April 5, 2018

BIR RULING NO. 610-18

Section 30 (E), 1997 Tax Code; RMO No. 20-2013; RMC No. 64-2016; BIR Ruling Nos. 158-11, 156-11, 153-11 & 218-14

Megawide Corporate Foundation, Inc.
20 N. Domingo Street, Barangay Valencia
Quezon City

Attention: *AAA*

Gentlemen :

This refers to your letter dated August 17, 2016, received via indorsement dated October 14, 2016 from Revenue Region No. 7, Quezon City, requesting for issuance of a certificate of tax exemption pursuant to Section 30 (E) of the National Internal Revenue Code of 1997, as amended.

It is represented that **MEGAWIDE CORPORATE FOUNDATION, INC.** with BIR Taxpayer's Identification No. (TIN) 000-000-000-00000 and Certificate of Registration No. OCN 3RC0000567247 dated September 11, 2012, 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. CN201213370; and that the purpose for which the association was incorporated are as follows:

a. To establish and maintain a non-stock, non-profit charitable foundation;

b. To conduct nationwide community development programs and advocacy campaigns such as health and safety consciousness and environmental awareness projects, in cooperation with agencies, corporations and foundations;

c. To promote the right and privileges of the poor, marginalized and disadvantage families and children in the community/ies through socio-civic, health, nutrition projects, and provide medical and

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financial assistance and other developmental programs and services;

d. To generate, solicit, use, distribute and allocate charitable gifts, donations and other income to victims of natural calamities or disasters for relief or rehabilitation measures; as well as to solicit, aid, donations and contributions, to assist, help, aid and provide medical assistance to the sick, the poor and the needy;

e. To raise and receive funds for charitable, educational and social welfare purposes and to hold, by bequest, devise, gift, purchase or lease, any property, real, personal, or mixed, without limitations as to amount or venue, except such limitations, if any, as may be imposed by law;

f. To provide scholarship grants to poor but deserving students nationwide;

g. In connection with the foregoing, to perform all and everything necessary and proper for the attainment of the purposes, or the furtherance of corporations or individuals; to do every other act or acts, incidental or appurtenant to, or connected with the aforesaid business or powers, or any part or parts thereof; provided, the same be not in conflict with the law under which this corporation is organized; to purchase, own, hold, acquire or otherwise accept such property, real or personal, as may be necessary, convenient, or appropriate for any of the purposes herein expressed; to invest the funds of the Foundation; to borrow money, to make and issue notes, bonds and to secure the same by mortgage, pledge or otherwise, in such amounts as the purposes of the corporation require.

In reply, after a careful evaluation, your request for tax exemption 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 legal basis.

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
>
> *(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." (emphasis*

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supplied)

Under the above-quoted provision, a 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 is exempt from income taxation. *(BIR Ruling No. 158-11 dated May 19, 2011, BIR Ruling No. 156-11 dated May 19, 2011 and BIR Ruling No. 153-11 dated May 17, 2011)*

Corporations or associations which apply for tax exemption ruling under Section 30 (E) of the Tax Code of 1997, as amended, must meet the following tests in accordance with Revenue Memorandum Order (RMO) No. 20-2013 dated July 22, 2013, to wit:

> i. Organizational Test — requires that the corporation or association's constitutive 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 operations may be considered "activities conducted for profit."

This was clarified in Revenue Memorandum Circular (RMC) No. 64-2016 dated June 20, 2016, to wit:

> *"Registration with the SEC as a non-stock, non-profit corporation, foundation, association or institution does not automatically exempt it from paying taxes. This only refers to its organization. The operations of a corporation generally refer to its regular activities.*
>
> xxx xxx xxx
>
> *Actual Operation: A corporation is exempt from tax on its income (other than income of whatever kind and character from its properties, real or personal) if such corporation meets two tests: (a) It must be organized and operated for one or more of the specified purposes; and (b) no part of its net income must inure to the benefit of private stockholders or individuals."*

To satisfy the operational test, an organization must be engaged in activities furthering public purposes rather than private interests. It must not be operated for the benefit of designated individuals or the persons who created it. It is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the organizers, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests. *(BIR Ruling No. 218-14 dated June 20, 2014)*

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It is noted that since its incorporation in 2012, based on the submitted financial statements, the corporation failed to prove that it is actually engaged in activities that furthers its charitable purposes as enumerated in the Articles of Incorporation. The Corporation failed to prove by actual operation that it is a non-stock, non-profit corporation organized and operated exclusively for charitable purposes.

In view of the foregoing, the request of **MEGAWIDE CORPORATE FOUNDATION, INC.** to be exempted from income tax on its income as a Section 30 (E) corporation is hereby denied as it failed to prove that it is a non-stock, non-profit corporation. Therefore, **MEGAWIDE CORPORATE FOUNDATION, INC.** shall be treated as an ordinary corporation subject to income tax pursuant to Section 27 (A) of the NIRC of 1997, as amended.

Please be guided accordingly.

Very truly yours,

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

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