



Republic of the Philippines
DEPARTMENT OF FINANCE

Roxas Boulevard Corner Pablo Ocampo, Sr. Street
Manila 1004

DOF Opinion No. 011.2022

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Partner

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**SUBJECT : Request for Review of Bureau of Internal Revenue
Ruling No. 466-2014 (S30F-0181-2020) dated 7
February 2021**

Dear **Atty. Pangilinan**:

This refers to your letter dated 10 February 2022 ("Request for Review"), which you filed with this Department on behalf of the Cement Manufacturers' Association of the Philippines (CEMAP) Inc. ("CeMAP" or the "Association") to request for the review of Bureau of Internal Revenue ("BIR") Ruling No. 466-2014 (S30F-0181-2020) dated 7 February 2021 denying CeMAP's application for the issuance of a Certificate of Tax Exemption under Section 30 (F) of the National Internal Revenue Code ("NIRC").

The Request for Review prays for the reversal of the BIR's findings that denied CeMAP's request for a tax exemption certificate on the ground that CeMAP did not qualify as a non-profit business league pursuant to Section 30 (F) of the NIRC, as amended. The particular provision in BIR Ruling No. 466-2014 (S30F-0181-2020) states:

A handwritten signature in black ink, appearing to be the name of the official, is located at the bottom left of the page.

“The giving of per diem to the members of the Board of Trustees is considered a distribution of the equity (including the net income) of CEMENT MANUFACTURERS ASSOCIATION OF THE PHILIPPINES (CEMAP) 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 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, CEMENT MANUFACTURERS ASSOCIATION OF THE PHILIPPINES (CEMAP) INC. cannot be qualified as non-stock, non-profit corporation under Section 30(F) of the National Internal Revenue Code of 1997, as amended.”

On the other hand, in the Request for Review, CeMAP asserted that it is indeed a non-profit business league pursuant to Section 30 (F) of the NIRC based on the following reasons:

- a. The Seventh Article of the CeMAP’s Amended Articles of Incorporation (“AOI”) provides that “The Trade Association shall be governed by Trustees who shall not receive compensation for the discharge of their duties as Trustees, but only reasonable per diems xxx.”
- b. The grant of reasonable per diem allowances to its Trustees is not a distribution of equity and/or net income of CeMAP but are necessary expenses incurred in furtherance of the duties and responsibilities of the Trustees and ultimately for the interest and welfare of the Association.
- c. CEMAP further represented that it has yet to actually give or distribute per diems to its Trustees.¹

¹ Corporate Treasurer Certification dated 7 March 2017.

The issue in the Request for Review is whether the provision in CeMAP's Amended AOI that its Trustees may be given reasonable per diems is in violation of the "inurement" prohibition under Section 30(F) of the NIRC.

Ruling

This Office reverses with BIR Ruling No. 466-2014 (S30F-0181-2020).

Section 30 (F) of the NIRC provides that a business league, chamber of commerce, or board of trade shall, in order to enjoy income tax exemption, have no part of its net income inure to the benefit of any private individual, to wit:

"Business league, chamber of commerce, or board of trade, not organized for profit and no part of the net income of which, inures to the benefit of any private stockholder or individual."

Revenue Memorandum Order ("RMO") No. 38-2019 clarified the nature, character, and tax treatment of corporations under Section 30 of the NIRC. It further provides that in determining whether or not a corporation falls within the contemplation of the category of income tax-exempt business league under Section 30, reference shall be made to Section 31 of Revenue Regulations ("RR") No. 02-40 which describes the corporation and its respective operations.

Section 31 of RR No. 02-40 defines a business league exempt from income tax as follows:

"Section 31. *Business Leagues.* – A business league is an association of persons having some common business interest, which limits its activities to work for such common interest and does not engage in a regular business of a kind ordinarily carried on for profit. Its work need not be similar to that of a chamber of commerce or board of trade. If it engages in a regular business of a kind ordinarily carried on for profit, the fact that the business is conducted on a cooperative basis or produces only sufficient income to be self-sustaining, is not a ground for exemption."



RMO No. 38-2019 reiterates this definition and enumerates the following characteristics of a business league to be qualified for the income tax exemption under Section 30(F), vis:

“xxx

- a. Organized as a business league, chamber of commerce, or board of trade;
- b. Operated as an association of persons having some common basic interest, which limits its activities to work for such common interest;
- c. It does not engage in in a regular business of a kind ordinarily carried on for profit;
- d. It is non-profit;
- e. **No part of its net income or asset shall belong to or inures to the benefit of any member, organizer, officer, or any specific person.** (Emphasis supplied)

xxx”

The “inurement” prohibition under Section 30 of the NIRC, as amended, 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 such organization, which should appropriately be devoted to the furtherance of the purpose/s for which it was organized.

Here, in evaluating whether the provision of per diems to the Trustees of CeMAP expressed in its Amended AOI is payment of compensation violative of the “inurement” prohibition, this Office reviewed the Association’s constitutive documents and submissions to the BIR. In determining the reasonableness of the grant of per diem, we also looked into the relevant and surrounding circumstances that may influence the appropriateness thereof.

We considered the following facts and circumstances in making an evaluation of the Request for Review:



- a. The Amended AOI of CeMAP in 2016 provides that its Trustees do not receive compensation for the discharge of their duties but only reasonable per diems as may be determined by majority of the Board of Trustees and ratified by majority of the members.
- b. The Association's Amended By-Laws provides that the Trustees shall not receive compensation for their services. There is no exception provided.
- c. In the Treasurer's Certification dated 7 March 2017, CeMAP's Treasurer Veralynn Jaromo attested that no part of the net income, compensation, salaries, or any emoluments benefits any private individual nor does the Board of Trustees receive any compensation or remuneration from the Association.
- d. The CeMAP submitted a Certification on Modus Operandi dated 7 March 2017 specifying its contemplated expenditures in the future which does not include the giving of per diems to its Trustees.

CeMAP represented that it has not given out any kind of per diems to its Trustees. Nevertheless, the giving of reasonable per diems is not automatically an "inurement" in violation of the prohibition provided for by law. The DOF opines that the exigencies of the operations of non-profit organizations also require them to incur reasonable expenses. However, such per diem to be granted must be a legitimate expense arising from the performance of duties that will lead to the Association achieving its purposes.

In another case, this Office ruled that reasonable per diems, such as transportation allowances for PhP2,000.00 per board meeting and honorariums for guest speakers with amount so small vis-à-vis numerous seminars conducted where guest speakers are all given honorariums, are allowed and not considered "inurement".

It is for the foregoing reasons that this Office disagrees with the decision of the Commissioner of Internal Revenue in BIR Ruling No. 466-2014 (S30F-0181-2020)



that the provision of reasonable per diems in the AOI of CeMAP is an outright violation of the “inurement” prohibition.

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 null and void.

Thank you.

Sincerely yours,


CARLOS G. DOMINGUEZ
Secretary of Finance
JUN 29 2022



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

