REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

Quezon City

Section 30 of the National Internal Revenue Code of 1997, as amended;
RMO 20-2013;
BIR Ruling Nos.143-16; 126-14; 357-13
330E-0209-2020
MAR 10 2020

IMMAJ-PJMCC FOUNDATION, INC.
6F JSU-Amosup Mariners Home,
1765 Nakpil street cor. Vasquez street,
Malate Manila

Attention: **EDUARDO U. MANESE**
President

Gentlemen:

This refers to your letter dated February 12, 2014 requesting for the issuance of certificate of tax exemption enjoyed by a non-stock, non-profit corporation or association organized and operated exclusively for charitable purpose under Section 30 (E) of the National Internal Revenue Code (NIRC) of 1997, as amended.

It is represented that IMMAJ-PJMCC Foundation, Inc. with Taxpayer's Identification No. , is a non-stock, non-profit corporation and that the purposes for which it was incorporated, as stated in the Amended Articles of Incorporation, are the following:

1. To update/upgrade the technical qualifications of seafarers through abbreviated/specialized marine courses.

2. To receive donations, contributions or endowments, in cash or in kind from members and/or other persons or entities in the maritime sectors from the Philippines and from abroad, and to receive such property or money as may from time to time be acquired by deed, grant, devise, bequest, gift, and the like.

3. To conduct research in the maritime business and technology in order to upgrade the qualifications of shipping managers and seafarers in accordance with the standards of developed maritime nations.

4. To provide assistance particularly in maritime education including the establishment of professional chairs for marine transportation, marine engineering, the social sciences and the humanities and/or related disciplines.

5. To purchase, acquire, hold, sell, lease, exchange, mortgage or otherwise deal in real and/or personal property and to build, acquire, lease, purchase, mortgage building and offices as may be necessary or useful to carry out the objects and purposes of the Foundation.

3301-0209-2020
MAR 10 2020

6. To organize, operate and maintain dormitories, classrooms, laboratories, canteens, printing and publishing facilities, nautical and maritime projects.

In reply, please be informed that your request for tax exemption as a non-stock, non-profit corporation under Section 30 (E) of the NIRC of 1997, as amended, is hereby denied for lack of factual basis.

Section 30 (E) of the NIRC of 1997, as amended, provides that:

> *"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;"*

To claim the tax exemption granted by the above law, the requirements must be clearly and expressly proved. It is a governing principle in taxation that tax exemptions are construed in *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority. The basic principle in the construction of laws granting tax exemptions has been very stable. He who claims an exemption from his share of the common burden of taxation must justify his claim by showing that the Legislature intended to exempt him by words too plain to be beyond doubt or mistake[1].

As discussed in the case of ST. LUKE'S MEDICAL CENTER, INC. vs. COMMISSIONER OF INTERNAL REVENUE *(G.R. No. 203514 dated February 13, 2017),* the Supreme Court states that:

> *"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.'"*

[1] City of Iloilo, et al. vs. Smart Communications, Inc., G.R. No. 167260 dated February 27, 2009

S30E- 0209-2020
MAR 10 2020

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. Furthermore, Section 30 (E) of the NIRC of 1997, as amended, 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.

Notwithstanding that the Articles of Incorporation states that IMMAJ-PJMCC Foundation, Inc. is a non-stock, non-profit corporation, it failed to prove that it is really a corporation organized and operated as contemplated under Section 30 (E) of the NIRC 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.

The purpose(s) stated in the Article of Incorporation did not provide that their services, training and/or seminars are organized and operated exclusively for charitable purposes. As stated in the Financial Statement "*The Foundation (IMMAJ-PJMCC Foundation, Inc.) is also task to facilitate and administer training projects that are funded by grants from the AJSU-AMOSUP Training Levy Fund (JATF). The JATF is derived from mandatory contributions made by ship owners for the upgrading of seafarer's skills and knowledge, as provided in the IBF AJSU/AMOSUP-IMMAJ CBA*". It seems that the mandatory contribution is for payment of the services rendered by IMMAJ-PJMCC Foundation, Inc.

To emphasize once more, tax exemptions are never presumed and as affirmed 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)* states that:

> *"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."*

In view of the foregoing, this Office is of the opinion that **IMMAJ-PJMCC Foundation, Inc.** does not qualify as a charitable corporation within the contemplation of Section 30 of the NIRC of 1997, as amended and that your request for the exemption of **IMMAJ-PJMCC Foundation, Inc.** as a non-stock, non-profit corporation under Section 30 (E) of the NIRC of 1997, as amended, is hereby denied for lack of factual and legal basis.

Please be guided accordingly.

Very truly yours,

CAESAR R. DULAY
Commissioner of Internal Revenue

033440

K1-JESS
K1-FR-14-1013