



Republic of the Philippines
DEPARTMENT OF FINANCE

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Makati City 1226

DOF Opinion No. 012.2019

**SUBJECT: REQUEST FOR REVIEW OF BUREAU OF INTERNAL
REVENUE RULING NO. 652-2018**

Gentlemen:

This refers to your Request for Review, on behalf of Uytengsu Foundation, Inc., of Bureau of Internal Revenue (BIR)-Law Division Ruling No. 652-2018 dated 12 April 2018.

Records of the case disclose that Uytengsu Foundation, Inc. (UFI) is a non-stock, non-profit corporation duly organized and existing under the laws of the Republic of the Philippines.¹

On 4 December 2013, UFI applied for tax exemption revalidation requesting for the issuance of a tax exemption ruling/certificate as a non-stock, non-profit corporation under Section 30 (E) of the National Internal Revenue Code, as amended.

The request for a confirmatory ruling was filed pursuant to Revenue Memorandum Order (RMO) No. 20-2013,² which prescribes for the policies and guidelines in the issuance of tax exemption rulings to qualified non-stock, non-profit corporations and associations under Section 30 of the Tax Code.

¹ UFI was issued with BIR Taxpayer Identification No. (TIN) 003-059-345-000 and Certificate of Registration No. OCN 9RC0000404064 dated 20 June 1993. It is registered with the Securities and Exchange Commission (SEC) under Company Registration No. 48028 dated 3 July 1972.

² RMO No. 20-2013 dated 22 July 2013. **Section 2. Applications for Tax Exemption and Revalidation.** – Corporations and associations enumerated under Section 30 of the NIRC, as amended, **including those which have been issued tax exemption rulings/certificates prior to June 30, 2012**, shall file their respective Applications for Tax Exemption/Revalidation with the Revenue District Office (RDO) where they are registered. Only corporations or associations that are duly qualified under Section 30 of the NIRC, as amended, shall be issued Tax Exemption Rulings.

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On 12 April 2018, the Commissioner of Internal Revenue (CIR) issued BIR Ruling No. 652-2018 denying UFI's request for failure to meet one of the conditions, the "operational test", for an entity to be considered a charitable corporation or association. Pursuant to the aforesaid ruling, UFI shall be considered an ordinary corporation, to wit:

"After a careful perusal of the documents submitted, it is found that UYTENG SU FOUNDATION, INC. failed to meet the third condition or the operational test.

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It must be emphasized that to be tax-exempt, a corporation or association claiming to be a charitable institution must not only be organized as such but must also undertake activities exclusive to charity, and that any profits it may have obtained as an incident to its operations must be devoted or used altogether to the charitable object which it is intended to achieve.

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Hence, UYTENG SU FOUNDATION, INC. shall be treated as an ordinary corporation subject to regular corporate income tax and applicable internal revenue taxes imposed by the National Internal Revenue Code of 1997, as amended."

Verily, the sole issue raised in this Request is whether UPI is a charitable institution operating exclusively for charitable purposes and thus, entitled to a tax exemption ruling/certificate.

Section 30 (E) of the Tax Code, as amended, provides that:

"**Sec. 30. Exempt from Tax on Corporations.** – The following organization shall not be taxed under this Title in respect to income received by them as such:

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(E) ***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 come or asset shall belong to or inure to the benefit of any member, organizer, officer, or any specific person.***"

In order to claim the benefits granted under the Section 30 (E) of the Tax Code, a corporation or association must meet the following conditions:

- a. It must be a non-stock corporation or association;
- b. Organized exclusively for charitable purposes;
- c. Operated exclusively for charitable purposes; and



- d. 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.³

The BIR posits that UPI failed to meet the third condition in order to qualify for tax exemption such that, the corporation has **not operated exclusively** for charitable purposes. The BIR maintains that UPI has been organized and incorporated since 3 July 1972 but as can be gleaned from its Audited Financial Statements (AFS) for the years 2012, 2011, and 2010, UPI has not shown any charity-oriented projects/activities undertaken in pursuit of its charitable purpose as represented in its Articles of Incorporation.

