



Republic of the Philippines
DEPARTMENT OF FINANCE

Roxas Boulevard Corner Pablo Ocampo, Sr. Street
Manila 1004

DOF OPINION NO. 001.2023

ATTY. MARDOMELO N. RAYMUNDO, JR.

ATTY. JELYN C. CLEMENTE

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Ayala Triangle, Ayala Avenue, Makati City 1226

**SUBJECT: Request for Review of Bureau of Internal Revenue (BIR)
Ruling No. S30E-0242-2020 dated 21 May 2020**

Dear **Attys. Raymundo and Clemente:**

This refers to the request for review your office filed on behalf **RONALD MCDONALD HOUSE CHARITIES OF THE PHILIPPINES, INC. (RMHC)** on 15 June 2022 of Bureau of Internal Revenue (BIR) Ruling No. **S30E-0242-2020** dated 21 May 2020, denying RMHC's request for confirmatory ruling of tax exemption and holding that RMHC shall be treated as an ordinary corporation subject to regular corporate income tax rate and other internal revenue taxes.

RMHC's submitted Amended Articles of Incorporation¹ shows that it is organized as a non-stock, non-profit association duly organized and existing under the laws of the Republic of the Philippines for the following purposes:

- a. For charitable, educational and scientific purposes within the meaning of Section 26 (e) of the Internal Revenue Code of 1986, as amended ("Code");²
- b. To make contributions and grants to corporations, trusts, or community chests, funds or foundations, organized and operated exclusively for charitable, scientific or educational purposes, which engage in whole or in part in educating children, or providing for essential needs of children or carrying on research as to physical and mental diseases and other disorders of children, or the diagnosis, prevention, and treatment thereof, no part of the net earnings of which shall inure to the benefit of any

¹ Approved by the Securities and Exchange Commission on 5 November 2003.

² Renumbered as Section 30(E) under the National Internal Revenue Code (NIRC) of 1997, as amended.

private shareholder or individual, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation, and which does not participate in, or including the publishing or distributing of statements, any political campaign on behalf of any candidate for public office, and to make grants to qualified physicians and scientists for the specific purpose of carrying on research as to physical and mental diseases and other disorders of children; and

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- e. To raise money from time to time for any of the purposes of the Corporation, without any limit as to the amount thereof. xxx
- f. To utilize the funds of the Corporation in furtherance of its purposes, provided, that the net profits derived from all undertakings shall not inure to the benefit of any of the trustees, officers, or members, or any private individual;
- g. To utilize at least 70% of the total funds of the Corporation for the purposes for which it was established, and that not more than 30% will be used for administrative purposes.

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In a letter dated 5 November 2013, RMHC requested from the BIR a confirmatory ruling of its tax-exempt status under Section 30(E) of the National Internal Revenue Code (NIRC), as amended. The BIR, in Ruling No. S30E-0242-2020 dated 21 May 2020, however, denied RMHC's application for tax exemption, stating that:

"xxx parts of the income are consistently used to fund tournaments and concerts in return for profits. Donations to other institutions engaged in activities not similar to the foundation's purpose, organizing and financing tournaments, concerts and activities of other private entities are considered distributions of the equity (including the net income) of [RMHC]. These are forms of financial assistance/private 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. Moreover, the conduct of tournaments for a fee constitutes an activity for profit which is taxable under the last paragraph of Section 30 of the 1997 Tax Code, as amended. Thus, [RMHC] cannot be qualified as a non-stock, non-profit corporation under Section 30 (E) of the National Internal Revenue Code of 1997, as amended."

The dispositive portion of the ruling reads:

“In view of the foregoing, the request of [RMHC] 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-profit corporation. Therefore, [RMHC] shall be treated as an ordinary corporation subject to thirty percent (30%) income tax rate pursuant to Section 27 (A) and other internal revenue taxes imposed by the National Internal Revenue Code of 1997, as amended.”

Verily, the issue to be resolved in this case is whether RMHC qualifies for exemption from income tax under Section 30(E) of the National Internal Revenue Code (NIRC), as amended.

RMHC predicates its application for tax exemption on Section 30 (E) of the National Internal Revenue Code (NIRC), as amended, which provides:

“Sec. 30. Exempt from Tax on Corporations. – The following organization shall not be taxed under this Title in respect to income received by them as such:

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(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.”

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“Notwithstanding the provisions in the preceding paragraphs, the income of whatever kind and character of the foregoing organizations from any of their properties, real or personal, or from any of their activities conducted for profit regardless of the disposition made of such income, shall be subject to tax imposed under this Code.”

