June 21, 2019

BIR RULING NO. 362-19

Section 30 of the National Internal Revenue Code of 1997, as amended; BIR Ruling No. 121-13 dated March 22, 2013

Philippine Stock Exchange Foundation, Inc.
2/F PSE Plaza, Ayala Triangle, Ayala Avenue,
Makati City

Attention: *AAA*

Gentlemen :

This refers to your letter dated December 18, 2013 applying on behalf of **PHILIPPINE STOCK EXCHANGE FOUNDATION, INC.** for tax exemption certificate being enjoyed by non-stock, non-profit corporation under Paragraphs (E) and (H) of Section 30 of the National Internal Revenue Code (NIRC) of 1997, as amended, which was forwarded to this Office by Revenue District Office No. 50, South Makati.

It is represented that **PHILIPPINE STOCK EXCHANGE FOUNDATION, INC.** ("**PSEFI**" for brevity), with business address at 2/F PSE Plaza Ayala Triangle, Ayala Avenue, Makati City, is a corporation duly registered and existing under the laws of the Republic of the Philippines with the Securities and Exchange Commission under SEC Company Registration No. ANO95-04193; that it is duly registered with the Bureau of Internal Revenue (BIR) with Taxpayers Identification No. (TIN) 000-000-000-000 and Certificate of Registration No. OCN9RC0000327017; that the purpose for which the corporation was incorporated is *"to initiate, develop, administer, promote, encourage, support, finance and assist programs and projects or undertakings of philanthropic, charitable, educational, scientific, civic, social welfare and eleemosynary nature, or a combination thereof. . ."*

In reply, please be informed that, in the case of *Commissioner of Internal Revenue Code vs. St. Luke's Medical Center, G.R. Nos. 195909 and 195960, September 26, 2012*, the

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Supreme Court clarified that:

> "The Constitution exempts charitable institutions only from real property taxes. In the NIRC, Congress decided to extend the exemption to income taxes. However, the way Congress crafted Section 30(E) of the NIRC is materially different from Section 28(3), Article VI of the Constitution. Section 30(E) of the NIRC defines the corporation or association that is exempt from income tax. On the other hand, Section 28(3), Article VI of the Constitution does not define a charitable institution, but requires that the institution "actually, directly and exclusively" use the property for a charitable purpose.
>
> 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."

PSEFI submitted files and documents to support its claim for tax exemption. However, the following information were found:

(1) In 2010, the Foundation donated (a) P0.5 million educational assistance to BBB, _____ of the Philippine Stock Exchange, Inc., (b) P0.4 million with Sarimanok News Network, Inc. to promote capital market development and (c) P0.4 million for the support of various charitable institutions and the development of capital markets. [1]

(2) In 2011, the Foundation donated P1.5 million for the development of the capital market under such projects as the development of the PSE Academy Website; the airing of PSE interstitials and interviews of listed company chief executive officers in the ABS-CBN News Channel (ANC) programs; and the launching of the PSE New Trading System. [2]

(3) In 2012, the Foundation donated P1.44 million for the development of the capital markets under such projects as the airing of PSE interstitials, interview of listed company chief executive officers in the ABS-CBN News Channel (ANC) and a featured documentary on the 20th year anniversary of the Manila and Makati Stock Exchanges into the Philippine Stock Exchange, and an art competition. [3]

(4) That the foundation has channel funds amounting to P14.0 Million for its Corporate Social Responsibility (CSR) donations and P21.0 Million for its Capital Market Development (CMD) Projects, from 1996 to October 2013. [4]

In order for a charitable non-stock, non-profit organization/corporation to be exempt from tax, no part of its net income or asset shall belong to or inure to the benefit of any

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member, organizer, officer or any specific person. For this reason, organizations/corporations which apply for tax exemption ruling must meet the following requirements set forth in Section 6 of Revenue Memorandum Order (RMO) No. 20-2013, to wit:

a. *It must be a non-stock corporation or association **organized and operated exclusively** for religious, charitable, scientific, athletic, or cultural purposes, or for the rehabilitation of veterans.*

b. *It should meet the following tests:*

   i. *Organizational Test — requires that the corporation or association's constructive documents exclusively limit its purposes to one or more of those described in paragraph (E) of Section 30 of the NIRC, as amended.*

   ii. *Operational Test — mandates that the regular activities of the corporation or association be exclusively devoted to the accomplishment of the purposes specified in paragraph (E) of Section 30 of the NIRC, as amended. A corporation or association fails to meet this test if a substantial part of its operation may be considered "activities conducted for profit."*

c. *All the net income or assets of the corporation or association must be devoted to its purpose/s and no part of its net income or asset accrues to or benefits any member or specific person. Any profit must be plowed back and must be devoted or used altogether for the furtherance of the purpose for which the corporation or association was organized.*

It is noted, however, that the majority of its donations were made not for charitable purposes but to help the development of the capital market which in turn would benefit the Philippine Stock Exchange, a taxable entity and one of its major donors.

Based on the foregoing, we regret to inform you that the **PSEFI** is not qualified to claim the tax exemption under Section 30 (E) and (H) of the NIRC of 1997, as amended, as the foundation is not organized and operated exclusively for charitable purpose.

A tax exemption is effectively a social subsidy granted by the State because an exempt institution is spared from sharing in the expenses of government and yet benefits from them. Tax exemptions for charitable institutions should therefore be limited to institutions beneficial to the public and those which improve social welfare. A profit-making entity should not be allowed to exploit this subsidy to the detriment of the government and

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other taxpayers. *(Commissioner of Internal Revenue vs. St. Luke's Medical Center, G.R. Nos. 195909 and 195960, September 26, 2012)*

In view of the foregoing, this Office is of the opinion that **PHILIPPINE STOCK EXCHANGE FOUNDATION, INC.** does not qualify as a charitable organization within the contemplation of Section 30 of the NIRC and that your request for the exemption of **PHILIPPINE STOCK EXCHANGE FOUNDATION, INC.** as a non-stock, non-profit corporation under Section 30 (E) 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,

(SGD.) CAESAR R. DULAY
Commissioner of Internal Revenue

Footnotes

1. Independent Auditors' (SGV & CO) Report for December 31, 2011 to 2010.
2. Independent Auditors' (SGV & CO) Report for December 31, 2011 to 2010.
3. Independent Auditors' (SGV & CO) Report for December 31, 2012 to 2011.
4. Certificate dated December 02, 2013 and signed by _____ CCC.

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