June 28, 2018

BIR RULING NO. 1034-18

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

Naga City Maternity House Puericulture & Family Planning Center Foundation, Inc.
Peñafrancia Avenue, San Francisco
Naga City 4400

Attention: *AAA*

Gentlemen :

This refers to your letter dated January 20, 2014 applying in behalf of **NAGA CITY MATERNITY HOUSE PUERICULTURE & FAMILY PLANNING CENTER FOUNDATION, INC.** for tax exemption certificate being enjoyed by non-stock, non-profit corporation or association under Section 30 (E) of the National Internal Revenue Code (NIRC) of 1997, as amended, which was forwarded to this Office by Revenue Region No. 10, Legaspi City, through 7th Indorsement dated June 22, 2016.

It is represented that **NAGA CITY MATERNITY HOUSE PUERICULTURE & FAMILY PLANNING CENTER FOUNDATION, INC.** with BIR Taxpayer's Identification No. (TIN) 000-000-000-000 and Certificate of Registration No. OCN 1RC0000526881 dated May 03, 1996, 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. I200100353; and that the purposes [1] for which the association was incorporated are:

1. *To provide pre-natal as well as post-natal health care to needy mothers and their babies. Any income from which shall ensure to the benefit of the foundation.*

2. *To promote the family planning and nutrition program of the government.*

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3. *To promote series of baby shows for babies whose ages are from one to three years old.*

4. *To provide a permanent functional health center to attend to the needs and requirements for maternity, family planning and nutrition patients.*

5. *To receive contributions, gifts, bequest, legacies and donations that may be offered to carry out the purpose of this foundation subject however, to provisions of law.*

6. *In general, to carry-on any activity and to have and exercise all the powers conferred upon this corporation by existing laws, and to do any and all of the acts and things herein set forth to the same extent as juridical persons could do.*

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 (E) 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
>
> *(E) Non-stock corporation or association organized and operated exclusively for religious, charitable, scientific, athletic, or cultural purposes, or for the rehabilitation of veterans, no part of its net income or asset shall belong to or inure to the benefit of any member, organizer, officer or any specific person.*
>
> 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 *"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

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"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 **NAGA CITY MATERNITY HOUSE PUERICULTURE & FAMILY PLANNING CENTER FOUNDATION, INC.**, it was disclosed that Board of Trustees are entitled to Honoraria. Treasurer's Certification by **NAGA CITY MATERNITY HOUSE PUERICULTURE & FAMILY PLANNING CENTER FOUNDATION, INC.**, Corporate _____ BBB, dated May 27, 2014, states that:

> *"this is to Certify that every month there is an allocation of Php2,000.00 each for every member of the Board of Trustees as their outreach budget for the outreach program every month."*

The giving of honoraria to the members of the Board of Trustees is considered a distribution of the equity (including the net income) of **NAGA CITY MATERNITY HOUSE PUERICULTURE & FAMILY PLANNING CENTER 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, **NAGA CITY MATERNITY HOUSE PUERICULTURE & FAMILY PLANNING CENTER FOUNDATION, INC.** cannot be qualified as a non-stock, non-profit corporation under Section 30 (E) 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 **NAGA CITY MATERNITY HOUSE PUERICULTURE & FAMILY PLANNING CENTER FOUNDATION, INC.** to be exempted from income tax on its income as a Section 30 (E) corporation is hereby denied as it failed to prove that it is a non-profit corporation. Therefore, **NAGA CITY MATERNITY HOUSE PUERICULTURE & FAMILY PLANNING CENTER 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 revenue taxes imposed by the National Internal Revenue Code of 1997, as amended.

Please be guided accordingly.

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Very truly yours,

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

Footnotes

1. Amended Articles of Incorporation adopted March 31, 2016.
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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