



Republic of the Philippines  
**DEPARTMENT OF FINANCE**  
Roxas Boulevard Corner Pablo Ocampo, Sr. Street  
Manila 1004

DOF OPINION NO. 002.2020

**ZEUS B. LIBROJO**

Ibrojo and Associates Law Offices  
Unit 2108 Jollibee Plaza, F. Ortigas Rd.  
Ortigas Center, Pasig City 1605

**SUBJECT: Request for Review of BIR Ruling No. 508-2019**

Dear **Atty. Librojo**:

This refers to your Request for Review of Bureau of Internal Revenue (BIR)-Law Division Ruling No. 508-2019 dated 11 September 2019 denying Lingap Adhikain Foundation, Inc.'s (LAFI) request for Certificate of Tax Exemption.

Lingap Adhikain Foundation, Inc. (LAFI for brevity) submits that it is a non-stock, non-profit corporation, organized and operated exclusively for charitable purposes: "maintaining a scholarship fund for deserving students and managing the activities of the foundation for the benefit of students who will qualify as scholars after appropriate competitive examination and screening."<sup>1</sup> LAFI posits that no part of its funds inure to the benefit of any of its trustees, officers or members. Predicating on which, LAFI filed an application for Certificate of Tax Exemption (CTE) with the BIR under Section 30 (E) of the National Internal Revenue Code (NIRC) of 1997, as amended.

In BIR Ruling No. 508-2019,<sup>2</sup> the BIR denied LAFI's claim for tax exemption, the dispositive portion of which reads:

"In view of the foregoing, this Office is of the opinion that **LINGAP ADHIKAIN FOUNDATION, INC.** does not qualify as a charitable organization within the contemplation of Section 30 of the NIRC of 1997, as amended. Hence, your request for the exemption of **LINGAP ADHIKAIN FOUNDATION, INC.** as a non-

<sup>1</sup> LAFI's Primary Purpose pursuant to its Amended Articles of Incorporation, amended as of 11 August 2014. The Primary Purpose further states that LAFI is incorporated to "perform research and/or educational projects with educational institutions and other government agencies in line with its efforts of uplifting the lives of the underprivileged."

<sup>2</sup> Dated 11 September 2019

stock, non-profit corporation under Section 30 (E) of the Tax Code of 1997, as amended, is hereby denied for lack of factual and legal basis.”

LAFI 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:

xxx

(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 come or asset shall belong to or inure to the benefit of any member, organizer, officer, or any specific person.”

However, the BIR, in denying LAFI’s claim for exemption, noted that:

1. The Amended Articles of Incorporation of LAFI provides in its Secondary Purpose that they could “enter into any lawful arrangements for sharing profits, union of interest, utilization, or any agreement, reciprocal concession or cooperation, with any entity, person or governmental, municipal or public authority, domestic or foreign, in the carrying on of any of the purposes of this association”;<sup>3</sup> and
2. LAFI’s Financial Statements for taxable years 2016 and 2017, state that LAFI shall use BIR Form No. 1702-RT such that, the Foundation’s transactions are subject only to regular/normal rate. It does not have transactions exempt from tax or under special tax rate and has “sale of services with taxable amounts of Php39,000.00 and Php457,203.00.”

The BIR concluded that LAFI is not organized and operated exclusively for charitable purposes since (1) as stated on its secondary purpose, LAFI may enter into lawful arrangements for sharing profits thus, allowing LAFI to generate profits, and (2) LAFI recorded sales of services and used BIR Form 1702-RT to file income tax returns for the taxable years immediately preceding the date of application.

In support of its Request for Review, LAFI argues that activities generating revenue do not necessarily disqualify non-stock, non-profit institutions from being granted tax exemption, especially where such assets or revenues are actually, directly and exclusively used for charitable purposes for which such institutions were established. LAFI posits that all assets and revenues it received from various fund-raising activities were pooled exclusively to maintain and

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<sup>3</sup> Par. 2, Secondary Purpose. LAFI’s Amended Articles of Incorporation.



provide for the scholarship fund to ensure that LAFI could continue supporting its scholars. None of the revenues generated from donations and fund-raising activities is geared for profit and/or distribution of dividends.

