

REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE
Quezon City

REVENUE MEMORANDUM ORDER NO. 38-2019

SUBJECT: Tax Exemption of Non-Stock, Non-Profit Corporations Under Section 30 of the National Internal Revenue Code of 1997, As Amended

TO : All Internal Revenue Officers and Other Concerned

I. BACKGROUND

Section 30 of the National Internal Revenue Code (NIRC) of 1997, as amended, enumerates only eleven (11) kinds of organization and expressly provides that such organizations shall not be taxed under Title II (Tax on Income) in respect to income received by them as such.

In determining whether or not a corporation falls within the contemplation of these 11 categories, reference shall be made to Sections 25, 26, 27, 29, 30, 31, 32, 34, 35 of Revenue Regulations (RR) No. 02-40 dated February 10, 1940 (the Income Tax Regulations) describing these corporations and their respective operations.

This Order is issued to clarify the nature, character and tax treatment of corporations under Section 30 of the NIRC, and to devolve to the Revenue Regions the issuance of Certificate of Tax Exemptions (CTEs) to said corporations.

This Order does not include processing of CTEs of non-stock, non-profit educational institutions under Section 30(H) of the NIRC, which is covered by Revenue Memorandum Order (RMO) No. 44-2016.

II. CHARACTERISTICS AND NATURE OF ORGANIZATIONS AND CORPORATIONS UNDER SECTION 30 OF THE NIRC, AS AMENDED.

In order to determine the true nature, and consequently, the taxability of a corporation claiming as a non-stock, non-profit entity, the concerned BIR personnel shall be guided by the following discussions:

A. Labor, agricultural or horticultural organization not organized principally for profit.

1) Characteristics:

- a) It is organized as a non-stock, non-profit corporation;
- b) Operated either as a labor, or agricultural, or horticultural organization;

2) Corporate Purposes:

- a) **Labor organization** – refers to an association of workers who have combined to protect and promote the interests of its members by bargaining collectively with their employers to secure better working conditions, wages and similar benefits. A legitimate labor organization is one duly registered with the Department of Labor and Employment (DOLE), and includes any branch or local thereof.

A labor organization may also be organized to improve the grade of the workers' products and/or develop a higher degree of efficiency in their respective occupations.

- b) **Agricultural and horticultural organization** – refers to an association of persons engaged in raising livestock, harvesting crops or aquatic resources, cultivating useful or ornamental plants, or similar pursuits. It may also refer to an organization engaged in cultivating the ground including the preparation of the soil, the planting of seed, the raising and harvesting of crops, and the rearing, feeding, and management of livestock. It includes organizations of persons involved in harvesting aquatic resources.

Horticulture concerns the cultivation of gardens or orchards and the growing of fruits, vegetables, flowers and ornamental plants.

- 3) **Actual operation:** To be entitled to exemption from income tax, the corporation must carry out activities primarily to improve the working conditions of its members, improve the grade of their products, and/or develop a higher degree of efficiency in their respective occupations or the improvement of production techniques.

B. Mutual savings bank not having a capital stock represented by shares, and cooperative bank without capital stock organized and operated for mutual purposes and without profit;

With the passage of Republic Act No. (RA) 8367, otherwise known as “Revised Non-Stock Savings and Loan Association Act of 1997”, which grants tax exemption to non-stock savings and loan associations, and RA 6938, otherwise known as the “Cooperative Code of the Philippines”, as amended by RA 9520, otherwise known as “Philippine Cooperative Code of 2008”, which grants tax incentives to cooperative banks, recognition of tax exemptions of non-stock savings and loan associations and cooperative banks are now governed by RA 8367 and RA 9520, respectively.

C. A beneficiary society, order or association, operating for the exclusive benefit of the members such as a fraternal organization operating under the lodge system, or mutual aid association or a non-stock corporation organized by employees providing for the payment of life, sickness, accident, or other benefits exclusively to the members of such society, order, or association, or non-stock corporation or their dependents;

1) **Characteristics:**

- a) It is organized as—
- i. A beneficiary society, order or association, operating for the exclusive benefit of the members such as a fraternal organization operating under the lodge system; or
 - ii. A mutual aid association or a non-stock corporation organized by employees providing for the payment of life, sickness, accident, or other benefits exclusively to the members of such society, order, or association, or non-stock corporation or their dependents.
- b) It must be operating for the exclusive benefit of the members or providing for the payment of life, sickness, accident, or other benefits exclusively to the members of such society, order, or association or their dependents;

- 2) **Corporate purposes:** The organization should be operated to assist their members through the provision of benefits through an established system of benefit payments to its members and their dependents.
- 3) **Actual operation:** The association must be operated either as—
 - a) A fraternal organization under the lodge system or a mutual aid association providing for the exclusive benefit of the members, or a non-stock corporation organized by employees providing for the payment of life, sickness, accident, or other benefits exclusively to the members of such society, order, or association, or non-stock corporation or their dependents; and
 - b) It should have an established system of benefit payments to its members and their dependents or established system for the payment of life, sickness, accident, or other benefits to its members or their dependents.

