



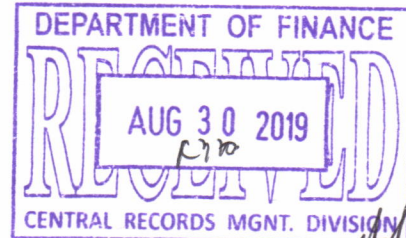
Republic of the Philippines
DEPARTMENT OF FINANCE

Roxas Boulevard Corner Pablo Ocampo, Sr. Street
Manila 1004

DOF Opinion No. 013.2019

MR. REYNANTE M. MARCELO

Partner, Tax Services
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1226 Metro Manila, Philippines



**SUBJECT: Request for Review of Bureau of Internal Revenue Ruling
No. 026-2016**

Dear **Mr. Marcelo**:

This refers to the subject letter dated 11 March 2016 ("Request for Review") which you filed with this Department on behalf of your client Information Technology and Business Process Association of the Philippines, Inc. ("IBPAP") to request for review of Bureau of Internal Revenue ("BIR") 026-2016 dated 11 January 2016, which denied IBPAP's request for tax exemption.

In particular, the Request for Review prays for the reversal of the BIR's finding that IBPAP should not be granted tax exemption under Section 30(F) of the National Internal Revenue Code ("NIRC") of 1997, as amended, because its primary activity is "the performance of particular services to benefit members and other entities interested in eS[e]rvices industry and that it is a value-added-tax (VAT)-registered taxpayer."

On the other hand, as stated in your Request for Review, it is your position that said Ruling must be reversed for two main reasons:

- a. IBPAP is a tax-exempt business league under Section 30(F) of the Tax Code, as amended; and

- b. IBPAP's VAT registration does not necessarily mean that it is engaged in business.

We find that the BIR made a reversible error and hence remand the docket back to the BIR for proper disposition in the manner outlined herein.

IBPAP is a tax-exempt business league under Section 30(F) of the Tax Code

Section 30(F) of the Tax Code, as amended, which provides:

SECTION 30. Exemptions from Tax on Corporations. — The following organizations shall not be taxed under this Title in respect to income received by them as such:

X X X

(F) 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;

X X X

Further, Section 31 of Revenue Regulations ("RR") No. 2-1940, more popularly known as the "Income Tax Regulations," defines business leagues 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.**

X X X (emphasis ours)



In denying IBPAP's application for tax exemption, the BIR found that Section 30(F) of the Tax Code, as amended, does not apply because IBPAP is engaged in business of providing particular services to benefit its members and other entities interested in the eServices industry, which is ordinarily carried on for profit.

This is erroneous. In the case of *Collector of Internal Revenue v. Manila Lodge No. 761 of the Benevolent & Protective Order of Elks and the Court of Tax Appeals ("CTA")*,¹ the Supreme Court took the CTA's definition of the term "business" as "restricted to activities or a affairs where profit is the purpose, or livelihood is the motive." In that case, the Supreme Court affirmed the CTA's finding that the therein taxpayer, having been organized as a fraternal social club, cannot be considered as engaged in business just because it sells on retail at its clubhouse to its members and their guests, as long as it provides margin enough to cover its operational expenses, without intention to obtain profit.

In a later case, *Collector of Internal Revenue v. Club Filipino, Inc. de Cebu*,² the Supreme Court ruled that a club that is "organized to develop and cultivate sports of all class and denomination, for the healthful recreation and entertainment of its stockholders and members," which operates a bar-restaurant where it sells food and drinks to its members and their guests, cannot be considered as for-profit entity just because it makes some profit. The bar-restaurant of the club is a necessary adjunct of the club and, hence, profits raised from its operations are necessarily incidental to the operation of the club.

Review of IBPAP's corporate purposes, as enumerated in its Amended Articles of Incorporation, show that it is intended to be the national organization that will represent its member-entities, all belonging to the eServices industry, before the government and the international business community. In furtherance of this primordial purpose it can partner with the government and organize events that will promote the general welfare of its members, including hosting of events and conferences that will increase the awareness and interest of different players in the eServices industry. All in all, these purposes merely promote the common business interests of IBPAP's members and the industry in general.

