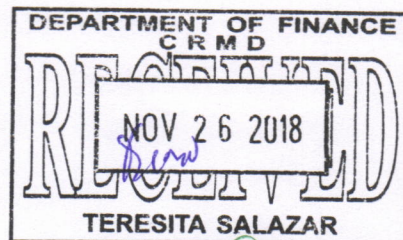




Republic of the Philippines
DEPARTMENT OF FINANCE

Roxas Boulevard Corner Pablo Ocampo, Sr. Street
Manila 1004



4/27
ATTY. JOSE MARIO C. BUÑAG
Counsel for The Rotary Foundation
BUÑAG & ASSOCIATES
Suites A & B, 10th Floor
Strata 100 Building
F. Ortigas Jr., Road
Ortigas Center, Pasig City

DOF Opinion No. 011.2018 NOV 26 2018

SUBJECT: Request for Review of Bureau of Internal Revenue Ruling No. 140-14

Dear Atty. Buñag:

This refers to the subject letter dated 20 February 2018 ("Request for Review") which you filed with this Department on behalf of The Rotary Foundation of Rotary International ("TRF") to request for review of Bureau of Internal Revenue ("BIR") Ruling No. 140-14 dated 31 January 2018, which ruled on the taxability of TRF which is a branch of Rotary International.

In particular, the Request for Review prays for the reversal of the BIR's denial of TRF's request for exemption from tax as a non-stock, non-profit corporation under Section 30 of the National Internal Revenue Code ("NIRC"). The BIR denied the request for exemption on the premise that it, being a branch of a foreign non-stock, non-profit corporation, is not entitled to the privilege being granted under Section 30(e) of the NIRC. The pertinent portion of the BIR Ruling No. 140-14 provides:

"In reply, please be informed that pursuant to the last paragraph of Section 5(a) of Revenue Memorandum Order (RMO) No. 20-2013 which states that, viz;

"A branch office of a foreign non-stock, non-profit corporation cannot qualify as a tax-exempt corporation under Section 30 of the NIRC, as amended."

In view of the foregoing, your request for the exemption of Rotary Foundation of Rotary International Phils. Inc. as a non-stock, non-profit corporation under Section 30 of the Tax Code of 1997, as amended is hereby denied for lack of legal basis."

On the other hand, it is your position, as stated in your Request for Review, that the BIR, being an administrative agency, cannot amend the law and the power to do so is lodged with the legislature. The Request for Review argues:

"It is our client's position that it cannot be disqualified from availing itself of the aforementioned tax exemption since the disqualification found in Section 5 of RMO 20-2013, to the effect that *"Branch office of a foreign non-stock, non-profit corporation cannot qualify as a tax*

exempt corporation under Section 30 of the NIRC", with all due respect, has no basis in law and in jurisprudence. [It is not even found in the provision.]

Section 30 of the NIRC never made a distinction on the nationality of a corporation qualified to avail of the tax exemption. In fact, it never disqualified branch offices of foreign corporations from the ambit of its operations. Thus, contrary to Section 5 of RMO 20-2013, it will be erroneous to disqualify the TRF from availing itself of the benefits under Section 30 of the NIRC on the sole bases that it is a branch office."

We partially agree with the BIR.

***The BIR did not amend the
National Internal Revenue
Code of 1997***

The RMO subject of this case explicitly provides, in Section 5 thereof, that a branch office, in this case TRF, of a foreign non-stock, non-profit corporation, Rotary International, cannot qualify as a tax-exempt corporation under Section 30 of the NIRC, as amended. Section 6 of the same RMO reiterates that those seeking exemption under Section 30(e) of the NIRC must not be a branch of a foreign non-stock, non-profit corporation.

The Commissioner for Internal Revenue, in issuing RMO 20-2013, exercised no more than his power to interpret the provisions of the NIRC and other tax laws.

Furthermore, the RMO enjoys a strong presumption of validity. TRF cannot be allowed to question the legality of an administrative issuance before the DOF. In ***ABAKADA Guro Party List v. Purisima***¹, the Court has extended the presumption of validity to legislative issuances as well as to rules and regulations issued by administrative agencies.

***TRF, while qualified as a Non-
Stock, Non-Profit Corporation,
cannot avail of the exemption
granted by Section 30***

Anent the issue of TRF's entitlement to the exemption granted under Section 30 of the NIRC, the DOF disagrees with the BIR that it is RMO 20-2013 that should be the sole basis for TRF's disqualification from availment of the said benefit.

While the DOF notes that the Philippine SEC Registration of TRF says that it can operate as a charitable organization, it is posited that it cannot avail of the exemption granted by Section 30 because of Revenue Memorandum Circular (RMC) No. 51-2014 which clarifies the inurement prohibition under Section 30 of the NIRC.

Under the law, in order for an entity to qualify as a non-stock and/or non-profit corporation/association/organization exempt from income tax under Section 30 of

¹ G.R. No. 166715, August 14, 2008, 562 SCRA 251

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.

One inurement of such nature is 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, RMC No. 51-2014 requires that the constitutive documents of the non-stock, non-profit corporation seeking exemption 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.

The pertinent provision of TRF's Articles of Incorporation provides:

"(c) Upon dissolution or liquidation of this corporation, after payment payment or provision for its debts and liabilities, all of its assets (except any assets conveyed to this corporation upon condition requiring return, transfer, or conveyance, which conditions occurs by reason of the dissolution of this corporation) shall be transferred or conveyed pursuant to law to one or more organizations described in section 501(c)(3) of the Internal Revenue Code of 1954 or corresponding provisions of any subsequent federal tax laws for one or more of the purposes described in article 5, as the corporate member of this corporation shall determine."

It is apparent from the foregoing that it does not comply with the requirements in RMC No. 51-2014: (i) there is no express statement that its assets shall be distributed to one or more entities formed for similar purposes in case of dissolution, and (ii) Section 501(c)(3) of the US Internal Revenue Code of 1954 provides for corporations/organizations organized not only for charitable purposes which is the primary purpose of TRF (e.g., corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition, and etc.).

It is for the foregoing reasons that the DOF denies 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

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