



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

DOF OPINION NO. 005.2020

MICHAEL B. LAPID

President

Mary the Queen College (Pampanga), Inc.

Jose Abad Santos Avenue, San Matias,

Guagua, Pampanga

SUBJECT: Request for Review of BIR Ruling No. 466-2014 (SH30-019-2020)

Dear **Mr. Lapid**:

This refers to the subject letter dated 26 February 2020 ("Request for Review") which you filed with this Department to request for review of Bureau of Internal Revenue ("BIR") Ruling No. 466-2014 (SH30-019-2020) dated 24 January 2020, 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 the request of Mary the Queen College (Pampanga), Inc. ("MQCPI") for tax exemption certificate on the basis of MQCPI not qualifying as a non-profit corporation under Section 30 (H) of the National Internal Revenue Code ("NIRC"), as amended. The pertinent portion of BIR Ruling No. 466-2014 (SH30-019-2020) provides:

"The giving of per diem to the members of the Board of Directors is considered a distribution of the equity (including the net income) of MARY THE QUEEN COLLEGE (PAMPANGA), INC. This is a form of private inurement which the law prohibits in the organization and operation of non-stock, non-profit corporation. This act violates the requirement that no part of the net income or

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assets of the corporation shall inure to the benefit of any individual or specific person. Thus, MARY THE QUEEN COLLEGE (PAMPANGA), INC. cannot be qualified as a non-stock, non-profit corporation under Section 30 (H) of the NIRC 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 MQCPI is a tax-exempt non-stock, non-profit institution pursuant to Sections 30 (H) of the Tax Code due to the following reasons:

- a. It is stated in Article Eight of MQCPI’s Amended Articles of Incorporation “That no part of the income which the corporation may obtain as an incident to its operation shall be distributed as dividends to its members, trustees or officers subject to the provisions of the Corporation Code on dissolution and any profits obtained as a result of its operation.”
- b. The school’s Board of Trustees do not received compensation aside from the per diem/transportation allowance of Two Thousand Pesos (Php 2,000.00) per meeting as stated in the Treasurer’s Certification dated May 15, 2018 and the BIR letter dated January 24, 2020. The per diem/transportation allowance did not redound to the benefit of any of its members as the same was brought out from the company’s coffers not for the sake of the interest of its members but for the school interest and welfare. Further, that the amount of Php 2,000.00 may well be considered to be 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.
- c. Assuming *arguendo* that their plea for reconsideration be denied, it is their honest belief and stand that instead of the ordinary rate of thirty percent (30%) provided by Sec. 30 paragraph (A) of the NIRC 1997 imposed by the BIR letter dated January 24, 2020, the rate of ten percent (10%) should be the one applied.

After reviewing the facts and the laws presented, we *agree* with MQCPI that the the per diem/transportation allowance in the amount of P2,000.00 should not be considered a violation of the “inurement” prohibition under Section 30 of the NIRC, as amended and RMC No. 51-2014 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 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.

¹ G.R. No. 195909, 26 September 2012.



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 school's Board of Trustees do not received compensation aside from the per diem/transportation allowance of Two Thousand Pesos (Php 2,000.00) per meeting as stated in the Treasurer's Certification dated May 15, 2018 and the BIR letter dated January 24, 2020. The per diem/transportation allowance did not redound to the benefit of any of its members but for the school interest and welfare. It is reasonable to believe that this amount covers travel expenses to and from the meeting venue and does not violate the "inurement" prohibition under Section 30 (H) of the Tax Code and Revenue Memorandum Circular ("RMC") No. 51-2014. **However, we wish to emphasize that such emolument given to the Trustees must be subject to proper liquidation or reimbursement procedures, as the case may be, of the travel expenses incurred by the Trustees.**

Hence, we hold that the payment of the limited amount of P2,000.00 by MQCPI to the Trustees per meeting, subject to proper liquidation or reimbursement procedures, as the case may be, should not bar MQCPI from qualifying as a non-profit corporation under Section 30 of the NIRC, as amended.

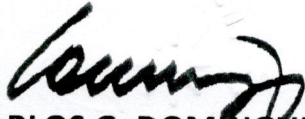


² *Ibid.*

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

JUN 23 2020



DEPARTMENT OF FINANCE
Republic of the Philippines



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CC Commissioner Caesar R. Dulay
Bureau of Internal Revenue