April 2, 2018

BIR RULING NO. 563-18

Section 30 (G), of the National Internal Revenue Code of 1997, as amended; BIR Ruling No. 001-2017; BIR Ruling No. 444-2014

NMS-CARES, Inc.
Ground Floor, Standard Factory Building I,
Loakan Road, BCEZ, Baguio City 2600

Attention: *AAA*

Gentlemen :

This refers to your letter dated August 19, 2015 applying in behalf of **NMS-CARES, INC.** for tax exemption certificate being enjoyed by non-stock, non-profit corporation or association organized and operated exclusively for the promotion of social welfare under Section 30 (G) of the National Internal Revenue Code (NIRC) of 1997, as amended, which was forwarded to this Office by Revenue Region No. 2, Baguio City, through 1st Indorsement dated August 26, 2015.

It is represented that **NMS-CARES, INC.** with BIR Taxpayer's Identification No. (TIN) 000-000-000-000 and Certificate of Registration No. OCN 4RC0000824125 dated September 3, 2014, 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. CN201427490; and that the purposes [1] for which the association was incorporated are:

1. *To provide programs for knowledge enhancement and skills development within Deaf Education;*

2. *Encourage the activity involvement of families with Deaf children and the community;*

3. *Advocate for the less privileged Deaf children of the community;*

4. *To cooperate with other organizations of similar aims;*

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5. *To encourage the responsive involvement of the non-Deaf private sector to help actualize the organization's vision;*

6. *To support, promote, and enhance the spirit of camaraderie, fellowship, and unity among its members; and*

7. *To transact all other lawful activities, which the Board of Trustees considers appropriate to further the purpose of the organization.*

In reply, please be informed that **this Office cannot as yet issue the requested Certificate of Tax Exemption** because **NMS-CARES, INC.** has to prove by actual operation for at least three (3) years that it is really an association exempt from income tax under Section 30 (G) of the National Internal Revenue Code of 1997, as amended. ***(BIR Ruling No. 001-2017 dated January 05, 2017)***

In the meantime, **NMS-CARES, INC.** can file the necessary annual information return instead of an income tax return on or before the fifteenth (15th) day of the fourth (4th) month following the end of its taxable year as required under Section 24 of Revenue Regulations No. 2-40 dated February 10, 1940. [2] Based on such information return, we shall conduct the necessary investigation on the activities undertaken during the period. The letter of exemption shall thereafter be issued depending upon the result of our investigation.

Thus, **NMS-CARES, INC.** is subject to the corresponding internal revenue taxes imposed under the National Internal Revenue Code of 1997, as amended, on its income derived from any of its properties, real or personal, or any activity conducted for profit regardless of the disposition thereof, which income should be returned for taxation.

Likewise, interest income from currency bank deposits and yield or any other monetary benefits from deposit substitute instruments and from trust funds and similar arrangements, and royalties derived from sources within the Philippines are subject to the twenty percent (20%) final withholding tax: provided, however, that interest income derived by it from a depository bank under the expanded foreign currency deposit system shall be subject to 7-1/2% final withholding tax pursuant to Section 27 (D) (1), in relation to Section 57 (A), both of the National Internal Revenue Code of 1997, as amended. ***(BIR Ruling No. 444-2014 dated October 30, 2014)***

Also, it should be understood that **NMS-CARES, INC.** shall be constituted as withholding agent of the government if it acts as an employer and its employee receives compensation income subject to the withholding tax under Section 79 (A), Chapter XIII, Title II of the National Internal Revenue Code of 1997, as amended, as implemented by Revenue Regulations No. 2-98, as amended, or if it makes income payments to individuals or corporations subject to the expanded withholding tax provided for in Section 57 (B) of the National Internal Revenue Code of 1997, as amended, also as implemented by Revenue Regulations No. 2-98, as amended.

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Moreover, under Section 235 of the National Internal Revenue Code of 1997, as amended, any provision of existing general and special law to the contrary notwithstanding, the books of accounts and other pertinent records of tax-exempt organization or grantees of tax incentives shall be subject to examination by the BIR for purposes of ascertaining compliance with the conditions under which it has been granted tax exemptions or tax incentives, and its tax liabilities, if any.

