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

Section 30 (E) of the NIRC of 1997, as amended
BIR Ruling No. 143-2016; BIR Ruling No. 101-2016
S30E-0236-2020
MAY 21 2020

USC-OFFICE OF POPULATION STUDIES FOUNDATION, INC.
USC-TC, Talamban, Cebu City 6000

Attention: JUDITH RAFAELITA B. BORJA, PhD
Director

Gentlemen:

This refers to your application for the issuance of a Tax Exemption Certificate on behalf of **USC – OFFICE OF POPULATION STUDIES FOUNDATION, INC.** pursuant to Section 30 (E) and (G) of the National Internal Revenue Code (NIRC) of 1997, as amended, *"as a non-stock, non-profit corporation organized and operated exclusively for scientific purposes and promotion of social welfare."*[1]

Documents submitted disclosed that **USC – OFFICE OF POPULATION STUDIES FOUNDATION, INC.** with BIR Taxpayer's Identification No. (TIN) and Certificate of Registration No. dated June 09, 2005, is a non-stock, non-profit corporation 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. ; and that the purposes for which it was incorporated are:

1. *To conduct research and training on population, health and development and to disseminate and publish the same;*

2. *To assist in the enhancement and promotion of the research culture at the University of San Carlos; and*

3. *To generate, receive and manage funds to support the operation of the Foundation.*

In reply, please be informed that Section 30 (E) and (G) of the NIRC 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

(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;

[1] Per Application Letter dated April 19, 2017.

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xxx xxx xxx

(G) Civic league or organization not organized for profit but operated exclusively for the promotion of social welfare;"

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

1. It is a non-stock corporation or association;
2. It is organized exclusively for scientific purposes;
3. It is operated exclusively for scientific 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.

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" 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]

Moreover, Section 30 (E) of the NIRC of 1997, as amended, requires that both the organization and operations of the scientific institution must be devoted "exclusively" for scientific purposes. The *organization* of the institution refers to its corporate form, as shown by its Articles of Incorporation, By-Laws and other constitutive documents.[3] The *operations* of the scientific institution, on the other hand, generally refer to its regular activities which must be exclusive to scientific research. It also 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. Furthermore, to be exempt from income taxes under Section 30 (G) of the NIRC of 1997, as amended, it requires that the institution be "operated exclusively" for social welfare.[4]

Careful perusal of the documents submitted disclosed that **USC – OFFICE OF POPULATION STUDIES FOUNDATION, INC.** failed to meet the third and fourth conditions. An evaluation of the accounts presented in the submitted Financial Statements for the years 2013, 2012, 2011, and 2010, particularly the Receipts and Expenses Summary, shows that the bulk of its revenues are being utilized for Salaries, Meals and Lodging, Travel and Transportation, and Survey Contracting Expense, and not devoted or used altogether to the scientific purposes and promotion of general welfare which it is intended to achieve as represented in its Amended Articles of Incorporation.

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.*"[5] 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 so claimed.*"[6]

In view of the foregoing, your request on behalf of **USC – OFFICE OF POPULATION STUDIES FOUNDATION, INC.,** for tax exemption as a non-stock, non-profit corporation under Section 30 (E) and (G) of the NIRC of 1997, as amended, is hereby denied for lack of legal and factual basis.

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[2] Section 87. Corporation Code of the Philippines.
[3] G.R. Nos. 195909 and 195960 dated 26 September 2012.
[4] *Ibid*
[5] *Ibid.*
[6] Quezon City and The City Treasurer of Quezon City vs. ABS-CBN Broadcasting Corporation [G.R. No. 166408, October 6, 2008].

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Hence, **USC – OFFICE OF POPULATION STUDIES FOUNDATION, INC.** shall be treated as an ordinary corporation subject to regular corporate income tax and the applicable internal revenue taxes imposed by the NIRC of 1997, as amended.

Moreover, Section 105 of the NIRC of 1997, as amended, 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 **USC – OFFICE OF POPULATION STUDIES FOUNDATION, INC.** is engaged in the sale of goods or services in the course of a business pursuit, including transactions incidental thereto, its revenues derived therefrom shall be subject to the twelve percent (12%) VAT, in case the gross receipts from such sales exceed Three Million Pesos (P3,000,000.00)[7], or to the three percent (3%) percentage tax, if gross receipts do not exceed Three Million Pesos (P3,000,000.00).

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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COPY FURNISHED:

REVENUE REGION NO. 13 – Cebu City
Attention: Revenue District Office No. 081 – Cebu City – North

PHILIPPINE COUNCIL FOR NGO CERTIFICATION (PCNC)
6th Floor, SCC Bldg., CFA-MA Compound,
4427 Interior Old Sta. Mesa, 1016 Manila

[7] Republic Act (RA) No. 10963 increased the VAT threshold from P1,919,500.00 to P3,000,000.00 effective January 01, 2018