However, the BIR denied RMHC’s claim for exemption ruling that RMHC distributed part of its equity (including the net income) (a) by consistently using part of its income in funding profit-making activities, like tournaments and concerts, and (b) by donating to other institutions engaged in activities not similar to the foundation's purpose, organizing and financing tournaments, concerts and activities of other private entities. According to the BIR, these are forms of financial assistance or private inurement which are prohibited for non-stock, non-profit corporation and a violation of the requirement that no part of the net income or assets of the corporation inure to the benefit of any individual or specific person.

In support of its Request for Review, RMHC argues that its funds are used only for the furtherance of its charitable purposes, with its expenses consist mainly of grants and donations to schools and communities, and that none of its funds is given to any private individual or entity for private purposes. RMHC maintains that its excess revenues over expenses does not inure to the benefit of any private person, and all the excess revenues are plowed back to finance future programs in furtherance of RMHC's educational and charitable purposes.

RMHC further maintains that while RMHC organizes golf and badminton tournaments as part of its fundraising activities, it has never organized any concert, contrary to the BIR's conclusion in its ruling. Additionally, RMHC argues that the holding of fund-raising activities does not necessarily contradict its nature as a charitable institution, considering that all the funds generated from such fund-raising activities are plowed back to support the RMHC's charitable programs.

In this instance, *we rule with RMHC.*

As jurisprudentially settled, in order to claim the benefits granted under Section 30 (E) of the NIRC, an entity must be:

- a. a non-stock corporation or association;
- b. organized exclusively for charitable purposes;
- c. operated exclusively for charitable purposes; and
- d. 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.³

The **organization** of the institution refers to its corporate form, as shown by its articles of incorporation, by-laws and other constitutive documents while the **operations** of the charitable institution generally refer to its regular activities – which both the organization and operations must be exclusive to charity.⁴ It is also required that the corporation or association be non-stock, "one where no part of its income is distributable as dividends to its members, trustees, or officers"⁵ and that any profit obtained as an incident to its operations must be "devoted or used altogether to the charitable object which it is intended to achieve."⁶

³ Commissioner of Internal Revenue (CIR) v. St. Luke's Medical Center, Inc. (SMLC). G.R. No. 195909, 195960. 26 September 2012, and CIR v. SMLC. G.R. No. 203514. 13 February 2017.

⁴ *Id.*

⁵ Section 87, *Batas Pambansa Blg. 68*. The Corporation Code of the Philippines.

⁶ *Supra fn 3*. The Court ruled that for Section 30 (E) to apply, any profit by a charitable institution must not only be plowed back "whenever necessary or proper," as stated in the Corporation Code, but must be devoted or used altogether to the charitable object of the corporation.

What is determinative of whether or not an entity is engaged in profit-making business is its object or purpose, as stated in its articles of incorporation and by-laws.⁷ Although, it is a familiar rule that the actual purpose is not controlled by the corporate form or by its commercial aspect, but may be shown by extrinsic evidence, including the by-laws and the method of operations.⁸

RMHC is a non-stock, non-profit charitable institution organized and operated exclusively for charitable purposes

There is no denying that RMHC is duly organized as a non-stock corporation. Its organizational documents⁹ reveal that RMHC is duly incorporated as a non-stock corporation primarily established for charitable, educational, and scientific purposes, making contributions and grants to entities organized and operated exclusively for charitable, scientific, or educational purposes. It is also duly accredited by the Philippine Council for Non-Government Organization Certification (PCNC) as a donee institution.¹⁰

As regards its operations, RMHC's Audited Financial Statements (AFS)¹¹ reflect that for three years immediately preceding its request for confirmatory ruling of tax exemption, RMHC derived its revenues from investments and savings,¹² while bulk of its revenues during such periods are from donations and fundraising projects, detailed as follows:

Revenues			
Particulars	2012	2011	2010
Donations	PhP7,411,819	PhP11,832,331	PhP9,188,628
Fundraising Projects	4,263,666	4,211,131	7,917,600

Meanwhile, RMHC's funds are used for administrative expenses, grants to schools and communities, and for fundraising projects, particularly:

⁷ Collector of Internal Revenue v. Club Filipino, Inc., de Cebu, G.R. No. L-12719. May 31, 1962. 115 PHIL 310-315

⁸ *Id.*

⁹ RMHC's Amended Articles of Incorporation dated 5 November 2013 and By-Laws dated 3 July 1995, submitted as part of the request for review docket.