UPI is a non-stock, non-profit corporation organized for charitable purposes

In order to qualify for an exemption under Section 30 (E) of the NIRC, the charitable entity has to meet the substantive test of charity provided in *Lung Center of the Philippines v. Quezon City*.⁴ This test of charity takes into account the corporate purposes, the constitution and by-laws, the methods of administration, the nature of the actual work performed, the character of the services rendered, the indefiniteness of the beneficiaries, and the use and occupation of the properties of the corporation.⁵

The Supreme Court is instructive as to what qualifies as charitable. In the case of *CIR v. St. Luke's Medical Center, Inc.*, the court elucidates that:

“Charity is essentially a gift to an indefinite number of persons which lessens the burden of the government. In other words, **charitable institutions provide for free goods and services to the public which would otherwise fall on the shoulders of government.**” Any profit by a charitable institution must not only be plowed back 'whenever necessary or proper,' but must be 'devoted or used altogether to the charitable object which it is intended to achieve.’⁶

(emphasis ours)

Moreover, to be exempt, it is required under Section 30 (E) that no part of [the corporation's] net income or asset shall belong to or inure to the benefit of any member, organizer, officer or any specific person and that, the operations of the charitable institution be exclusive to charity.⁷

³ *CIR v. St. Luke's Medical Center, Inc.*, G.R. No. 203514, 13 February 2017. See RMO No. 20-2013 it is provided that aside from the four aforementioned conditions, corporations or associations applying for tax exemption/ruling must not be a branch of a foreign non-stock, non-profit corporation.

⁴ G.R. No. 144104, 29 June 2004

⁵ *Id.*

⁶ *CIR v. St. Luke's Medical Center, Inc.*, *supra* fn. 3

⁷ *Id.*



In this case, records show that UPI has passed the substantive test of charity.

A review of UPI's incorporation document⁸ reveals that UPI is organized and registered as a non-stock, non-profit corporation.⁹ Further, a Certification from UPI's Corporate Treasurer states that the trustees and key officers of UPI do not receive any income, compensation, salaries or emoluments of any kind from UPI.¹⁰ More so, UPI has been incorporated for charitable purpose(s), to wit:

"To furnish financial assistance for religious, charitable, and/or educational purposes principally through Ellinwood-Malate Church, Silliman University and the Cebu Christian School, as may be determined or decided by the Board of Trustees of Uytengsu Foundation, Inc.; and generally, to carry out religious, educational, charitable and other eleemosynary or humanitarian activities, for the promotion of the welfare of the community in general and not for financial gain or profit;"

However, although UPI may be considered as a charitable institution, this registration does not automatically exempt the corporation from paying taxes.¹¹ To be exempt, both the organization and operations of the charitable institution must be devoted 'exclusively' for charitable purposes.¹² This is referred to as the operational test which mandates that the corporation's regular activities shall be exclusively devoted to the accomplishment of its purpose.

UPI has operated 'exclusively' for charitable purposes

Upon examination of UPI's financial documents and modus operandi, we agree with UPI that it has operated exclusively for charitable purposes.

UPI claims that it has consistently been supporting its beneficiary institutions for their projects and activities. Pursuant to an Affidavit of Modus Operandi executed by the Vice President of UPI, it is shown that over the past few years, UPI has conducted charitable activities by rendering financial assistance to certain beneficiaries, as follows:

⁸ UPI's Articles of Incorporation, Rollo p. 131-134

⁹ Section 87 of the Corporation Code of the Philippines. A non-stock corporation is 'one where no part of its income is distributable as dividends to its members, trustees, or officers' and that any profit 'obtain[ed] as an incident to its operations shall, whenever necessary or proper, be used for the furtherance of the purpose or purposes for which the corporation was organized.'

¹⁰ Certification from Corporate Treasurer. Rollo p. 93. See Paragraph Eight of UPI's Articles of Incorporation. Rollo p. 132, where it is provided that no part of [UPI's] income or assets shall inure to the private benefit of any individual member.

