REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE
Quezon City

Sec. 30(E), Tax Code; RR 13-98	000-00	S30E-018-2020 JAN 2 4 2020

Person to Contact: Chief, Law & Legislative Division
Tel Nos. 926-55-36/927-09-63

Bustamante, Lozada and Associates
No. 57-A Manansala St.
Amorsolo, U.P. Diliman, Quezon City

Attention: **Atty. Manuel R. Bustamante, CPA**
Chairman

Gentlemen:

This refers to your letter dated December 19, 2014, as indorsed by the Regional Director, Revenue Region No. 8, Revenue District Office No. 49, North Makati, through 1st Indorsement dated January 27, 2015, requesting on behalf of COMMANDERIE DE BORDEAUX MANILA, INC. ("La Commanderie") for the issuance of a certificate of tax exemption enjoyed by non-stock, non-profit corporation or association pursuant to Section 30 (E) of the National Internal Revenue Code (NIRC) of 1997, as amended.

It is represented that Commanderie De Bordeaux Manila, Inc. (TIN:) is a non-stock, non-profit association duly organized and existing under the laws of the Republic of the Philippines. It is registered with the Securities and Exchange Commission (SEC), under Company Registration No. , on April 29, 2010. It is an association for cultural and civic purposes. Its Articles of Incorporation provides that the purpose for which the corporation/association was incorporated is (In general) *"the dissemination of better understanding of the wines of Bordeaux La Commanderie shall extend a close and friendly interchange with recognized organizations and established Bordeaux wine societies in France to strengthen bonds of friendship and understanding between such organizations. In this way, strong fraternal relations may be created and preserved, strengthened and extended, between La Commanderie and wine lovers of France and other countries."*

In reply, please be informed that Section 1 (i) and (l) of Revenue Regulations (RR) No. 13-98 defines cultural activity and social welfare, as follows:

"(i) 'Cultural activity' — shall refer to and include undertaking and/or assisting in research activities on all aspects of history, social system, customs and traditions; developing, enriching and preserving Filipino arts and culture; developing and promoting the visual and performing arts; and participating in vigorous implementation of bilingual policy through translation and wider use of technical, scientific and creative publications, development of an adaptive technical dictionary and use of Filipino as the medium of instruction.

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(l) 'Social welfare purposes' — shall refer to and include

(i) undertaking and/or assisting in the amelioration of the living conditions of distressed citizens particularly those who are handicapped by reasons of poverty, youth, physical and mental disability, illness, old age, and natural disasters, including assistance to cultural minorities;

(ii) pursuing a program for the protection and development of children and youth, such as providing services for drop-outs, pre-school children of low-income working mothers, and physically handicapped children;

(iii) providing for the rehabilitation of the youth and disabled adults, released prisoners, drug addicts, alcoholics, mentally retarded, hansenites and similar cases; and

(iv) providing for services to squatter families and to displaced workers."

The Supreme Court, in the case of *Commissioner of Internal Revenue vs. St. Luke's Medical Center, Inc. (G.R. No. 195909 & G.R. No. 195960, September 26, 2012)*, held that –

". . . [T]o be exempt from income taxes, Section 30 (G) of the NIRC requires that the institution be "operated exclusively" for social welfare.

However, the last paragraph of Section 30 of the NIRC of 1997, as amended, qualifies the words "organized and operated exclusively" by providing that:

> *'Notwithstanding the provisions in the preceding paragraphs, the income of whatever kind and character of the foregoing organizations from any of their properties, real or personal, or from any of their activities conducted for profit regardless of the disposition made of such income, shall be subject to tax imposed under this Code.'*

In short, the last paragraph of Section 30 provides that if a tax exempt charitable institution conducts "any" activity for profit, such activity is not tax exempt even as its not-for-profit activities remain tax exempt. This paragraph qualifies the requirements in Section 30 (E) that the "[n]on-stock corporation or association [must be] organized and operated exclusively for. . . charitable. . . purposes. . . It likewise qualifies the requirement in Section 30 (G) that the civic organization must be "operated exclusively" for the promotion of social welfare."

