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
RMC 64-2016 RMO 20-2013
BIR RULING NO. 150-16; BIR Ruling no. 121-13
S20E-024 7-2020 MAY 22 2020

BABA'S FOUNDATION INCORPORATED
KM 6, Diversion Rd, Buhangin,
Davao City 1000

Attention: CRISTITA V. RACOSALEM-EPAL
Executive Director

Madame:

This refers to your letter dated November 7, 2013 applying on behalf of **BABA'S FOUNDATION INCORPORATED** for tax exemption certificate being enjoyed by non-stock[1] and non-profit corporation under Section 30 of the National Internal Revenue Code (NIRC) of 1997, as amended, which was forwarded to this Office by Revenue Region No. 19, Davao City.

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

1. To help in the general upliftment of the material, moral, intellectual and spiritual conditions of the people;

2. To provide the means to develop the full human potentials;

3. To establish and strengthen cooperatives organizations, as a vehicle for community development;

4. To provide immediate assistance and rehabilitation to victims of calamities in coordination with the Ananda Marga Universal Relief Team (AMURT) and Ananda Marga Universal Relief Team Ladies (AMURTEL);

5. To engage in the development of the livelihood and socio economic projects thru providing project financial and marketing assistance in communities interested to be assisted by the Foundation;

6. To conduct Microfinance operation pursuant to RA 8425, the Social Reform and Poverty Alleviation Act;

[1] As stated in the Amended Articles of Incorporation

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7. To help establish day care centers, pre-school age educational programs, nutrition centers, orphanages, home and program for the aged and adult education facilities for the illiterates;

8. To assist the disabled and rehabilitates the victims of drug abuse;

9. To provide the fora for research and discussion of scientific, social, moral, economic and spiritual subjects;

10. To help develop the artistic talents of Filipinos guided by the principles that art is for service and for blessedness;

11. To help develop human settlements;

12. To provide medical assistance to urban and rural poor settlers;

13. To vigorously promote and implement sustainable development programs that will protect and rehabilitate our natural eco-systems;

14. To advocate for the establishment of good community governance and the protection of the rights of women, children and indigenous people;

15. To establish and develop Alternative Health Facilities and Wellness Centers, as well as promote and advocate for holistic Health development;

16. To advocate, and engage in programs, for the prevention of cruelty to animals and plants;

17. To engage in livelihood activities and receive donations from local or foreign sources, to enter into loan transactions with local or foreign sources for provision of financial assistance to assisted beneficiary communities and individuals, in order to meet the financial needs of the Foundation, and to acquire properties or enter into transactions with any individual or organization in accordance with law in order to enhance the realization of the objectives by which this foundation is organized, provided that nothing in the income of the corporation shall inure to benefit any of its members, officers and trustees;

18. To expand its operation in areas needing assistance and services only with the approval of the Board of Trustees.

In reply, please be informed that the request of Baba's Foundation Inc., for exemption from income tax as a non-stock, non-profit corporation for charitable and social welfare purposes is denied for lack of legal basis.

As stated in subsections (E) and (G) of Section 30 of the NIRC of 1997, as amended:

> *"SEC. 30. Exemptions 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*

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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 xxx xxx

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

xxx xxx xxx

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 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 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."

The Supreme Court further discussed the qualification for the availment of tax exemption under Section 30 (E) and (G) of the NIRC of 1997, as amended, *to wit*:

"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 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."

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> *"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 Baba's Foundation Inc., was organized as a non-stock corporation, this does not automatically exempt it from paying taxes. The purposes stated in the Articles of Incorporation and in the Oath of Undertaking of Cristita V. Racosalem-Epal are, among others: *"3. That one of the programs being implemented by Baba's Foundation is its Microfinance Program called Developing Resources thru Entrepreneurship and Alternative Microfinance Systems (DREAMS), a livelihood and entrepreneurship initiative which provide credit assistance and other micro financial services to micro and small entrepreneurs, farmers, women, enterprising out of school youth, to help them improve their lives and families;"* and *"4. That the DREAMS Microfinance Program of Baba's Foundation Inc., to sustain its assistance to its beneficiaries, as well as its operation, is extending credit with an effective interest rate of 2.5% per month, as it is also accessing loan from external creditors to be re-lent to its clients and beneficiaries;"*. Based therefrom, it can be gleaned that Baba's Foundation Inc., is not operated exclusively for charitable or social welfare purposes.

While Section 3 of RMO 20-2013 requires that the Articles of Incorporation/ Amended Articles of Incorporation/By-Laws/Amended By-Laws must clearly state that: (a) it is a non-stock, non-profit corporation or association; (b) the purpose/s for which it was created is/are one of those enumerated under Section 30 of the NIRC of 1997, as amended; (c) no part of the corporation or association's net income or assets shall inure to the benefit of any private individual; (d) the trustees of the non-profit corporation or association do not receive any compensation or remuneration; and (e) in the event of dissolution, the assets of the corporation shall be transferred to similar institution or to the government. A perusal of the submitted Amended Articles of Incorporation and Amended By-Laws, shows that (a), (c), and (e) are not explicitly stated in the said document/s. Also, the Financial Statements are incompletely submitted.

Wherefore, this Office is of the opinion that Baba's Foundation Inc., does not qualify for income tax exemption under Section 30 (E) and (G) of the NIRC of 1997, as amended, as it failed to meet the requirements set forth under the said law.

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[2].

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

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In view of the foregoing, this Office is of the opinion that **BABA'S FOUNDATION INC.** does not qualify as a charitable or social welfare corporation within the contemplation of Section 30 of the NIRC and that your request for the exemption of **BABA'S FOUNDATION INC.** as a non-stock, non-profit corporation under Section 30 (E) and (G) of the Tax Code 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

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