¹⁰ 2021 Notes to Financial Statements. Corporate Information.

¹¹ RMHC's submitted Audited Financial Statements, particularly Statements of Revenues and Expenses. Pages 44 (FY 2012), 64 (FY 2011), and 85 (FY2010) of the case docket.

¹² Reflected in the AFS as investment income and interest income.

Expenses			
Particulars	2012	2011	2010
Grants to schools and communities	PhP6,796,651	PhP9,070,907	PhP7,186,001
Fundraising Projects	1,790,564	1,788,687	5,062,916
Administrative Expenses	1,810,314	2,498,358	1,001,951
Total	PhP10,397,529	PhP13,357,962	PhP13,250,868

Clearly, bulk of the expenses incurred by RMHC went to fund its charitable programs - grants to schools and communities - particularly the (a) **Bright Minds Read** - a partnership program with the Department of Education to develop beginner's reading for public school children; and the (b) **Bahay Bulilit** - a partnership program with the Department of Social Welfare and Development that builds day-care centers in depressed areas to give primary education to children under six (6) years old.¹³

However, as also provided above, RMHC incurred revenues and expenses for their fundraising projects which include the conduct of golf and badminton tournaments (2010-2012) and the George T. Yang Concert (2010). Yet, while it is conceded that RMHC derived profit from these fund-raising activities, such fact does not immediately convert RMHC into a for-profit enterprise. The conduct of these fundraising activities does not necessarily contradict RMHC's nature of being a charitable institution, especially when its excess revenues over expenses are plowed back to the organization,¹⁴ in furtherance of its charitable purpose. This would only mean that such profits are taxable in accordance with the last paragraph of Section 30 of the NIRC.¹⁵ This issue is not novel as in several instances the Supreme Court has already ruled that a non-profit institution will not be considered profit-driven simply because of generating profits.¹⁶

¹³ In its 2021 Notes to Financial Statements, RMHC's latest programs include: (a) **Read to Learn** - a partnership program with the Department of Education that teaches reading in public schools; (b) **Bahay Bulilit** - a partnership program with the Department of Social Welfare and Development that builds day-care centers in areas where they are needed the most; and (c) **Bigay Tulong** - a program launched in 2007 to help thousands of disaster affected families that sees McDonald's restaurants nationwide as a venue for donation drop off and today it has not evolved to McDonald's Kindness Kitchen.

¹⁴ As provided in its Statements of Changes in Fund Balance. RMHC's balance at end of the year is composed of the excess of revenue over expenses for the year plus the balance at the beginning of the year.

¹⁵ "Section 30. Notwithstanding the provisions in the preceding paragraphs, the income of whatever kind and character of the foregoing organizations from any of their properties, real or personal, or from any of their activities conducted for profit regardless of the disposition made of such income, shall be subject to tax imposed under this Code."

¹⁶ *La Sallian Educational Innovators Foundation, Inc. v. CIR*, G.R. No. 202792. February 27, 2019 citing *CIR v. SMLC*, 805 Phil. 607, 619 (2017); *CIR v. SMLC*, 695 Phil. 867, 885 (2012); and *Hospital De San Juan De Dios, Inc. v. Pasay City, et al.*, 123 Phil. 38, 42.

The Supreme Court in the case of Jesus Sacred Heart College v. Collector of Internal Revenue declared that "every responsible organization must be run to at least insure its existence, by operating within the limits of its own resources, especially its regular income. In other words, it should always strive, whenever possible, to have a surplus."

Thus, considering the records of the case, it is this Office's view that RMHC is a non-stock, non-profit institution organized and operated exclusively for charitable purposes. Nevertheless, even if RMHC may qualify as a non-stock, non-profit corporation under Section 30 (E) of the Tax Code, this is without prejudice to the application of the last paragraph of Section 30 which imposes taxes on the income from any property of exempt organizations, as well as that arising from any activity it conducts for profit.¹⁷

In view of the foregoing, this Office grants the request for review. Kindly note that this ruling is being issued on the basis of the foregoing facts as represented. However, if upon investigation, it shall be disclosed that the facts are different, then this ruling shall be considered as null and void.

Thank you.

Very truly yours,


BENJAMIN E. DIOKNO

Secretary



JAN 10 2023

CC: **ROMEO D. LUMAGUI, JR.**
Commissioner, Bureau of Internal Revenue



DEPARTMENT OF FINANCE
Republic of the Philippines



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¹⁷ Section 30 last paragraph, NIRC. See Commissioner v. CA and YMCA, G.R. No. 124043, October 14, 1998