D. Cemetery company owned and operated exclusively for the benefit of its members;

1) **Characteristics:**

- a) It is organized as non-stock corporation and not operated for profit;
- b) Owned by and operated exclusively for the benefit of its lot owners;
- c) It is chartered solely for burial purposes and not permitted by its charter to engage in any business not necessarily incident to that purpose; and
- d) No part of its net earnings inures to the benefit of any private shareholder or individual.

- 2) **Corporate purposes:** The corporation is organized as a cemetery company for the exclusive benefit of its members, solely for the purpose of the disposal of bodies by burial and that its Articles of Incorporation does not permit it to engage in any business not necessarily incident to that purpose; and that no part of its net earnings inures to the benefit of any private shareholder or individual.

- 3) **Actual operation:** It is operated solely for burial purposes and not permitted by its charter to engage in any business not necessarily incident to that purpose. No part of its net earnings should inure to the benefit of any private shareholder or individual. Earnings of the company may be used for the operation, maintenance, and improvement of the cemetery.

E. Non-stock 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 income or asset belongs to or inures to the benefit of any member, organizer, officer or any specific person;

1) **Characteristics:**

- a) A non-stock corporation or association
- b) Organized and operated exclusively for:
 - i. religious,
 - ii. charitable,
 - iii. scientific,
 - iv. athletic, or
 - v. cultural purposes, or
 - vi. for the rehabilitation of veterans,
- c) No part of its net income or asset belongs to or inures to the benefit of any member, organizer, officer or any specific person

2) **Corporate purposes:**

- a) **Religious purposes** – refers to the promotion, propagation and accomplishment of any form of religion, creed or religious belief recognized by the Government of the Republic of the Philippines.
- b) **Charitable purposes** – refers to activities extending relief to the poor, distressed and underprivileged and shall include fighting against juvenile delinquency and community deterioration, and provision for free goods and services to the public.
- c) **Scientific purposes** – refers to undertaking or assisting in pure or basic, applied and scientific research in the field of agriculture, forestry, fisheries, industry, engineering, energy development, food and nutrition, medicine, environment and biological, physical and natural sciences for the public interest.
- d) **Athletic purposes** – refers to and include conducting a program on physical fitness and amateur sports development for the country; developing and maintaining recreational facilities, playgrounds and sports centers; and conducting training programs for the development of youth and athletes for national and international competitions.
- e) **Cultural purposes** – refers to and include undertaking and/or assisting in research activities on all aspects of history, social system, customs and traditions; developing, enriching and preserving Filipino arts and culture; developing and promoting the visual and performing arts; and participating in vigorous implementation of bilingual policy through translation and wider use of technical, scientific and creative publications, development of an adaptive technical dictionary and use of Filipino as the medium of instruction.
- f) **Rehabilitation of veterans** – refers to services extended to Philippine veterans and members of their families because of financial difficulties and attendant problems; and services extended to disabled veterans towards productive life.

- 3) **Actual operation:** A corporation is exempt from tax on its income if it meets two tests: (a) It is organized and operated for one or more of the above-specified purposes; and (b) no part of its net income or assets inures to the benefit of private stockholders or individuals.

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 stock-holder, or individual;

1) **Characteristics:**

- a) Organized as a business league, chamber of commerce, or board of trade;
- b) Operated as an association of persons having some common business interest, which limits its activities to work for such common interest;
- c) It does not engage 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 inure to the benefit of any member, organizer, officer or any specific person

2) **Corporate purposes:** To promote such common interest and not to engage in a regular business of a kind ordinarily carried on for profit. It is an organization of the same general class as a chamber of commerce or board of trade.

3) **Actual operations:** Its activities should be directed to the improvement of business conditions of one or more lines of business and should not engage in a regular business of a kind ordinarily carried on for profit. 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.

G. Civic league or organization not organized for profit but operated exclusively for the promotion of social welfare;

1) **Characteristics:**

- a) It is organized as a non-stock corporation and not for profit;
- b) It is exclusively operated for the promotion of social welfare; and
- c) It has no net earnings or assets which inure to the benefit of any member, organizer, officer or any specific person

2) **Corporate purposes:** The organization must be primarily engaged in promoting the common good and general welfare of the people of the community, i.e. for the purpose of bringing about civic betterment and social improvement.

3) **Actual operations:** To be entitled to the exemption, the regular activities of the corporation must be exclusively for promotion of social welfare. 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.

