



Republic of the Philippines
DEPARTMENT OF FINANCE

Roxas Boulevard Corner Pablo Ocampo, Sr. Street
Manila 1004

DOF Opinion No. 007.2020

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ATTENTION : **Atty. Eric R. Recalde**

SUBJECT : **Request for Review of Bureau of Internal Revenue
Ruling No. 1295-2018 dated 23 October 2018**

Dear **Atty. Recalde**:

This refers to your subject letter dated 26 November 2018 ("Request for Review") which you filed with this Department on behalf of Catholic Relief Services – United States Conference of Catholic Bishops ("CRS-USCCB") to request for the review of Bureau of Internal Revenue ("BIR") Ruling No. 1295-2018, which ruled on the taxability of CRS-USCCB vis-à-vis its status as a non-stock, non-profit charitable corporation.

CRS-USCCB is a branch office of a foreign corporation duly organized and existing under the laws of the District of Columbia, USA. The Securities and Exchange Commission ("SEC") granted CRS-USCCB a license to do business on 20 September 1989, with an amended license on 13 February 2006 to reflect its change of name.

CRS-USCCB is likewise registered with the BIR with Taxpayer's Identification No. ("TIN") 001-114-314-000 and Certificate of Registration No. OCN1RC0000623129 dated 30 June 1994.

The primary purpose of CRS-USCCB, as shown in its original SEC license, is to provide assistance and services in their identified areas of operation in consonance with national developmental policy with periodic consultation and

technical assistance from the Ministry of Social Services and Development [now DSWD].

CRS-USCCB sent a letter to the BIR dated 25 November 2015 requesting for the issuance of a certificate of tax exemption pursuant to Section 30 (E) of the National Internal Revenue Code of 1997 ("NIRC"), as amended.

In particular, the Request for Review prays for the reversal of BIR's denial of CRS-USCCB's request for exemption from income tax as a non-stock, non-profit charitable corporation under Section 30 (E) of the NIRC. The BIR denied the request for tax exemption of CRS-USCCB for lack of legal basis. In BIR Ruling No. 1295-2018, the BIR couched the denial of CRS-USCCB's request, as follows:

xxx

A perusal of the documents submitted shows that, on September 30, 1989, the Securities and Exchange Commission (SEC) granted Catholic Relief Services, NCWC (*now CRS-USCCI*), a foreign corporation organized and existing under the laws of the District of Columbia, USA, a license to establish a branch office in the Philippines in the name of Catholic Relief Services-USCC, Inc. (*now Catholic Relief Services-United States Conference of Catholic Bishops [CRS-USCCB]*) and transact business under Company Registration No. 1257 which was later amended to F-1257. Thus, it is a branch of a foreign corporation which accordingly under Section 5 of Revenue Memorandum Order No. 20-2013 cannot qualify as a tax-exempt corporation under Section 30 of the NIRC, as amended.

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In view of the foregoing, the request of CATHOLIC RELIEF SERVICES-UNITED STATES CONFERENCE OF CATHOLIC BISHOPS (CRS-USCCB) to be exempted from income tax on its income as a Section 30 (E) corporation is hereby denied for lack of legal basis. It shall be treated as an ordinary corporation subject to regular corporate income tax and the applicable internal revenue taxes such as Value-Added Tax



(VAT) or Percentage Tax imposed by the Tax Code of 1997, as amended.

On the other hand, in your Request for Review, you argued that (i) a branch of a foreign non-stock, non-profit corporation may qualify for income tax exemption under Section 30 (E), and (ii) CRS-USCCB is a qualified tax exempt organization under Section 30 (E), thus:

xxx

In the Ruling, the CIR opined that CRS-USCCB is not entitled to a tax exempt status under Section 30 (E) for the sole reason that it is a branch of a foreign non-stock, non-profit corporation. xxx With all due respect, we do not agree.

A. RMO 20-2013 violates the equal protection clause of the Constitution when it disqualifies branches of foreign non-stock, non-profit corporations from the tax exemption under Section 30 (E), even if without having substantial distinctions from domestic non-stock, non-profit corporations or associations.