¹ G.R. No. L-11176, 29 June 1959.

² G.R. No. L-12719, 31 May 1962.

The fact that it collects fees, dues, and other receipts from its members and other persons, in furtherance of these activities should not convert IBPAP into a profit-making enterprise or an entity engaged in business. IBPAP, like any other organization, needs funding to pay its overhead expenses. Even if IBPAP generates some excess collection over its overhead expenses, such does not necessarily turn it into a for-profit entity that should be denied exemption as long as its activities are in furtherance of its primary purposes, none of which is motivated by profit.

IBPAP's VAT-registration does not affect its income tax exemption

The BIR likewise found that since IBPAP is a VAT-registered taxpayer, it must be engaged in businesses since "VAT is a business tax imposed primarily on those taxpayers engaged in business."

Again, this is erroneous. The relevant portion of Section 105 of the NIRC of 1997, as amended, provides:

SECTION 105. Persons Liable. — Any person who, in the course of trade or business, sells, barter, exchanges, leases goods or properties, renders services, and any person who imports goods shall be subject to the value-added tax (VAT) imposed in Sections 106 to 108 of this Code.

X X X

The phrase 'in the course of trade or business' means the regular conduct or pursuit of a commercial or an economic activity, including transactions incidental thereto, by any person regardless of whether or not the person engaged therein is a nonstock, nonprofit private organization (irrespective of the disposition of its net income and whether or not it sells exclusively to members or their guests), or government entity.

X X X

Based on BIR's interpretation of Section 105, once a nonstock, nonprofit entity registers as a VAT taxpayer or becomes liable for VAT, it must primarily be engaged "in the course of trade or business." This means that all nonstock,



nonprofit entity subject to VAT must be engaged in business. Hence, no nonstock, nonprofit entity can be subject to VAT and at the same time be exempt from income tax under Section 30 of the NIRC of 1997, as amended, for being engaged in business.

In the case of CIR v. CA & COMASERCO, correctly cited by IBPAP, the Supreme Court ruled otherwise. In that case, the taxpayer, COMASERCO, argued that "the term 'in the course of trade or business' requires that the 'business' is carried on with a view to profit or livelihood." Hence, the entity must perforce be profit-oriented. Since COMASERCO is not motivated by profit because it is operating "only on reimbursement-of-cost basis, without any profit," it cannot be subject to VAT. To this, the Supreme Court disagreed, stating that:

Contrary to COMASERCO's contention the above provision clarifies that even a non-stock, non-profit organization or government entity, is liable to pay VAT on the sale of goods or services. VAT is a tax on transactions, imposed at every stage of the distribution process on the sale, barter, exchange of goods or property, and on the performance of services, even in the absence of profit attributable thereto. The term "in the course of trade or business" requires the regular conduct or pursuit of a commercial or an economic activity, regardless of whether or not the entity is profit-oriented. (emphasis supplied)

This Supreme Court ruling contradicts BIR's interpretation of Section 105 of the NIRC of 1997, as amended. Since VAT is a tax on transactions, it can be imposed on an entity even if the entity is not profit-oriented, or even on transactions without profit. Hence, the fact that IBPAP is a VAT-registered entity does not automatically or necessarily mean that it is engaged in business or it is profit-oriented. It can be subject to VAT and still be an exempt entity under Section 30(F) of the Tax Code.


All, in all, the BIR erred when it denied IBPAP's application for tax exemption. After reviewing the facts and the laws presented, we rule in favor of IBPAP and, hence, find that it should be exempt from income tax pursuant to Section 30(F) of the NIRC of 1997, as amended, and the corresponding withholding tax under Section 2.57.5 of Revenue Regulations ("RR") No. 2-1998, 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
AUG 27 2019



CC  Commissioner Caesar R. Dulay
Bureau of Internal Revenue