April 16, 2018

BIR RULING NO. 719-18

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

Edmund Rice Ministries Foundation, Philippines, Inc.
Edmund Rice Center Cathedral Compound
Kabankalan City, 6111 Negros Occidental

Attention: *AAA*

Gentlemen :

This refers to your letter dated September 15, 2015, as indorsed by the Assistant Regional Director, Revenue Region No. 14, Government Center, Palo, Leyte, through 1st Indorsement dated September 10, 2015, Revenue District Office No. 90, Maasin City requesting on behalf of **EDMUND RICE MINISTRIES FOUNDATION, PHILIPPINES, INC.** for the issuance of a certificate of tax exemption enjoyed by non-stock, non-profit corporation or association pursuant to Section 30 of the National Internal Revenue Code (NIRC) of 1997, as amended.

Documents show that Edmund Rice Ministries Foundation, Philippines, Inc. TIN 000-000-000-000 is a non-stock, non-profit association duly organized and existing under the laws of the Republic of the Philippines. It is registered with the Securities and Exchange Commission (SEC) under Company Registration No. 201505207 dated March 8, 2015.

In reply, please be informed that **this Office cannot as yet issue the requested Certificate of Tax Exemption** because Edmund Rice Ministries Foundation, Philippines, 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 of the Tax Code of 1997, as amended. (BIR Ruling No. 001-2017 dated January 05, 2017)

In the meantime, Edmund Rice Ministries Foundation, Philippines, Inc. is subject to the corresponding internal revenue taxes imposed under the Tax Code of 1997, as amended, on its income derived from any of its properties, real or personal, or any

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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 Tax Code of 1997, as amended. (BIR Ruling No. 444-2014 dated October 30, 2014)

Also, it should be understood that Edmund Rice Ministries Foundation, Philippines, Inc. shall be constituted as withholding agent of the government if it acts as an employer and its employees receive compensation income subject to the withholding tax under Section 79 (A), Chapter XIII, Title II of the Tax 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 Tax Code of 1997, as amended, also as implemented by Revenue Regulations No. 2-98, as amended.

Moreover, under Section 235 of the Tax 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 Tax 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).

Valve-Added Tax

Section 105 of the Tax Code of 1997, as amended, provides —

> *"**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 Edmund Rice Ministries Foundation, Philippines, 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 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 educational activities, is exempt from the 12% VAT.

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

A. *Original copy* of application letter for issuance of Tax Exemption Ruling. The letter shall cite the particular paragraph of Sec. 30 of the National Internal Revenue Code (NIRC) of 1997, as amended, under which the application for exemption is being based;

B. *Certified true copy* of Certificate of Registration/Incorporation with the Securities and Exchange Commission (SEC);

C. *Certified true copy* of the latest Articles of Incorporation issued by the SEC which must include the following:

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1. That the corporation is non-stock, non-profit;

2. That the primary purpose for which it was created is one of those enumerated under Sec. 30 of the NIRC;

3. That no part of the net income shall inure to the benefit of any of its members;

4. That the trustees do not receive any compensation; and

5. In case of dissolution, assets of the corporation shall be transferred to similar institution or the government.

D. *Certified true copy* of the By-Laws;

E. *Original copy* of Certification under Oath by an executive officer of the corporation or association as to (i) all previous amendments/changes in the Articles of Incorporation and By-Laws, (ii) manner of activities, and (iii) the sources and disposition of income, if any. If there are no amendments/changes, the Certification shall state this fact;

F. *Certified true copy* of the Certificate of Registration with the BIR;

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

H. *Original copy* of the Certification issued by the RDO where the corporation/association is registered that it 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 the Certification issued by the RDO on the status thereof;

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

J. *Original copy* of a statement under Oath by an executive officer of the corporation/association as to its *modus operandi* which shall include:

1. A full description of the past, present, and proposed activities;

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2. A narrative description of anticipated receipts and contemplated expenditures; and

3. A detailed description of all revenues which it seeks to be exempted from 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

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