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In interpreting the term "exclusive" as used in the provision, the Supreme Court, citing the case of Lung Center of the Philippines vs. Quezon City (G.R. No. 144104, June 29, 2004), stated that -

> *"Exclusive" is defined as possessed and enjoyed to the exclusion of others; debarred from participation or enjoyment; and "exclusively" is defined, "in a manner to exclude; as enjoying a privilege exclusively." . . . The words "dominant use" or "principal use" cannot be substituted for the words "used exclusively" without doing violence to the Constitution and the Law. Solely is synonymous with exclusively."*

Neither Commanderie De Bordeaux Manila, Inc.'s corporate purposes nor its financial statements show that it was organized primarily in pursuit of cultural purposes and/or operated exclusively for the promotion of social welfare as defined in RR No. 13-98.

Such being the case, Commanderie De Bordeaux Manila, Inc. is subject to the corresponding internal revenue taxes imposed under the National Internal Revenue Code of 1997, as amended, on its income derived from any of its properties, real or personal, or any activity conducted for profit regardless of the disposition thereof, which income should be returned for taxation.

Likewise, interest income from currency bank deposits and yield or any other monetary benefits from deposit substitute instruments and from trust funds and similar arrangements, and royalties derived from sources within the Philippines are subject to the twenty percent (20%) final withholding tax: provided, however, that interest income derived by it from a depository bank under the expanded foreign currency deposit system shall be subject to 15%[1] final withholding tax pursuant to Section 27 (D)(1), in relation to Section 57 (A), both of the National Internal Revenue Code of 1997, as amended.

Also, it should be understood that Commanderie De Bordeaux Manila, Inc. shall be constituted as withholding agent of the government if it acts as an employer and its employee receives compensation income subject to the withholding tax under Section 79 (A), Chapter XIII, Title II of the National Internal Revenue Code of 1997, as amended, as implemented by Revenue Regulations No. 2-98, as amended, or if it makes income payments to individuals or corporations subject to the expanded withholding tax provided for in Section 57 (B) of the National Internal Revenue Code of 1997, as amended, also as implemented by Revenue Regulations No. 2-98, as amended.

Furthermore, it is subject to the payment of the annual registration fee of Five Hundred Pesos (PhP500.00) as prescribed in Section 236 (B) of the National Internal Revenue Code of 1997, as amended. It is also required to issue duly registered receipts or sales or commercial invoices for each sale or transfer of merchandise or for services rendered.

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[1] Republic Act No. 10963 increased the tax rate from 7.5% to 15% effective January 1, 2018

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Value-Added Tax

Section 105 of the National Internal Revenue Code of 1997, as amended, provides that:

> *"SEC. 105. Persons Liable. - Any person who, in the course of trade or business, sells, barters, exchanges, leases goods or properties, renders services, and any person who imports goods shall be subject to the value-added tax (VAT) imposed in Sections 106 to 108 of the same Code.*
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> *x x x x x x x x x*
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> *The phrase 'in the course of trade or business' means the regular conduct or pursuit of a commercial or an economic activity, including transactions incidental thereto, by any person regardless of whether or not the person engaged therein is a non-stock, non-profit private organization (irrespective of the disposition of its net income and whether or not it sells exclusively to members or their guests), or government entity."*

Accordingly, if Commanderie De Bordeaux Manila, Inc. is engaged in the sale of goods or services in the course of a business pursuit, including transactions incidental thereto, in general, it shall be liable for VAT.

Moreover, its purchase of goods or properties or services and importation of goods shall be subject to the 12% VAT pursuant to Sections 106 to 108 of the National Internal Revenue Code of 1997, as amended. It must be noted that VAT is an indirect tax payable by the seller and not by the purchaser of goods. Being an indirect tax, the amount of tax may be shifted or passed on to the buyer/purchaser, transferee or lessee of the goods, properties or services. Once shifted to the buyer/customer as an addition to the cost of goods or services sold, it is no longer a tax but an additional cost which the buyer/customer has to pay in order to obtain the goods or services.

Please be guided accordingly.

Very truly yours,

CAESAR R. DULAY
Commissioner of Internal Revenue

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