June 13, 2018

BIR RULING NO. 1015-18

Section 30 (G) of the NIRC of 1997, as amended; RMO No. 20-2013; RMC No. 051-14; BIR Ruling No. 466-2014

Touch of Hope Foundation, Inc.
Km. 21 National Highway, Cagangohan,
Panabo City, Davao del Norte 8105

Attention: *AAA*

Gentlemen :

This refers to your letter dated March 23, 2015, applying on behalf of **TOUCH OF HOPE FOUNDATION, INC.** for tax exemption certificate being enjoyed by non-stock, non-profit corporation or association under Section 30 (G) of the National Internal Revenue Code (NIRC) of 1997, as amended, which was forwarded to this Office by Revenue Region No. 19, Davao City.

It is represented that **TOUCH OF HOPE FOUNDATION, INC.** with BIR Taxpayer's Identification No. 000-000-000-000 and Certificate of Registration No. OCN 2RC0000630956 dated September 2, 2007, is a non-stock, non-profit association duly organized and existing under the laws of the Republic of the Philippines; that it is registered with the Securities and Exchange Commission (SEC) under Company Registration No. CN200253278; and that the purposes [1] for which the association was incorporated are:

1) To be of help to the community by providing medical and dental services and assistance.

1.1 Providing free medical and dental consultations and other services to the indigents and to the senior citizens of the community. Provided, all such services shall be performed only by licensed professionals.

1.2 Initiating health awareness information drives specifically of responsible parenthood, environmental sanitation and drug abuse.

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1.3 Establishing a rehabilitation center for drug dependents, and the emotionally and mentally disturbed individuals. Counselling and psychological test services will also be offered in this center.

2) To alleviate the economic and social conditions of the poorest in the barangay by providing livelihood programs and creating projects to meet their basic needs.

2.1. Introducing productive and sustainable livelihood projects such as food processing, arts and artifacts, dress making, computer technician, cell repair, and hog raising agriculture.

2.2 Providing public toilets, bathrooms and water systems in the community.

2.3 Providing recreational center designed for children, the youth and the aged in the furtherance of their social development.

2.4 Providing relief operation for the natural calamities and war victims.

3. To reinforce literacy rate and development of moral and spiritual values by providing educational services and assistance such as scholarship grants to deserving students belonging to the poorest sector of the community.

In reply, please be informed that Section 30 of the National Internal Revenue Code of 1997, as amended, enumerates the non-stock and/or non-profit corporations/associations/organizations that are exempt from income tax in respect to income received by them as such. Section 30 (G) of the National Internal Revenue Code of 1997, as amended, provides, *viz.*:

> *"Sec. 30. Exempt from Tax on Corporations. — The following organizations shall not be taxed under this Title in respect to income received by them as, such:*
>
> xxx xxx xxx
>
> *(G) Civic league or organization not organized for profit but operated exclusively for the promotion of social welfare;*
>
> xxx xxx xxx"

"Non-stock" means *"no part of its income is distributable as dividends to its members, trustees, or officers"* and that any profit *"obtained as an incident to its operations shall, whenever necessary or proper, be used for the furtherance of the purpose or purposes for which the corporation was organized."* [2] "Non-profit" means that

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"no net income or asset accrues to or benefits any member or specific person, with all the net income or asset devoted to the institution's purposes and all its activities conducted not for profit." [3]

Revenue Memorandum Circular (RMC) No. 51-2014 has clarified that in order for an entity to qualify as a non-stock and/or non-profit corporation/association/organization exempt from income tax under Section 30 of the National Internal Revenue Code, as amended, its earnings or assets shall not inure to the benefit of any of its trustees, organizers, officers, members or any specific person. The following are considered "inurements" of such nature:

> 1. *The payment of compensation, salaries, or honorarium to its trustees or organizers; x x x.*

In the submitted documents of **TOUCH OF HOPE FOUNDATION, INC.**, it was disclosed that Board of Trustees are entitled to honorarium, salaries and allowances. _____ Certification by **TOUCH OF HOPE FOUNDATION, INC.'s** _____ BBB, dated March 18, 2015, states that:

> *"5. That honorarium, salaries and allowances paid by TOHFI to its trustees, officers and other executive officers are in the amounts of Php_____, Php_____ and _____for years 2011, 2012 and 2013, respectively."*

The giving of honoraria to the members of the Board of Trustees is considered a distribution of the equity (including the net income) of **TOUCH OF HOPE FOUNDATION, INC.** This is a form of private inurement which the law prohibits in the organization and operation of a non-stock, non-profit corporation. This act violates the requirement that no part of the net income or assets of the corporation shall inure to the benefit of any individual or specific person. Thus, **TOUCH OF HOPE FOUNDATION, INC.** cannot be qualified as a non-stock, non-profit corporation under Section 30 (G) of the National Internal Revenue Code of 1997, as amended.

Please bear in mind that, *"being a non-stock and/or non-profit corporation does not, by this reason alone, completely exempt an institution from tax."* [4] Thus, *"statutes granting tax exemptions are construed **strictissimi juris** against the taxpayer and liberally in favor of the taxing authority. A claim of tax exemption must be clearly shown and based on language in law too plain to be mistaken. Otherwise stated, taxation is the rule, exemption is the exception. The burden of proof rests upon the party claiming the exemption to prove that it is in fact covered by the exemption so claimed."* [5] ***(BIR Ruling No. 466-2014 dated November 19, 2014)***

In view of the foregoing, the request of **TOUCH OF HOPE FOUNDATION, INC.** to be exempted from income tax on its income as a Section 30 (G) corporation is hereby denied as it failed to prove that it is a non-profit corporation. Therefore, **TOUCH OF HOPE FOUNDATION, INC.** shall be treated as an ordinary corporation subject to thirty percent (30%) income tax rate pursuant to Section 27 (A) and other internal

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revenue taxes imposed by the National Internal Revenue Code of 1997, as amended.

Please be guided accordingly.

Very truly yours,

(SGD.) CAESAR R. DULAY
Commissioner of Internal Revenue

Footnotes

1. First, Amended Articles of Incorporation.
2. Section 87, Corporation Code.
3. *CIR vs. St. Luke's Medical Center, Inc.*, G.R. Nos. 195909 and 195960 dated 26 September 2012.
4. *CIR vs. St. Luke's Medical Center, Inc.* [G.R. No. 195909 & G.R No. 195960, 26 September 2012].
5. *Quezon City and The City Treasurer of Quezon City vs. ABS-CBN Broadcasting Corporation* [G.R. No. 166408, 6 October 2008].

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