REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

Quezon City

Section 30(E) of the Tax Code of 1997, as amended
BIR Ruling No. 126-14 BIR Ruling No. 357-13
#143-2016 4-21-2016

DIVINA LAW
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Attention: **Nilo T. Divina**
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Senior Partner

Gentlemen:

This refers to your letter dated November 11, 2013 requesting on behalf of your client, **ALGO FOUNDATION, INC.**, tax exemption enjoyed by non-stock corporation or association organized and operated exclusively for charitable purposes under Section 30(E) of the Tax Code of 1997, as amended.

It is represented that **ALGO FOUNDATION, INC.**, with Taxpayer's Identification No. is a non-stock, non-profit corporation duly organized under the laws of the Philippines, registered with the Securities and Exchange Commission (SEC) under Company Registration No. dated February 15, 2008; and that the purposes for which it was incorporated are the following, among others:

1) *To take part in a significant and continuing human enterprise by engaging in non-profit, benevolent, cultural and altruistic activities for the purpose of advancing the social, health and economic well-being of their fellow citizens;*

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2) *To undertake such activities as may be conducive to the achievement of the objective and functions of the Foundation including of research, lectures, and community healthcare; and*

3) *To engage in book publishing, printing, binding, reproducing, mimeographing, copying, multigraphing, selling, distributing and dealing in artistic properties of every kind and description; to acquire all rights in literary properties and publish the same on a royalty basis; to publish under contract the literary properties of others insofar as these properties are incidental and related to the primary purpose of the Foundation.*

In reply, please be informed that your request for tax exemption as a non-stock non-profit corporation under Section of the Tax Code of 1997, as amended, is hereby denied for lack of factual basis.

Section 30 (E) of the 1997 Tax Code, 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) 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"*

Under the above provision, the tax exemption can only be availed of by, among others, a charitable corporation or association if it meets the following conditions:

a. *It is a non-stock corporation or association;*
b. *It is organized exclusively for charitable purposes;*
c. *It is operated exclusively for charitable purposes; and*
d. *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.*

Section 87 of the Corporation Code of the Philippines defines a non-stock corporation as "one where no part of its income is distributable as dividends to its members, trustees, or officers"[1] and that any profit "obtain[ed] 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]. In the case of *Lung*

[1] Section 87, Corporation Code of the Phillippines.
[2] Ibid.

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Center of the Philippines v. Quezon City[3], cited in the case of *Commissioner of Internal Revenue vs. St. Luke's Medical Center, Inc.*,[4] it was held that any profit by a charitable institution must not only be plowed back "whenever necessary or proper," but must be "devoted or used altogether to the charitable object which it is intended to achieve.

As regards the second and third conditions, Section 30(E) of the 1997 Tax Code requires that both the organization and operations of the charitable institution must be devoted "exclusively" for charitable purposes. The **organization** of the institution refers to its corporate form, as shown by its articles of incorporation, by-laws and other constitutive documents[5]. The **operations** of the charitable institution, on the other hand, generally refer to its regular activities which must be exclusive to charity[6].

Furthermore, Section 30(E) of the 1997 Tax Code necessitates that no part of the association's net income or asset shall belong to or inure to the benefit of any member, organizer, officer or any specific person.

After a careful perusal of the documents submitted, it is found that **ALGO FOUNDATION, INC.** failed to meet the third condition or the operational test. It is noted that the subject corporation has been organized and incorporated for more than eight (8) years as of this date but, as can be gleaned from its Audited Financial Statements for the last three years, it has not shown any charity- oriented projects/activities undertaken in pursuit of its charitable purposes as represented in its Articles of Incorporation. An evaluation of the accounts presented in the Financial Statements shows that interest income is the only source of revenue for four (4) consecutive years (2009-2012), and that one hundred percent (100%) of its expenses for every calendar year accounts for administrative expenses only.

It must be emphasized that to be tax-exempt, a corporation or association claiming to be a charitable institution must not only be organized as such but must also undertake activities exclusive to charity, and that any profits it may have obtained as an incident to its operations must be devoted or used altogether to the charitable object which it is intended to achieve. Notwithstanding that the Articles of Incorporation state that **ALGO FOUNDATION, INC.** is a non-stock, non-profit corporation, it has to prove that it is really a corporation organized and operated as contemplated under Section 30(E) of the Tax Code of 1997, as amended. Being registered as a non-stock and non-profit corporation does not, by this reason alone, completely exempt an institution from tax.[7]

Note that tax exemptions are never presumed and thus, as ruled by the Supreme Court in the case of *Quezon City and The City Treasurer of Quezon City vs. ABS-CBN Broadcasting Corporation (G.R. No. 166408 dated October 6, 2008)*:

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[3] G.R. No. 144104 dated 29 June 2004.
[4] G.R. Nos. 195909 and 195960 dated 26 September 2012
[5] Ibid.
[6] Ibid.
[7] Ibid.

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> *"He who claims an exemption from his share of common burden must justify his claim that the legislature intended to exempt him by unmistakable terms. For exemptions from taxation are not favored in law, nor are they presumed. They must be expressed in the clearest and most unambiguous language and not left to mere implications. It has been held that "exemptions are never presumed, the burden is on the claimant to establish clearly his right to exemption and cannot be made out of inference or implications but must be laid beyond reasonable doubt". In other words, since taxation is the rule and exemption the exception, the intention to make an exemption ought to be expressed in clear and unambiguous terms."*

Hence, **ALGO FOUNDATION, INC.** shall be treated as an ordinary corporation subject to regular corporate income tax and the applicable internal revenue taxes imposed by the Tax Code of 1997, as amended.

Moreover, Section 105 of the Tax Code of 1997 provides that 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.

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 **ALGO FOUNDATION, 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.

Please be guided accordingly.

Very truly yours,

KIM S. JACINTO-HENARES
Commissioner of Internal Revenue

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