



Republic of the Philippines
DEPARTMENT OF FINANCE

Roxas Boulevard Corner Pablo Ocampo, Sr. Street
Manila 1004

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DOF Opinion No. 005.2019

DR. JOSE PAULO E. CAMPOS /

President

General Emilio Aguinaldo Medical School Foundation, Inc.

Barangay Salitran II, City of Dasmaringas

Cavite, Philippines

SUBJECT: Request for Review of BIR Ruling No. 755-2018

Dear **Dr. Campos**:

This refers to the subject letter dated 11 June 2018 ("Request for Review") which you filed with this Department on behalf of General Emilio Aguinaldo Medical School Foundation, Inc. ("GEAMSFI") to request for review of Bureau of Internal Revenue ("BIR") Ruling No. 755-2018 dated 30 April 2018, which ruled on your request for tax exemption certificate.

In particular, the Request for Review prays for the reversal of the BIR's finding that denied GEAMSFI's request for tax exemption certificate on the basis of GEAMSFI not qualifying as a non-profit corporation under Section 30 (E) and (H) of the National Internal Revenue Code ("NIRC"), as amended. The pertinent portion of BIR Ruling No. 755-2018 provides:

"As certified under oath by the Corporate Treasurer of GENERAL EMILIO AGUINALDO MEDICAL SCHOOL FOUNDATION, INC., the Members of the Board of Trustees are receiving emoluments consisting of Two Thousand Pesos (Php2,000.00) every meeting conducted once every quarter.

The payment of such emoluments and other benefits to the members of the Board of Trustees is considered a distribution of the equity (including the net income) of GENERAL EMILIO AGUINALDO MEDICAL SCHOOL FOUNDATION, INC. This is a form of private inurement which the law prohibits in the organization and operation of a non-stock, non-profit corporation. This act is not in accordance with the definition of "non-profit" that "no net income or asset accrues to or benefits any member or specific person, with all the net income or asset devoted to the institution's purposes and all its activities conducted not for profit". Thus, GENERAL EMILIO AGUINALDO MEDICAL SCHOOL FOUNDATION, INC. cannot be qualified as a non-profit corporation under Sections 30 (E) and (H) of the National Internal Revenue Code of 1997, as amended."

On the other hand, as stated in your Request for Review, you respectfully disagreed with the above ruling and asserted that GEAMSFI is a tax-exempt non-stock, non-profit institution pursuant to Sections 30 (E) and (H) of the Tax Code due to the following reasons:

- a. GEAMSFI is a non-stock, non-profit institution duly organized and operated exclusively for charitable, scientific and educational purposes only by virtue of the laws of the Philippines falling under Sections 30 (E) and (H) of the Tax Code, with reference to Sections 8 and 4 (3) of Articles VI and XIV of the Constitution, respectively, and the income of the Foundation is actually, directly and exclusively used for educational and charitable purposes only;
- b. No part of the Foundation's net income inures to the benefit of any private individual as mentioned in its Amended Articles of Incorporation and By-Laws;
- c. The Foundation's trustees do not receive any compensation or remuneration as stated in its Amended Articles of Incorporation and By-Laws. The P2,000.00 received by the trustees for every meeting conducted once every quarter is only a reasonable amount to cover travel expenses to and from the meeting venue which does not violate the "inurement" prohibition under Section 30 (E) of the Tax Code and Revenue Memorandum Circular (RMC) No. 51-2014.

After reviewing the facts and the laws presented, we *agree* with GEAMSFI that the subject emoluments for the quarterly meeting of the members of the Board of Trustees ("Trustees"), limited to the amount of P2,000.00 for travel expenses and subject to proper liquidation, should not be considered a violation of the "inurement" prohibition under Section 30 of the NIRC, as amended and RMC No. 51-14 for the reasons stated below.

Being a non-stock and non-profit corporation does not, by this reason alone, completely exempt an organization from tax. Tax exemptions should be limited to organizations beneficial to the public and those which improve social welfare. A profit-making entity should not be allowed to exploit this subsidy to the detriment of the government and other taxpayers.

It is vital to highlight that the "inurement" prohibition provided under the law was specifically incorporated as a tool to ascertain that non-stock, non-profit organizations are not used as a tax shelter through tax exemptions granted thereto or for their officers or organizers to gain or benefit from the income or assets of the said organization, which should appropriately be devoted to the furtherance of the purpose/s for which it was organized.

With such recognized intention, the BIR issued RMC No. 51-14, clarifying the "inurement" prohibition under Section 30 of the NIRC, as amended, and it considered, among others, the payment of compensation, salaries, or honorarium to the trustees or organizers as "inurement" that would negate the non-stock, non-profit organization from being entitled to exemption from income tax.

Rightfully so, the earnings or assets of the organization should not inure to the benefit of any of its trustees, organizers, officers, members or any specific person. As enunciated by the Supreme Court in the case of *CIR vs. St. Luke's Medical Center, Inc.*,¹ "non-profit" means no net income or asset accrues to or benefits any member or specific person, with all the net income or asset devoted to the institution's purposes and all its activities conducted not for profit.

On the other hand, it should not also be overlooked that the exigencies of the operations of these organizations also require it to incur reasonable expenses. In the attendance of board meetings, for example, this would require the Trustees to incur travel expenses to and from the place of the meeting. This is a legitimate expense which arises in the performance of

¹ G.R. No. 195909, 26 September 2012.



their duties and responsibilities as duly appointed members of the board. Activities and objectives of these organizations could not materialize without the members of the board exercising their function as such. Thus, it would greatly hamper the progress and success of the organization in achieving their benevolent purpose/s.

This certainly would not be the ramification that the law and its related issuances intend. As a matter of efficiency, the government forgoes taxes which should have been spent to address public needs because certain private entities already assume a part of the burden. The loss of taxes by the government is compensated by its relief from doing public works which would have been funded by appropriations from the Treasury.²

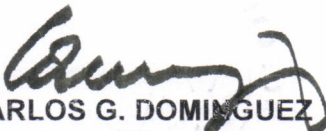
Applied to the case at bar, the president of GEAMSF1 declared in GEAMSF1's sworn request for review that the emolument is used only to cover travel expenses to and from the meeting venue. The emolument of P2,000.00 given to the Trustees for travel expenses incurred going to and from the organization's quarterly meeting is a reasonable expense incurred in furtherance of their duties and responsibilities and ultimately, the objectives of GEAMSF1. We wish to emphasize, however, that such emolument given to the Trustees must be subject to proper liquidation of the travel expenses incurred by the Trustees.

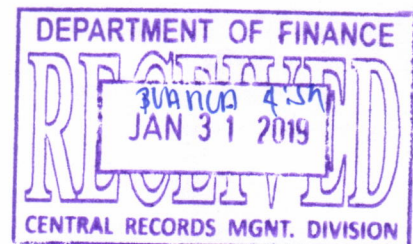
Hence, we hold that the payment of the limited amount of P2,000.00 by GEAMSF1 to the Trustees for their quarterly meeting, subject to proper liquidation, should not bar GEAMSF1 from qualifying as a non-profit corporation under Section 30 of the NIRC, as amended.


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 of Finance
JAN 29 2019



 **CC** **Commissioner Caesar R. Dulay**
Bureau of Internal Revenue

² Ibid.