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More substantially, RMO 20-2013 violates CRS-USCCB's right to equal protection of the laws, which provides that entities of like situation should be treated alike.

xxx

B. RMO 20-2103 violates the due process requirement when it imposes an additional burden to the taxpayer without the requisite notice, publication, and public hearing.

xxx



Ruling

The DOF rules against CRS-USCCB for the primary reason that it failed to comply with the inurement prohibition under Section 30 (E) of the NIRC, as amended.

Section 30 (E) of the NIRC, as amended, reads:

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.** (Emphasis ours)

The Supreme Court, in **Commissioner of Internal Revenue v. St. Luke's Medical Center, Inc.**,¹ had the chance to discuss the requirements for a charitable institution to be considered tax-exempt under Section 30 (E) of the NIRC:

- (i) It must be a non-stock corporation or association;
- (ii) Organized exclusively for charitable purposes;
- (iii) Operated exclusively for charitable purposes; and
- (iv) **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.** (Emphasis ours)

The Court, in that same case, added that:

Thus, both the organization and operations of the charitable institution must be devoted "exclusively" for charitable purposes. The organization of the institution refers to its corporate form, as shown by its articles of incorporation, by-laws and other constitutive documents. xxx

The operations of the charitable institution generally refer to its regular activities. Section 30 (E) requires that these

¹ G.R. Nos. 195909 and 195960, 26 September 2012



operations be exclusive to charity. **There is also a specific requirement that “no part of [the] net income or asset shall belong to or inure to the benefit of any member, organizer, officer or any specific person.”** (Emphasis ours)

Revenue Memorandum Circular² (RMC) No. 51-2014, which clarifies the inurement prohibition under Section 30 of the NIRC, as amended, provides that:

Therefore, in order for an entity to qualify as a non-stock and/or nonprofit corporation/association/organization exempt from income tax under Section 30 of the NIRC, as amended, its earnings or assets shall not inure to the benefit of any of its trustees, organizers, officers, members or any specific person. The following are considered “inurements” of such nature:

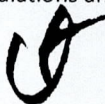
xxx

6. When upon dissolution and satisfaction of all liabilities, its remaining assets are distributed to its trustees, organizers, officers or members. Its assets must be dedicated to its exempt purpose. **Accordingly, its constitutive documents must expressly provide that in the event of dissolution, its assets shall be distributed to one or more entities formed for the purpose/purposes similar to its own, or to the Philippine government for public purpose.** (Emphasis ours)

It is thus clear that non-stock, nonprofit corporations are subject to a non-distribution constraint; this simply means that these entities cannot distribute profit or its assets to those who control it. Its net earnings must be plowed back into financing the goods or services that the corporation was formed to provide. As seen above, the non-distribution constraint is embodied in the prohibition against inurement found in Section 30 of the NIRC.

To our mind, the mere fact that the CRS-USCCB is a branch of a foreign corporation renders it unable to comply with the non-distribution constraint which non-stock and/or nonprofit corporations are subject to. In the event of the cancellation of its registration or license to do business in the Philippines, its

² RMCs are issuances that publish pertinent and applicable portions, as well as amplifications of laws, rules, regulations and precedents issued by the BIR and other agencies/offices.



assets – which would have been used in the Philippines in furtherance of its charitable purpose herein – will ultimately return to its head office in the US by operation of law.

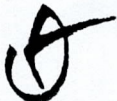
Assuming further one would look into the constitutive documents of CRS-USCCB which were executed in the US would reveal that no similar statement/provision exists. Both the Articles of Incorporation (1947) and the Amended and Restated Bylaws of Catholic Relief Services (2007) do not contain the required statement/provision.

However, this Office notes that appended to its constitutive documents is a *Statement of Election to Accept of Catholic Relief Services – United States Catholic Conference Incorporated* (“CRS-USCCI”) and a *Resolution Electing Nonprofit Corporation Act*. These documents contain a similar inurement prohibition clause, to wit:

That no part of the net income of this corporation shall inure to the benefit of any private individual, and no director, member, officer, employee or other person shall receive, or be lawfully entitled to receive, any pecuniary benefit, profit or compensation of any kind, except reasonable compensation for services rendered, or expenses incurred, in effecting one or more of its purposes as herein before set forth.

