September 11, 2019

BIR RULING NO. 508-19

Section 30 of the National Internal Revenue Code of 1997, as amended; BIR Ruling No. 803-18 dated May 10, 2018; BIR Ruling No. 121-13 dated March 22, 2013

Lingap Adhikain Foundation, Inc.
(Formerly: Maritime Explorations Foundation, Inc.)
2805 Jollibee Plaza, F. Ortigas Jr. Road,
Brgy. San Antonio, Pasig City 1605
Attention: *AAA*

Madam :

This refers to your letter dated March 22, 2017 applying on behalf of **LINGAP ADHIKAIN FOUNDATION, INC.** for tax exemption certificate being enjoyed by non-stock, non-profit corporation under Paragraph (E) of Section 30 of the National Internal Revenue Code (NIRC) of 1997, as amended.

It is represented that **LINGAP ADHIKAIN FOUNDATION, INC.** ("**LINGAP**" for brevity), with business address at 2805 Jollibee Plaza, F. Ortigas Jr. Road, Brgy. San Antonio, Pasig City 1605, 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. CN201321269; that it is duly registered with the Bureau of Internal Revenue (BIR) with Taxpayers Identification No. (TIN) 000-000-000-000 and BIR Certificate of Registration No. OCN0RC0000000000.

The purpose for which the corporation was incorporated are as follows:

"PRIMARY PURPOSE

To **establish and operate as a non-stock, non-profit foundation organized for charitable purpose by maintaining** a scholarship fund for deserving students and manage activities of the foundation for the benefit of students who will qualify as scholars after appropriate competitive examination and screening; and to perform research and/or educational projects with educational institutions and other government agencies in line with its efforts of uplifting the lives of the underprivileged.

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SECONDARY PURPOSE

1. To uphold the development of Filipino youths by providing quality education to the underprivileged by focusing on the following programs: school infrastructure development, teacher training, student health and nutrition, learning support, and other related special projects;

2. To enter into any lawful arrangements for sharing profits, union of interest, unitization, or any agreement, reciprocal concession or cooperation, with any entity, person or governmental, municipal or public authority, domestic or foreign, in the carrying on of any of the purposes of this association;

3. To acquire or obtain from any government or authority, national, provincial, municipal or otherwise, or any association, company or partnership or person, such charter, contracts, franchise, privileges, exemption, licenses and concession as may be conducive to any of the objects of the association;

4. To conduct and transact any and all lawful activities, and to do or cause to be done any one or more of the acts and things herein set forth as its purposes, within or without the Philippines, and in any and all foreign countries, and to do everything necessary, desirable or incidental to the accomplishment of the purposes or the exercise of one or more of the powers herein enumerated, or which shall at any time appear conducive to or expedient for the protection of benefit of this association."

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

LINGAP submitted documents to support its claim for tax exemption. However, the following were noted:

1. The Amended Articles of Incorporation [1] provides in the Secondary Purpose that "To enter into any lawful arrangements for sharing profits, union of

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interest, unitization, or any agreement, reciprocal concession or cooperation, with any entity, person or governmental, municipal or public authority, domestic or foreign, in the carrying on of any of the purposes of this association";

2. The Financial Statement for 2015-2016 states that, "For the taxable year ended December 31, 2016, the Foundation shall use BIR form no. 1702-RT. The Foundation's transactions are subject only to regular/normal tax rate. It does not have transactions exempt from tax or under special tax rate." [2] and "Sale of Services with taxable amount of P_____"; [3] and

3. The Financial Statement for 2017-2016 states that, "For the taxable year ended December 31, 2017, the Foundation shall use BIR form no. 1702-RT. The Foundation's transactions are subject only to regular/normal tax rate. It does not have transactions exempt from tax or under special tax rate." [4] and "Sale of Services with taxable amount of P_____." [5]

Based on the foregoing, we regret to inform you that the **LINGAP** is not qualified to claim the tax exemption under Section 30 (E) 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 other taxpayers. *(Commissioner of Internal Revenue vs. St. Luke's Medical Center, G.R. Nos. 195909 and 195960, September 26, 2012)*

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. *(Quezon City and The City Treasurer of Quezon City vs. ABS-CBN Broadcasting Corporation, G.R. No. 166408, 6 October 2008)*

In view of the foregoing, this Office is of the opinion that **LINGAP ADHIKAIN FOUNDATION, INC.** does not qualify as a charitable organization within the contemplation of Section 30 of the NIRC of 1997, as amended. Hence, your request for the exemption of **LINGAP ADHIKAIN 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.

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Very truly yours,

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

Footnotes

1. Dated December 10, 2014.
2. Page 17 of the Notes to The Financial Statements as at and for the Years ended December 31, 2016 and 2015.
3. Page 18 of the Notes to The Financial Statements as at and for the Years ended December 31, 2016 and 2015.
4. Page 17 of the Notes to The Financial Statements as at and for the Years ended December 31, 2017 and 2016.
5. Page 17 of the Notes to The Financial Statements as at and for the Years ended December 31, 2017 and 2016.

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