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

Section 30(E) of the Tax Code of 1997	000-00	#150-2016 4-25-2016

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

ST. PAUL'S HOSPITAL OF ILOILO, INC.
General Luna Street, Iloilo City

Attention: **SR. ROSAMOND MARIE ABADESCO, SPC**
Administrator

Gentlemen:

This refers to your letter dated December 19, 2013, requesting for the issuance of a certificate of tax exemption enjoyed by non-stock corporation or association organized and operated exclusively for charitable and social welfare purposes under Section 30 (E) and (G) of the Tax Code of 1997, as amended.

It is represented that St. Paul's Hospital of Iloilo, Inc. with Taxpayer's Identification No. is a duly organized non-stock, non-profit corporation under the laws of the Philippines registered with the Securities and Exchange Commission (SEC) under Registration No. and that the primary purposes for which it was incorporated as appearing in its Articles of Incorporation are the following:

1. To provide medical and surgical aid and nursing or other care for sick, infirmed, aged, injured or destitute persons;

That the secondary purposes are:

1. To instruct and train suitable persons in the duties of nursing and attending upon the sick; and
2. To provide instructions and consolations of religion for those who are under the care of the institution;
3. Such other purposes incidental and kindred to those above-mentioned as the Board of Trustees may prescribe;
4. To erect, build, or otherwise procure a suitable building or buildings for the purposes aforesaid;
5. To carry into effect this purpose and the incidents thereto, it shall perform and do any and all things, and exercise any and all powers, rights, and attributes which such corporation, now or thereafter, could lawfully do and exercise under the laws of the Philippines;

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> *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."*

The Supreme Court, in the similar case of ST. LUKE'S MEDICAL CENTER, INC. vs. COMMISSIONER OF INTERNAL REVENUE [G.R. No. 195909 & 195960. September 26, 2012.], had the occasion to rule on the qualification of St. Luke's Medical Center, Inc. as a non-stock, non-profit operating exclusively for charitable and social welfare purposes, as follows:

"Section 30 (E) of the NIRC provides that a charitable institution must be:

(1) A non-stock corporation or association;
(2) Organized exclusively for charitable purposes;
(3) Operated exclusively for charitable purposes; and
(4) 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."

Thus, 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. Section 30 (E) of the NIRC specifically requires that the corporation or association be non-stock, which is defined by the Corporation Code as "one where no part of its income is distributable as dividends to its members, trustees, or officers" 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." However, under Lung Center, 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."

In its decision, the Supreme Court discussed the requirements under Section 30 (E) and (G):

> *"To be exempt from income taxes, Section 30(E) of the NIRC requires that a charitable institution must be "organized and operated exclusively" for charitable purposes. Likewise, to be exempt from income taxes, Section 30(G) of the NIRC requires that the institution be "operated exclusively" for social welfare."*

The Supreme Court had also noted that St. Luke's had revenues to paying patients and held that a hospital which receives revenues from paying patients is not an institution "operated exclusively" for charitable purposes as clearly, revenues from paying patients are income received from "activities conducted for profit." Thus, it declared:

> *"The Court cannot expand the meaning of the words "operated exclusively" without violating the NIRC. Services to paying patients are*

activities conducted for profit. They cannot be considered any other way. There is a purpose to make profit over and above the cost of services."

In rejecting the claim of St. Luke's as a non-stock, non-profit corporation organized and operated exclusively for charitable and social welfare purposes, the Supreme Court held that:

"The Court finds that St. Luke's is a corporation that is not "operated exclusively" for charitable or social welfare purposes insofar as its revenues from paying patients are concerned. This ruling is based not only on a strict interpretation of a provision granting tax exemption, but also on the clear and plain text of Section 30(E) and (G). Section 30(E) and (G) of the NIRC requires that an institution be "operated exclusively" for charitable or social welfare purposes to be completely exempt from income tax. An institution under Section 30(E) or (G) does not lose its tax exemption if it earns income from its for-profit activities. Such income from for-profit activities, under the last paragraph of Section 30, is merely subject to income tax, previously at the ordinary corporate rate but now at the preferential 10% rate pursuant to Section 27(B)."

In this case, while St. Paul's Hospital of Iloilo, Inc. was organized as a non-stock and non-profit charitable institution. However, this does not automatically exempt it from paying taxes. This only refers to the organization of St. Paul's Hospital of Iloilo, Inc. An examination of its audited financial statements show that St. Paul's Hospital of Iloilo, Inc. is not operated exclusively for charitable or social welfare purposes as it mainly derives income from the services rendered and operation as a hospital which are all for-profit activities.

Wherefore, this Office is of the opinion that St. Paul's Hospital of Iloilo, Inc. does not qualify for income tax exemption under Section 30 (E) and (G) of the Tax Code of 1997, as amended. St. Paul's Hospital of Iloilo, Inc. failed to meet the requirements under Section 30 (E) and (G) of the Tax Code of 1997, as amended, to be income tax exempt. However, it remains a proprietary non-profit hospital under Section 27 (B) of the Tax Code as long as it does not distribute any of its profits to its members and such profits are reinvested pursuant to its corporate purposes. St. Paul's Hospital of Iloilo, Inc., as a proprietary non-profit hospital, is entitled to the preferential tax rate of 10% on its net income from its for-profit activities.

Value-Added Tax

Sec. 109 (G) of the Tax Code of 1997, as amended, provides, viz. —

"SEC. 109. Exempt Transactions. — Subject to the provisions of Subsection (2) hereof, the following transactions shall be exempt from the value-added tax:

xxx xxx xxx

(G) Medical, dental, hospital and veterinary services except those rendered by professionals;"

St. Paul's Hospital of Iloilo, Inc.'s hospital services is exempt from VAT pursuant to Section 109 (G) of the Tax Code of 1997, as amended.

Notwithstanding that hospital services rendered by St. Paul's Hospital of Iloilo, Inc. is exempt from VAT, its purchase of goods or properties or services and

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importation of goods shall nevertheless be subject to the 12% VAT pursuant to Section 107 of the said Code.

It should be noted that VAT is an indirect tax payable by the seller and not by the purchaser of goods. However, being an indirect tax, it can 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.

As long as St. Paul's Hospital of Iloilo, Inc. will not engage in the regular conduct of a commercial or economic activity not in connection with its primary purposes, it will remain exempt from 12% VAT.

Under Section 235 of the Tax Code of 1997, any provision of existing general and special law to the contrary notwithstanding, the books of accounts and other pertinent records of tax-exempt organization or grantees of tax incentives shall be subject to examination by the BIR for purposes of ascertaining compliance with the conditions under which it has been granted tax exemptions or tax incentives, and its tax liabilities, if any.

Finally, it is subject to the payment of the annual registration fee of PhP500.00 as prescribed in Section 236 (B) of the Tax Code of 1997, as amended. It is also required under Section 6 (C) in relation to Section 237 of the same Code to issue duly registered receipts or sales or commercial invoices for each sale or transfer of merchandise or for services rendered which are not directly related to the activities for which the Association is registered [Revenue Memorandum Circular (RMC) No. 76-2003].

This ruling is being issued on the basis of the foregoing facts as represented. However, if upon investigation, it will be disclosed that the facts are different, then this ruling shall be considered null and void.

Very truly yours,

KIM S. JACINTO-HENARES
Commissioner of Internal Revenue

K-1-JRC
cc: Regional Director
Revenue Region 11-Iloilo City

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