April 2, 2018

BIR RULING NO. 559-18

Section 30 (E) of the NIRC of 1997, as amended; RMO No. 20-2013; RMC No. 051-2014; BIR Ruling No. 466-2014

South Cotabato Foundation, Inc.
Arellano Street, Zone III, Koronadal City 9506

Attention: *AAA*

Gentlemen :

This refers to your letter dated December 16, 2013, requesting on behalf of **SOUTH COTABATO FOUNDATION, INC.**, for the issuance of a certificate of tax exemption enjoyed by non-stock, non-profit corporation or association organized and operated exclusively for charitable purposes under Section 30 (E) of the National Internal Revenue Code of 1997 as amended.

It is represented that of **SOUTH COTABATO FOUNDATION, INC.** with Taxpayer's Identification No. 000-000-000-000, is a non-stock, non-profit corporation duly organized under the laws of the Philippines; that it is registered with the Securities and Exchange Commission (SEC) under Registration No. 112703; and that the purposes [1] for which it was incorporated are the following:

1. *To engage, establish, maintain and carry on purely benevolent and charitable medical undertakings or assistance to the poor, orphans, underprivileged, and victims of widespread diseases, fire, typhoons, earthquakes and other similar calamities;*

2. *To carry on and conduct scientific, athletic, philanthropic, trust, cultural or educational undertakings or for the rehabilitation of detention and/or insular, provincial and municipal prisoners, detainee and/or under probation, parole of other similar situations, or for the prevention of cruelty to children or animals;*

3. *To create, organize, establish, sponsor, set-up and/or undertake socio-economic, civic, charitable, cultural and development programs, centers and/or projects that shall contribute to the upliftment of the poor,*

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orphans and underprivileged and victims of fire, typhoon, earthquake and other similar calamities;

4. *To encourage, promote, sponsor, establish, initiate, organize and/or set-up research and development projects in community development, culture, education, health, agriculture, sciences, humanities, trade and industries;*

5. *To establish, set-up and maintain scholarships, grants-in-aid or professorial chairs in order to foster, promote and encourage the study and improvement of fundamental or pure research, applied research, developmental work and/or economic evaluation in the fields of community development, education, health, agricultures, sciences, humanities, trade and industries;*

6. *In connection with the accomplishment of the aforementioned purposes, to perform the same alone, singly or jointly in coordination or assistance of other benevolent, charitable, medical, scientific, athletic, philanthropic, trust, cultural, educational, research, development and/or training centers, Orphanages, Red Cross, Social Welfare Institutions, and other similar institutions devoted in the development of the community, culture, education, health, agriculture, humanities, trade, industries and all kinds of sciences whether operated by a private person or persons, associations, partnerships, joint ventures, corporation or by the Philippine government or foreign government or foreign person or persons including its political subdivision or government owned or controlled corporations or jointly with any person or persons, firms, associations, partnerships, joint ventures, or corporations whether domestic or foreign and as may be necessary or convenient for carrying on the purposes herein provided;*

7. *To purchase, own, hold, acquire, lease, control, accept, or otherwise, such property or properties, real or personal, and interest in such properties necessary or convenient or appropriate for carrying on any of the purposes herein provided;*

8. *To invest its funds or undertake revenue, business and/or income generative and/or self liquidation projects; and*

9. *To conduct microfinance operations pursuant to Republic Act No. 8425 or the Social Reform and Poverty Alleviation Act (as amended on December 23, 2005).*

In reply, please be informed that Section 30 (E) of the National Internal Revenue Code (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

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> *(E) Non-stock 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****; x x x"* (Emphasis supplied)

"Non-stock" means *"no part of its income is distributable as dividends to its members, trustees, or officers"* and that any profit *"obtained 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] "Non-profit" means that *"no net income or asset accrues to or benefits any member or specific person, with all the net income or asset devoted to the institution's purposes and all its activities conducted not for profit."* [3]

Revenue Memorandum Circular (RMC) No. 51-2014 has clarified that in order for an entity to qualify as a non-stock and/or non-profit corporation/association/organization exempt from income tax under Section 30 of the NIRC, as amended, its earnings or assets shall not inure to the benefit of any of its trustees, organizers, officers, members or any specific person. The following are considered "inurements" of such nature:

> 1. *The payment of compensation, salaries, or honorarium to its trustees or organizers;*
>
> xxx xxx xxx

In Article XII, of the submitted Amended Articles of Incorporation of **SOUTH COTABATO FOUNDATION, INC.**, it provides that:

> *"The board of trustees shall serve without compensation other than reasonable per diems for actual necessary expenses incurred upon other official business authorized by resolution of the Board. x x x."*

Also, Number 5 of Article II of the submitted New By-Laws of **SOUTH COTABATO FOUNDATION, INC.**, provides that:

> *"5. Compensation — The Board of Trustees shall serve without compensation other than reasonable reimbursements for actual attendance upon meetings of the Board and actual necessary expenses incurred upon other official business authorized by resolution of the Board. x x x."*

The giving of *per diems* to the Board of Trustees is considered distribution of the net income of **SOUTH COTABATO FOUNDATION, INC.** It is form of inurement which the law prohibits in the organization and operation of a non-stock, non-profit corporation. This act violates the requirement that no part of the net income or assets of the corporation shall inure to the benefit of any individual or specific person.

Please bear in mind that, "*being a non-stock and/or non-profit corporation does*

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not, by this reason alone, completely exempt an institution from tax." [4] 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.*" [5] ***(BIR Ruling No. 466-2014 dated November 19, 2014)***

In view of the foregoing, the request on behalf of **SOUTH COTABATO FOUNDATION, INC.** to be exempted from income tax on its income as a Section 30 (E) corporation or association is hereby denied as it failed to prove that it is a non-profit corporation or association. Therefore, it shall be subject to thirty percent (30%) corporate income tax pursuant to Section 27 (A) of the National Internal Revenue Code of 1997, as amended.

Please be guided accordingly.

Very truly yours,

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

Footnotes

1. Article II, Amended Articles of Incorporation.
2. Section 87, Corporation Code.
3. *CIR vs. St. Luke's Medical Center, Inc.*, G.R. Nos. 195909 and 195960 dated 26 September 2012.
4. *CIR vs. St. Luke's Medical Center, Inc.* [G.R. No. 195909 & G.R. No. 195960, 26 September 2012].
5. *Quezon City and The City Treasurer of Quezon City vs. ABS-CBN Broadcasting Corporation* [G.R. No. 166408, 6 October 2008].

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