



Republic of the Philippines
DEPARTMENT OF FINANCE

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Manila 1004



Copy
M/S
MR. SIXTO DONATO MACASAET

Executive Director

DOF Opinion No. 009.2019

Foundation for a Sustainable Society, Inc.
46-E Eugenio Lopez St. cor Samar Avenue
South Triangle
Quezon City

**SUBJECT: Request for Review of Bureau of Internal Revenue
Ruling No. 624-2018 dated 11 April 2018**

Dear **Mr. Macasaet**:

This refers to your subject letter dated 23 May 2018 ("Request for Review") which you filed with this Department on behalf of Foundation for a Sustainable Society, Inc. ("FSSI") to request for the review of Bureau of Internal Revenue ("BIR") Ruling No. 624-2018 dated 11 April 2018, which ruled on the taxability of FSSI vis-a-vis its status as a non-stock, non-profit corporation.

FSSI is a non-stock, non-profit corporation duly organized and existing under the laws of the Republic of the Philippines with BIR Taxpayer's Identification ("TIN") No. 004-516-868-000 and Securities and Exchange Commission ("SEC") Certificate of Registration No. ANO95-03381, dated 06 September 1995.

FSSI was organized as the recipient of the proceeds of the Contribution Agreement between the Republic of the Philippines and the Swiss Confederation effecting their bilateral agreement on the reduction of external debt and the establishment of a foundation to support sustainable production programs and projects of non-government organizations ("NGOs"), people's organizations ("POs") and marginalized communities. In that agreement signed by both countries on 11 August 1995, FSSI was specifically described as a "non-stock, non-profit, tax exempt organization with donee status".

In your Articles of Incorporation ("AOI"), the primary purpose for which FSSI is incorporated is *"to contribute, encourage, assist, provide financial support by means of grants and loans in a clear and transparent manner, and to provide technical and managerial support to developmental, educations [sic], scientific and/or charitable non-governmental/private organizations or associations for*

entities such as people's organizations and marginalized communities, to support projects and/or programs in the area of sustainable productions; this will encompass productive activities in the field of agriculture and fishery as well as in the urban and rural small industries sector, including forward and backward linkages as long as they are directly and essentially linked to and contribute materially to the above mentioned activities."

FSSI sent a letter to the BIR dated 28 August 2014 applying for a Tax Exemption Ruling pursuant to Section 30 (E) of the NIRC.

In particular, the Request for Review prays for the reversal of BIR's denial of FSSI's request for exemption from tax as a non-stock, non-profit corporation under Section 30 (E) of the 1997 National Internal Revenue Code ("NIRC"). The BIR denied the request for exemption on the ground that FSSI failed to prove that it is a non-profit corporation. In BIR Ruling No. 624-2018, the BIR couched the denial of FSSI's request, as follows:

"xxx

In the submitted 2011 Financial Statements of the Foundation, Note 22 thereof disclosed that there is a per diem being paid in attending BOT meetings. Moreover, Section 11 of the By-Laws provides that reasonable per diem may be allowed for the special regular meetings of the Board. 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 that no part of the net income or assets of the corporation shall inure to the benefit of any individual or specific person. Thus, Foundation for a Sustainable Society (FSSI) Incorporated cannot be qualified as a non-stock, non-profit corporation or association under Section 30 (E) of the National Internal Revenue Code of 1997, as amended.

xxx

In view of the foregoing, the request of Foundation for a Sustainable Society (FSSI) Incorporated to be exempted from income tax on its income as a Section 30 (E) corporation or association is hereby denied as it failed to prove that it is a (non-stock) non-profit corporation or association. Therefore, it



shall be subject to thirty percent (30%) corporate income tax pursuant to Section 27 (A) of the National Internal Revenue Code of 1997, as amended."

On the other hand, in your Request for Review, you argued that no part of your income or asset has inured to the benefit of any member, organizer, officer or any specific person, thus:

"Second. Contrary to the finding of the CIR, we would also like to clarify that no part of FSSI's income or asset has inured to the benefit of any member, organizer, officer or any specific person.

xxx

In denying our request for a favourable ruling, the CIR ruling cited Note 22 of our 2011 Financial Statements which states that "Project and monitoring pertains to expenses incidental to monitoring and evaluating existing projects, including per diem in attending BOT meetings of existing partners". This refers to expenses of FSSI's staff/employees when they attend BOT meetings of partner NGOs and POs as part of project monitoring and evaluation, and not "per diem being paid (to Board members) in attending BOT meetings (of FSSI)" as stated in the CIR ruling."

Ruling

The DOF rules to reverse BIR Ruling No. 624-2018 dated 11 April 2018.

The FSSI, being a non-stock, non-profit corporation, is subject to a nondistribution constraint, and thus, it cannot distribute profits to those who control it. This is embodied in the prohibition against inurement found in Section 30 (E) of the NIRC which provides that:

"xxx

(E) Nonstock corporations 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 or any specific person;

xxx"

Paragraph 11 of FSSI's Articles of Incorporation reads:

"xxx

ELEVENTH. -That none of the Trustees of the Corporation as such shall receive any compensation nor any type of remuneration in cash or in kind;

xxx"

Section 11, Article II of FSSI's amended By-Laws provides:

"Section 11. Compensation of Trustees -

a. Trustees shall not receive any compensation in cash or in kind for their service as Trustees. However, by resolution of two-thirds (2/3) of the Members of the Board of Trustees, expenses for attendance at regular or special meetings of the Board and other reasonable expenses may be allowed. Actual and necessary traveling expenses of its members or any officer of the Foundation in the pursuit of its defined objectives and purposes may be allowed by resolution of the Board of Trustees.

b. No Trustee shall directly financially benefit from any transaction with the Foundation."

It is clear from FSSI's constitutive documents (AOI and By-Laws) that no part of their income or asset goes to any member, organizer, officer or any specific person as compensation, salaries, or honorarium.

After a careful reading of Note 22 of the 2011 Audited Financial Statements of FSSI, we note that a per diem is given to employees/staff of FSSI when they attend BOT meetings of partner organizations as part of project monitoring and evaluation. As such, the DOF is convinced that this is not violative of the




rule prohibiting private inurement nor is it a form of a private inurement. In fact, it is considered as an operating expense necessary for the furtherance of the purpose or purposes for which FSSI was organized.

These expenses are reasonable and necessary, absent any allegation that it is exorbitant or unreasonable. FSSI continues to serve public interest despite the grant of a per diem to cover transportation costs and other expenses of employees/staff when attending BOT meetings of partner organizations as part of project monitoring and evaluation.

It is for the foregoing reasons that the DOF approves herein Request for Review. Kindly note that 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 12 2019