¹¹ Revenue Memorandum Circular No. 064-2016

¹² *Perpetual Succour Hospital of Cebu, Inc. v. CIR*. CTA Case No. 8912, 25 July 2017



- a. 2006 UPI donated Php17 Million financial support to the construction of the Uytensu Mission Hall at Ellinwood Malate Church;¹³
- b. 2007 Php12,665,827.57 financial support to the construction of Uytensu Foundation Computer Center at Silliman University;¹⁴
- c. 2008 Additional financial support for the above projects totaling Php7,282,191.43;¹⁵ and
- d. 2018 Php26 Million donated to Philippine Christian Gospel School,¹⁶ for the construction of a 5-storey building named "Uytensu Integrated Learning Center."¹⁷

Nevertheless, UPI's financial statements for three (3) years immediately preceding the date of application for tax exemption show that UPI has not conducted for such period any charity-oriented projects/activities in pursuit of its charitable purpose thus constraining the BIR to deny its application.

In the case of *Lung Center of the Philippines v. Quezon City*,¹⁸ the Supreme Court defined "exclusive" as:

"possessed and enjoyed to the exclusion of others; debarred from participation or enjoyment; and 'exclusively' is defined, 'in a manner to exclude; as enjoying a privilege exclusively.' ... Solely is synonymous with exclusively."

As such, the submitted financial statements may reveal that UPI has not conducted any charity-oriented activity for the given period, however, it likewise reveals that **UPI has not conducted any activity that would digress it from the charitable purpose it was organized for.**

Moreover, the mere realization of income from investments and dividends does not automatically divest UPI of its status as a non-stock, non-profit corporation operating exclusively for charitable purposes, as long as no part of its profits inures to the benefit of any stockholder or individual.¹⁹

¹³ UPI Vice President's Affidavit of *Modus Operandi*. Rollo p. 90-91

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ Previously Cebu Christian School

¹⁷ As evidenced by a Certificate of Project Donation signed by Wanda Po Liam Giok, School Director.

¹⁸ *Supra fn 4*, see *Young Men's Christian Association of Omaha v. Douglas County*, 83 N.W. 924 (1900) and *Lodge v. Nashville*, 154 S.W. 141.

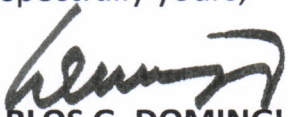
¹⁹ See *Commissioner v. CA and YMCA*, G.R. No. 124043, October 14, 1998



Thus, considering the records of the case, it is this Office's view that UPI has **solely** operated for charitable purposes. UPI's regular activities of donating or rendering financial assistance to its beneficiaries, albeit not yearly, is exclusively devoted to the accomplishment of its charitable purpose which is to carry out religious, educational, charitable and other eleemosynary or humanitarian activities for the promotion of the welfare of the community and not for financial gain or profit.

Finally, even if UPI may qualify as a non-stock, non-profit corporation under Section 30 (E) of the Tax Code, this is without prejudice to the application of the last paragraph of Section 30 which imposes taxes on the income from any property of exempt organizations, as well as that arising from any activity it conducts for profit.²⁰

Respectfully yours,


CARLOS G. DOMINGUEZ
Secretary *16* *ait*

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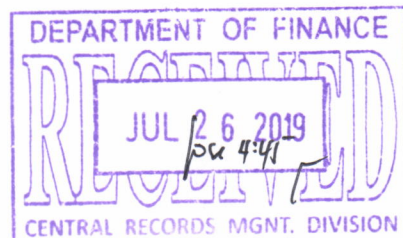


CC: **CAESAR R. DULAY**
Commissioner
Bureau of Internal Revenue
BIR Road, Diliman, Quezon City

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Uytensu Foundation, Inc.

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²⁰ "Section 30. Notwithstanding the provisions in the preceding paragraphs, the income of whatever kind and character of the foregoing organizations from any of their properties, real or personal, or from any of their activities conducted for profit regardless of the disposition made of such income, shall be subject to tax imposed under this Code." See *Commissioner v. CA and YMCA*, G.R. No. 124043, October 14, 1998