September 27, 2019

BIR RULING NO. 539-19

Section 30 (E) of the National Internal Revenue Code of 1997, as amended; BIR Ruling No. 143-2016

Metrobankers Foundation, Inc.
4/F Metrobank Plaza, Sen. Gil Puyat Avenue
Makati City 1200

Attention: *AAA*

Gentlemen :

This refers to your letter dated December 16, 2013, requesting on behalf of **METROBANKERS FOUNDATION, INC.** for the issuance of a certificate of tax exemption enjoyed by non-stock, non-profit corporation or association pursuant to Section 30 (E) of the National Internal Revenue Code (NIRC) of 1997, as amended.

Documents submitted disclosed that **METROBANKERS FOUNDATION, INC.** with BIR Taxpayer's Identification No. (TIN) 000-000-000-000 and Certificate of Registration No. OCN 9RC0000388602 dated May 12, 2004, 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. ANO94-001320 dated April 04, 1994; that it is an affiliate of Metropolitan Bank & Trust Company; and that the main purpose for which it was incorporated is:

> *"To establish, and operate a private, non-profit foundation which shall initiate, stimulate, encourage, promote, develop, support, assist, undertake, finance, provide, establish, manage, operate and/or maintain programs, plans, projects, or enterprises for charitable, cultural, civic, social welfare, athletic, or educational aims, objectives, endeavors, or activities geared towards the upliftment of the material, physical, social, economic, and moral welfare of all human beings, regardless of race, creed or religions."*

In reply, please be informed that Section 30 (E) of the National Internal Revenue Code of 1997, as amended, provides, *viz.*:

> *"Sec. 30. Exempt from Tax on Corporations. — The following organizations*

Copyright 2020 CD Technologies Asia, Inc.

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";

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

1. It is a non-stock corporation or association;

2. It is organized exclusively for charitable purposes;

3. It is 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.

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." [1] In the case of *Lung Center of the Philippines v. Quezon City*, [2] cited in the case of *Commissioner of Internal Revenue vs. St. Luke's Medical Center, Inc.*, [3] it was held that 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."

As regards the second and third conditions, Section 30 (E) of the National Internal Revenue Code of 1997, as amended, requires that 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. [4] The *operations* of the charitable institution, on the other hand, generally refer to its regular activities which must be exclusive to charity. [5]

Moreover, Section 30 (E) of the National Internal Revenue Code 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.

Careful perusal of the documents submitted disclosed that **METROBANKERS FOUNDATION, INC.** failed to meet the third and fourth conditions. An evaluation of the accounts presented in the submitted Audited Financial Statements for the years 2012, 2011, and 2010, shows that the bulk of its revenues comes from dividends, interests, and

Copyright 2020 CD Technologies Asia, Inc.

gains arising from changes in fair values of financial asset at fair value. Also, millions of its assets and funds are being utilized as an accommodation for its officers and employees, as well as the officers and employees of its affiliate, the Metropolitan Bank & Trust Company. Moreover, its expenses/disbursements are not devoted or used altogether to the charitable object which it is intended to achieve as represented in its Articles of Incorporation.

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.

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."* [6] 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."* [7]

In view of the foregoing, your request on behalf of **METROBANKERS FOUNDATION, INC.**, for tax exemption as a non-stock, non-profit corporation under Section 30 (E) of the National Internal Revenue Code of 1997, as amended, is hereby denied for lack of legal and factual basis.

Hence, **METROBANKERS FOUNDATION, INC.** shall be treated as an ordinary corporation subject to regular corporate income tax and the applicable internal revenue taxes imposed by the National Internal Revenue Code of 1997, as amended. ***(BIR Ruling No. 143-2016 dated April 21, 2016)***

Moreover, Section 105 of the National Internal Revenue Code 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 **METROBANKERS 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

Copyright 2020 CD Technologies Asia, Inc.

(12%) VAT, in case the gross receipts from such sales exceed Three Million Pesos (P3,000,000.00), [8] 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,

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

Footnotes

1. Section 87, Corporation Code of the Philippines.
2. G.R. No. 144104 dated 29 June 2004.
3. G.R. Nos. 195909 and 195960 dated 26 September 2012.
4. *Ibid.*
5. *Ibid.*
6. *Ibid.*
7. *Quezon City and The City Treasurer of Quezon City vs. ABS-CBN Broadcasting Corporation* [G.R. No. 166408, 6 October 2008].
8. Republic Act (RA) No. 10963 increased the VAT threshold from P1,919,500.00 to P3,000,000.00 effective January 01, 2018.

Copyright 2020 CD Technologies Asia, Inc.