Quezon City

Section 30 (E) of the NIRC of 1997, as amended; RMO No. 20-2013; RMC No. 051-14
BIR Ruling No. 466-2014
S30E-015-2020
JAN 2 4 2020

PLATON MARTINEZ FLORES SAN PEDRO
LEAÑO LAW OFFICES
6th Floor Tuscan Bldg., 114 V.A. Rufino Street
Legaspi Village, 1229 Makati City

Attention: **MIA CARISSA C. MARTIN**
Representative

Gentlemen:

This refers to your letter dated October 10, 2018, as indorsed by the Regional Director, Revenue Region No. 18, Koronadal City, through 1st Indorsement dated December 3, 2018, requesting on behalf of **MAHINTANA 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.

It is represented that **MAHINTANA FOUNDATION, INC.** with BIR Taxpayer's Identification No: (TIN) and Certificate of Registration No. OCN dated January 18, 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. 75603; and that the purposes[1] for which the association was incorporated are: "*to promote, carry on, conduct and encourage the advancement and development of education, scientific research and training in the fields of industrial, technological, agricultural, health, environmental, biological, physical and social sciences as well as the humanities and all other sciences or fields of human knowledge and culture, with special (but not exclusive) emphasis on research, development, training, and related activities designed to contribute to maximization of economic productivity and community development, wider distribution of social and economic values and protection and improvement of the environment, through financial aid and support, grants, scholarships, sponsorships, donations and other forms of assistance out of the funds of the Fund and to promote and encourage the dissemination of the results of scientific research and technological development and application thereof*".

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*

[1] Articles of Incorporation adopted on November 22, 2010.

S30E-015-2020
JAN 2 4 2020

(E) Nonstock 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 of 1997, 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:

2. Payment of exorbitant or unreasonable compensation to its employees; xxx

The submitted documents of **MAHINTANA FOUNDATION, INC.** shows that Officers of the corporation are receiving exorbitant or unreasonable compensation. The Certification of **MAHINTANA FOUNDATION, INC.**'s Treasurer, [redacted], dated February 26, 2019, states that:

"The following is the summary of the Foundation's expenses related to compensation, salaries or any emoluments paid to administrative staff for the years 2014 to 2017:

	2017	*2016*	*2015*	*2014*
Salaries, wages & allowances				
Chief Executive Officer	1,762,797	1,679,330	1,688,850	1,595,412
Admin Support Staff	1,443,650	1,374,730	1,273,725	771,615
Program Officer	490,480	457,600	416,000	375,436
Project Staff	4,247,091	4,033,072	4,276,207	4,417,885
SSS, Philhealth, Pag-ibig & Other benefits				
Chief Executive Officer	211,737	209,275	208,006	148,697
Admin Support Staff	321,700	318,142	318,511	124,403
Program Officer	139,174	75,226	69,576	65,016
Project Staff	3,351,727	1,251,088	1,400,126	1,504,874
Retirement costs				
Chief Executive Officer	337,502	460,294	276,165	1,549,561
Admin Support Staff	216,392	295,194	616,780	749,445

The compensation of **MAHINTANA FOUNDATION, INC.**'s Chief Executive Officer is exorbitant and unreasonable for a charitable institution. 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,

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2 Section 87, Corporation Code
3 CIR vs. St. Luke's Medical Center, Inc., G.R. Nos. 195909 and 195960 dated 26 September 2012

BIR-010-2020
JAN 2 4 2020

MAHINTANA 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 s[illegible]laimed."*[5] *(BIR Ruling No. 466-2014 dated November 19, 2014)*

In view of the foregoing, the request of **MAHINTANA 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, **MAHINTANA 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.

Very truly yours,

CAESAR R. DULAY
Commissioner of Internal Revenue

032356

K-1/spt18-402

COPY FURNISHED:

REVENUE REGION NO. 18 – Koronadal City
Attention: Revenue District Office No. 111 – Koronadal City

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