In the event of the liquidation or dissolution of the corporation, **the assets remaining after all debts have been satisfied, shall be conveyed to a nonprofit organization, qualified for exemption under the Internal Revenue Code of the United States, to be used for purposes as nearly as practicable analogous to those for which this corporation was created.**

Time and again, the BIR has consistently required the constitutive documents to expressly provide the manner of distribution of assets in the event of dissolution, such that these assets shall be distributed to one or more entities formed for the purpose/purposes similar to its own, or to the Philippine government for public purpose. There are qualified nonprofit organizations under the Internal Revenue Code of the United States which are not among those exempt under Section 30 (E) of the NIRC, as amended. Under Section



501(c)(3) of the US Tax Code, corporations organized and operated exclusively for testing for public safety, literary, and for the prevention of cruelty to children or animals are likewise exempt. In contrast, the coverage of the exemption in Section 30 (E) of the NIRC covers only religious, charitable, scientific, athletic, or cultural purposes, or for the rehabilitation of veterans. Furthermore, this Office opines that it could not have been the intention of Philippine Legislature for a non-stock, nonprofit corporation to distribute assets outside the Philippines in the event of dissolution and enjoy tax exemption in the Philippines at the same time.

It is worthy to recall that the law frowns on exemptions from taxation. Hence, an exempting provision should be construed *strictissimi juris*.³ The Supreme Court, as early as 1967, has held that:

From 1906, in *Catholic Church vs. Hastings* to 1966, in *Esso Standard Eastern, Inc. vs. Acting Commissioner of Customs*, it has been the constant and uniform holding that exemption from taxation is not favored and is never presumed, so that if granted it must be strictly construed against the taxpayer.⁴

Lastly, it is our submission that RMO 20-2013 is a valid issuance of the BIR. The Commissioner of Internal Revenue, in issuing RMO 20-2013, exercised no more than his power to interpret the provisions of the NIRC and other tax laws.

Revenue Memorandum Order⁵ (RMO) 20-2013 provides that a branch office of a foreign non-stock, nonprofit corporation cannot qualify as a tax-exempt corporation under Section 30 of the NIRC, as amended. The justification for the disqualification of branches of foreign corporations under RMO 20-2013 can be traced back to the ease of profit repatriation for branches of foreign corporations. These branches can easily siphon exempt funds to its head office or other branches outside the Philippines. Thus, the RMO merely reiterates sound tax policy aimed at keeping the tax-exempted income utilized fully for its intended charitable purposes in the Philippines.

³ *Philippine Guaranty Co. v. Commissioner*, G.R. No. L-22074, September 6, 1965.

⁴ *Commissioner of Internal Revenue v. Guerrero*, G.R. No. L-20942, September 22, 1967.

⁵ RMOs, by nature, are issuances that provide directives or instructions; prescribe guidelines; and outline processes, operations, activities, workflows, methods and procedures necessary in the implementation of stated policies, goals, objectives, plans and programs of the Bureau in all areas of operations, except auditing.



The Supreme Court, in the St. Luke's case, succinctly discussed the rationale for the tax exemption of charitable institutions:

Charity is essentially a gift to an indefinite number of persons which lessens the burden of government. In other words, charitable institutions provide for free goods and services which would otherwise fall on the shoulders of government. **Thus, 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. This is the rationale for the tax exemption of charitable institutions.** 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. (Emphasis supplied)

The ability of these branches to funnel money to and from the Philippines and elsewhere in the world is detrimental to the government and to the charity's beneficiaries. It is damaging to the government that had to forego collection of taxes.

Additionally, the RMO enjoys a strong presumption of validity. In **ABAKADA Guro Party List v. Purisima**⁶, the Court has extended the presumption of validity to legislative issuances as well as to rules and regulations issued by administrative agencies, saying:

Administrative regulations enacted by administrative agencies to implement and interpret the law which they are entrusted to enforce have the force of law and are entitled to respect. Such rules and regulations partake of the nature of a statute and are just as binding as if they have been written in the statute itself. As such, they have the force and effect of law and enjoy the presumption of constitutionality and legality until they are set aside with finality in an appropriate case by a competent court.

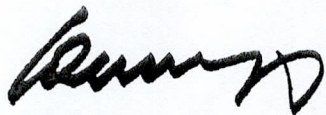
⁶ G.R. No. 166715, August 14, 2008, 562 SCRA 251



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

JUL 23 2020



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

