July 24, 2018

BIR RULING NO. 1105-18

Section 30 (E) of the Tax Code of 1997;
BIR Ruling No. 159-15; BIR Ruling No.
466-2014; RMC No. 51-2014

Extreme Response International, Inc.
303 Southwest Center
Osmeña Highway, Makati City

Attention: *AAA*

Gentlemen :

This refers to your letter dated September 1, 2015 duly indorsed by Revenue Region No. 8-Makati City, requesting on behalf of Extreme Response International, Inc., for the issuance of a certificate of tax exemption pursuant to Section 30 of the Tax Code of 1997, as amended.

It is represented that Extreme Response International, Inc., a foreign corporation organized and existing under the laws of Georgia, U.S.A., was duly licensed to establish its branch office in the Philippines; that it is registered with the Securities and Exchange Commission (SEC) under Amended License No. FN201303414 under the name Extreme Response International, Inc. (TIN 000-000-000-000); and that the purpose for which it intends to pursue in the transaction of its business in the Philippines, is to introduce and promote underdeveloped countries and communities appropriate educational and literacy programs, to respond to the immediate needs of disadvantaged children and families throughout the world, to sponsor general charitable works and to establish and operate a residential children's home, without owning land in the Philippines.

Likewise, a review of the Articles of Incorporation and By-Laws as well as the Financial Statements and the Treasurer's Affidavit reveals that the Directors and the officers receive compensation for services rendered.

In reply, please be informed that Section 5 (a) of Revenue Memorandum Order (RMO) No. 20-2013 provides that:

> *"A branch office of a foreign non-stock, non-profit corporation cannot qualify as a tax-exempt corporation under Section 30 of the NIRC, as amended."*

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Moreover, what the law exempts under Section 30 of the National Internal Revenue Code of 1997, as amended are non-stock and/or non-profit corporations/associations/organizations. "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."* [1] "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."* [2]

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;*

xxx xxx xxx

The giving of honorarium and other incentives to the members of the Board of Directors are considered distributions of the equity (including the net income) of Extreme Response International, Inc. These are forms of private inurements which the law prohibits in the organization and operation of a non-stock, non-profit corporation. These acts violate 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, Extreme Response International, Inc. cannot be qualified as a non-stock, non-profit corporation or association under Section 30 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."* [3] 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."* [4] ***(BIR Ruling No. 466-2014 dated November 19, 2014)***

In view of the foregoing, your request for the exemption of Extreme Response International, Inc. as a non-stock, non-profit corporation under Section 30 of the Tax Code of 1997, as amended, is hereby denied for lack of legal basis. ***(BIR Ruling No. 159-15 dated May 6, 2015)*** Therefore, Extreme Response International, Inc. shall be

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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.

Very truly yours,

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

Footnotes

1. Section 87, Corporation Code.
2. *CIR vs. St. Luke's Medical Center, Inc.*, G.R. Nos. 195909 and 195960 dated 26 September 2012.
3. *CIR vs. St. Luke's Medical Center, Inc.* [G.R. No. 195909 & G.R. No. 195960, 26 September 2012].
4. *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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