



Republic of the Philippines  
**DEPARTMENT OF FINANCE**

Roxas Boulevard Corner Pablo Ocampo, Sr. Street  
Manila 1004

DOF OPINION NO. 006.2020

**ATTY. MIA CARISSA C. MARTIN**

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Legaspi Village, Makati City

**SUBJECT: Request for Review of BIR Ruling No. 466-2014 S30E-015-2020**

Dear **Atty. Martin**:

This refers to the subject letter dated 21 February 2020 ("Request for Review") which you filed with this Department on behalf of Mahintana Foundation, Inc. ("Mahintana") to request for the review of Bureau of Internal Revenue ("BIR") Ruling No. 466-2014 S30E-015-2020 dated 24 January 2020, which ruled to deny Mahintana's request for exemption from income tax on its income as a non-stock, non-profit corporation under Section 30(E) and (G) of the National Internal Revenue Code (NIRC) of 1997, as amended.

In particular, the Request for Review prays for the reversal of the BIR's denial of Mahintana's request for exemption based on the submitted document which provides the summary of its expenses related to compensation, salaries or any emoluments paid for the years 2014 to 2017. In the subject ruling, it determined that the compensation of Mahintana's Chief Executive Officer (CEO) is exorbitant and unreasonable and, thus, considered an "inurement" under Revenue Memorandum Circular (RMC) No. 51-2014. The pertinent portion of BIR Ruling No. 466-2014 S30E-015-2020 provides:

"The compensation of **MAHINTANA FOUNDATION, INC.'s** Chief Executive Officer is exorbitant and unreasonable for a charitable institution. 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 violates the requirement

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that no part of the net income or assets of the corporation shall inure to the benefit of any individual or specific person. Thus, **MAHINTANA FOUNDATION, INC.** cannot be qualified as a non-stock, non-profit corporation under Section 30(E) of the National Internal Revenue Code of 1997, as amended.”

On the other hand, Mahintana respectfully disagreed with the above ruling and asserts in its Request for Review that Mahintana is a non-stock, non-profit institution pursuant to Sections 30(E) and (G) of the Tax Code due to the following reasons:

- a. Mahintana qualifies as a non-stock, non-profit corporation entitled to exemption from income tax because it meets the Organizational Test and Operational Test under Revenue Memorandum Order (RMO) No. 38-2019;
- b. The CEO’s compensation is reasonable and fall well below the allowable 30% threshold of total administrative expenses over total expenses; and
- c. The compensation of Mahintana’s CEO is reasonable, necessary and justifiable, and appropriate considering his professional background, the size and kind of the organization’s projects, and the amount of donations/income that Mahintana receives.

RMC No. 51-2014 was issued to clarify the inurement prohibition under Section 30 of the NIRC of 1997, as amended. In order for an entity to qualify as a non-stock and/or non-profit corporation/association/organization exempt from income tax under Section 30 of the NIRC of 1997, as amended, its earnings or assets shall not inure to the benefit of any of its trustees, organizers, officers, members or any specific person. Further, the circular enumerates what are considered “inurements” as contemplated above.

The issue in the present Request for Review is specifically with regard the payment of exorbitant or unreasonable compensation to Mahintana’s CEO, who is not a member of the Board of Trustees, is a form of “inurement”. The BIR, in its ruling, considers the compensation given to the CEO in the years 2014 to 2017 amounting to (per annum) P1.595 million, P1.689 million, P1.679 million and P1.763 million, respectively, as exorbitant and unreasonable for a charitable institution. Consequently, this is a form of private inurement which



the law prohibits in the organization and operation of a non-stock, non-profit corporation.

*We do not agree.*

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. It is with the guidance of this objective that we base our conclusion herein.

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.*,<sup>1</sup> “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. Activities and objectives of these organizations could not materialize without the presence of competent and skilled complement of staff. This would greatly hamper the progress and success of the organization in achieving their benevolent purpose/s.

In determining the reasonableness/unreasonableness of the compensation provided by Mahintana to its CEO, we take into consideration not only the peso amount of the compensation but also the relevant and surrounding circumstances that necessarily influence the appropriateness thereof. The amount of compensation *per se* is not a very dependable measure in the ascertainment of its reasonableness/unreasonableness. This is likewise true in determining whether or not a corporation falls within the contemplation of a non-stock, non-profit corporation under Section 30 of the NIRC of 1997, as amended. Under RMO No. 38-2019, to be considered as a non-stock, non-profit corporation under Section 30 of the NIRC of 1997, as amended, the

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<sup>1</sup> G.R. No. 195909, 26 September 2012.



characteristics, corporate purpose/s and actual operations of the entity serve as a guide in determining the true nature of the organization.

It cannot be denied that each entity is distinct with characteristics unique to the particular organization. Each entity should be evaluated in conjunction with the relevant and surrounding circumstances attending the organization. These circumstances, together with the peso amount of the compensation, should then be appreciated as a whole. What might be considered exorbitant or unreasonable amount of compensation for one entity may not necessarily be exorbitant or unreasonable if applied to another entity with substantial distinction from the former which makes for real difference.

Upon review of the documents pertaining to Mahintana, we deem it of the essence to consider the following circumstances, in addition to the amount of the compensation, in the evaluation thereof:

- a. Mahintana's Strategic Plan for calendar years 2017-2021 outlining the Modus Operandi of its programs/projects and key results area;
- b. Summary of activities and programs realized by Mahintana during the period 2014-2018;
- c. Audited Financial Statements for the year 2017;

<b>Description</b>	<b>2017</b>	<b>2016</b>
Total Assets	P116,232,220	P79,933,699
Total Liabilities	P6,873,321	P5,862,410
Fund Balance	P81,054,845	P56,109,706
Grants/Income	P89,185,724	P71,376,569
Project Costs and Expenses	P59,193,449	P60,576,528
General and Administrative Expenses	P7,227,678	P7,181,828

- d. Years of service of the CEO in Mahintana – 26.5 years;



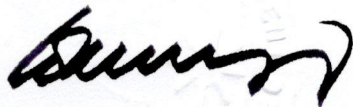
- e. CEO's responsibilities, which include the overall management and day to day operations of the organization, reviewing and evaluating the results of program activities, ensuring that contractual obligations are being fulfilled, and allocating resources for greater program effectiveness and efficiency.

These determinants, though not all necessarily quantifiable in terms of currency, are important in rationally evaluating the substance and not merely the form to which the particular compensation constitutes. Taking the foregoing into account and the organization as a whole, we hold that the compensation of Mahintana's CEO is not considered exorbitant or unreasonable that would fall under the "inurement" prohibition of the rules. Thus, the amount of compensation of its CEO, by itself, does not detract from the entity being considered a non-stock, non-profit corporation under Section 30 of the NIRC of 1997, 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

MAR 16 2020



**DEPARTMENT OF FINANCE**  
Republic of the Philippines



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