In this instance, *we rule in favor of LAFI*. The BIR committed a reversible error when it ruled that LAFI is not organized and operated exclusively for charitable purposes.

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

In the case of *Commissioner of Internal Revenue v. St. Luke's Medical Center, Inc.*,<sup>4</sup> the Supreme ruled that in order to claim the benefits granted under the Section 30 (E) of the NIRC, an entity must be:

1. A non-stock corporation or association;
2. Organized exclusively for charitable purposes;
3. Operated exclusively for charitable purposes; and
4. 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.<sup>5</sup>

The Court explained that 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.<sup>6</sup> 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"<sup>7</sup> 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."<sup>8</sup>

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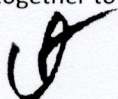
<sup>4</sup> G.R. No. 195909, 195960. September 26, 2012.

<sup>5</sup> *Id.* See *Commissioner of Internal Revenue (CIR) v. St. Luke Medical Center, Inc. (SMLC)* G.R. No. 203514. 13 February 2017.

<sup>6</sup> *Id.*

<sup>7</sup> Section 87, *Batas Pambansa Blg. 68*. The Corporation Code of the Philippines.

<sup>8</sup> *Supra fn 4*. The Court also 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 and by-laws.<sup>9</sup> 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.**<sup>10</sup>

In the instant case, LAFI's Secondary Purpose allows it to enter into lawful arrangements for sharing profits. However, we opine that such purpose does not necessarily contradict LAFI's nature of being a charitable institution, when the profits earned in its operations were plowed back to the scholarship fund, in furtherance of its charitable purpose.

As shown in its Audited Financial Statements (AFS) for taxable years 2017 and 2016, LAFI has recorded revenue (sales of services) in the amount of Php457,203.00 and Php39,000.00, respectively. However, such amounts are derived from only two sources: (1) donations and (2) proceeds from fund-raising activities. Out of these amounts, for 2017, Php381,023 was earned from donations while Php76,180 from fund raising while for 2016, Php23,000 was from donations and Php16,000 from fund raising.<sup>11</sup> Meanwhile, LAFI has recorded scholarship grants in the amount of Php150,790 for 2017 and Php14,200 for 2016. These scholarship grants are evidenced by Certifications from school coordinators/administrators.<sup>12</sup>

While it is conceded that LAFI derived profit from its fund-raising activities, such fact does not necessarily convert it into a for profit enterprise. This would only mean that such profits are taxable in accordance with the last paragraph of Section 30 of the NIRC.<sup>13</sup>

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.<sup>14</sup>

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<sup>9</sup> Collector of Internal Revenue v. Club Filipino, Inc., de Cebu, G.R. No. L-12719. May 31, 1962. 115 PHIL 310-315

<sup>10</sup> *Id.*

<sup>11</sup> Audited Financial Statements attached to the Request docket.

<sup>12</sup> Certifications attached to the Request docket.

<sup>13</sup> "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."

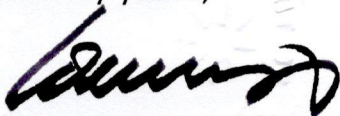
<sup>14</sup> La Sallian Educational Innovators Foundation, Inc. v. CIR, G.R. No. 202792. February 27, 2019 *citing* CIR v. SMLC, 805 Phil. 607, 619 (2017); CIR v. SMLC, 695 Phil. 867, 885 (2012); and Hospital De San Juan De Dios, Inc. v. Pasay City, et al., 123 Phil. 38, 42. The Supreme Court in the case of Jesus Sacred Heart College v. Collector of

Thus, considering the records of the case, it is this Office's view that LAFI is a non-stock, non-profit institution organized and operated exclusively for charitable purposes, through promoting social welfare by providing educational scholarships or assistance to underprivileged members of the society. Finally, even if LAFI 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.<sup>15</sup>

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

Thank you.

Sincerely yours,



**CARLOS G. DOMINGUEZ**

Secretary

MAR 16 2020



*Copy furnished*

**Commissioner Caesar R. Dulay**  
Bureau of Internal Revenue  
Quezon City

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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."*

<sup>15</sup> Section 30 last paragraph, NIRC. See *Commissioner v. CA and YMCA*, G.R. No. 124043, October 14, 1998