Furthermore, it is subject to the payment of the annual registration fee of Five Hundred Pesos (Php500.00) as prescribed in Section 236 (B) of the National Internal Revenue Code of 1997, as amended. It is also required to issue duly registered receipts or sales or commercial invoices for each sale or transfer of merchandise or for services rendered which are not directly related to the activities for which the Association is registered under Section 6 (C) in relation to Section 237 of the same Code ***[Revenue Memorandum Circular (RMC) No. 76-2003]***.

Value-Added Tax

Section 105 of the National Internal Revenue Code of 1997, as amended, provides that:

> "***SEC. 105. Persons Liable.*** — *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.*
>
> xxx xxx xxx
>
> *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.*
>
> xxx xxx xxx"

Accordingly, if **NMS-CARES, INC.** is engaged in the sale of goods or services in the course of a business pursuit, including transactions incidental thereto in general, it shall be liable for VAT.

Notwithstanding that it is a non-stock, non-profit corporation, its purchase of goods or properties or services and importation of goods shall nevertheless be subject to the 12% VAT pursuant to Sections 106 to 108 of the said Code.

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

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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.

However, revenue from contributions and donations, not being derived from sale of services or sale of goods made in the course of business but rather in connection with its non-stock, non-profit activities, is exempt from the 12% VAT.

Finally, for purposes of securing a Certificate of Tax Exemption after the three (3)-year period, **NMS-CARES, INC.** is required to submit the following documents pursuant to **Revenue Memorandum Order (RMO) No. 20-2013 dated July 22, 2013:**

1. *Original copy* of application letter for issuance of Tax Exemption Ruling. The letter shall cite the particular paragraph of Section 30 of the National Internal Revenue Code of 1997, as amended, under which the application for exemption/revalidation is being based.

2. *SEC Certified true copy* of its Certificate of Incorporation;

3. *SEC Certified true copy* of its latest Amended Articles of Incorporation which must specifically include and clearly state the following provisions:

    a. *That the corporation is non-stock, non-profit;*

    b. *That the primary purpose for which the corporation was created is one of those enumerated under Sec. 30 of the Tax Code of 1997, as amended;*

    c. *That no part of the net income of the corporation shall inure to the benefit of any its members or private individual;*

    d. *That the trustees of the non-profit corporation do not receive any compensation; and*

    e. *In case of dissolution, assets of the corporation shall be transferred to a similar institution or to the government.* (Revenue Memorandum Circular No. 51-2014)

4. *SEC Certified true copy* of its latest Amended By-Laws;

5. *Original copy* of a Certification under Oath by an executive officer of the corporation as to:

    a. *all previous amendments/changes in the Articles of Incorporation and By-laws;* (If there are no amendments/changes, the Certification shall state this fact)

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b. *manner of activities; and*

c. *the sources and disposition of income, if any, of the corporation.*

6. *Certified true copies* of its Income Tax Returns or Annual Information Returns and Financial Statements for the last three (3) years of operation;

7. *Original copy* of a Certification under Oath by the treasurer of the corporation as to the amount of income, compensation, salaries or any emoluments paid by the corporation to its trustees, officers and other executive officers;

8. *Certified true copy* of its BIR Certificate of Registration;

9. *Original copy* of a Certification issued by the Revenue District Office (RDO) where the corporation is registered that the corporation is not the subject of any pending investigation, on-going audit, pending tax assessment, administrative protest, claim for refund or issuance of tax credit certificate, collection proceedings, or a judicial appeal; or if there be any, the *original copy* of a Certification issued by the RDO on the status thereof; and

10. *Original copy* of a Statement under Oath by an executive officer of the corporation as to its *modus operandi* which shall include:

    a. *A full description of the past, present, and proposed activities of the corporation;*

    b. *A narrative description of anticipated receipts and contemplated expenditures; and*

    c. *A detailed description of all revenues which it seeks to be exempted from income tax. All other revenues which are not included in the statement or application shall be subject to income tax.*

This ruling is being issued on the basis of the foregoing facts as represented. However, if upon investigation, it will be ascertained that the facts are different, then this ruling shall be considered null and void.

Very truly yours,

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

Footnotes

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1. Article II, Amended Articles of Incorporation of NMS-CARES, INC.
2. *Collector vs. Sinco*, G.R. L-9276 dated October 23, 1956.

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