H. A non-stock and nonprofit educational institution¹;

I. Government educational institution;

1) **Characteristics:**

- a) It is established by law or a local government unit;
- b) It is administered and financially subsidized by the government or the local government concerned;
- c) It is governed by the Board of Trustees or Board of Regents; and
- d) It is supervised by DepEd or CHED

2) **Corporate purposes:** It is established as an educational institution financed and operated by an agency of the government which does not charge tuition fees; instead, financing is obtained through taxes or other government-collected revenues.

3) **Actual operations:** The institution operates as a primary or secondary school, a college, or a professional or trade school that has a regularly scheduled curriculum, a regular faculty, and a regularly enrolled student body in attendance at a place where the educational activities are regularly carried on.

J. Farmers' or other mutual typhoon or fire insurance company, mutual ditch or irrigation company, mutual or cooperative telephone company, or like organization of a purely local character, the income of which consists solely of assessments, dues, and fees collected from members for the sole purpose of meeting its expenses;

¹ This Order does not include processing of CTEs of non-stock, non-profit educational institutions.

- 1) **Characteristics:**
 - a) It is organized as a non-stock, non-profit organization;
 - b) It is organized as a farmers' or other mutual typhoon or fire insurance company, mutual ditch or irrigation company, mutual or cooperative telephone company, or like organization of a purely local character;
 - c) Income consists solely of assessments, dues, and fees collected from members; and
 - d) Its income is for sole purpose of meeting its expenses.

- 2) **Corporate purposes:** It is established for the operation of a mutual typhoon or fire insurance company, mutual ditch or irrigation company, mutual or cooperative telephone company. Organizations, other than mutual life insurance associations, must be organized and operated on a mutual basis i.e. it is owned by its members and policy holders who are banded together to provide themselves a mutually desirable service approximately at cost and on a mutual basis.

- 3) **Actual operations:**
 - a) A mutual insurance company owned entirely by its policy holders; or association of farmers, direct beneficiaries of the operation of an irrigation project/system; or a telephone company owned and operated by the members to provide telephone services for the benefit of the members.
 - b) These organizations are operated on a mutual basis and must use their income solely to cover losses and expenses, with any excess being returned to members or retained to cover future losses and expenses.
 - c) A mutual life insurance organization cannot have policyholders other than its members.

However, associations organized as cooperatives and registered with the Cooperative Development Authority are governed by R.A. 9520 or “Philippine Cooperative Code of 2008”.

K. Farmers', fruit growers', or like association organized and operated as a sales agent for the purpose of marketing the products of its members and turning back to them the proceeds of sales, less the necessary selling expenses on the basis of the quantity of produce finished by them;

- 1) **Characteristics:**
 - a) It is organized as a non-stock, non-profit organization;
 - b) It is organized as an association or organization whose members are engaged in farming, fruit growing, or similar occupations;
 - c) Its income is for sole purpose of meeting its expenses.

- 2) **Corporate purposes:** To act as a sales agent for the purpose of marketing the products of its members and turning back to them the proceeds of sales, less the necessary selling expenses on the basis of the quantity of produce finished by them.

- 3) **Actual operations:**
 - a) Associations, acting as sales agents for farmers-members, must establish that they have no net income for their own account.
 - b) It should return to the members the proceeds of sales after deducting the necessary selling expenses on the basis of the quantity of produce finished by them.
 - c) The proceeds of the business should be distributed on such proportionate basis.

III. OPERATIONAL & ORGANIZATIONAL TESTS IN DETERMINING ENTITLEMENT TO EXEMPTION

The requirements for the grant of tax exemption are specified by the law granting it and such grant is strictly construed against the taxpayer because an exemption restricts the collection of taxes necessary for the existence of the government. Thus, a corporation claiming tax exemption must be able to show clearly that it is organized and operated for the purposes under Section 30 of the NIRC, and that its income is derived pursuant thereto.

Organizational Test: This requires that the corporation or association's constitutive documents (SEC Registration, Articles of Incorporation and By-Laws) must show that its primary purpose/s of incorporation fall under Section 30 of the NIRC.

Operational Test: This requires that the regular activities of the corporation or association be exclusively devoted to the accomplishment of the purposes specified in Section 30 of the NIRC. A corporation or association fails to meet this test if the corporation has no activities conducted in furtherance of the purpose for which it was organized, or if a substantial part of its operations constitutes "activities conducted for profit".

IV. NON-PROFIT, INUREMENT PROHIBITION

Corporations falling under Section 30 of the NIRC, as amended, must be non-profit. "Non-profit" means that "no net income or asset accrues to or benefits any member or specific person, with all the net income or asset devoted to the institution's purposes and all its activities conducted not for profit".

Thus, in order for an entity to qualify as a non-profit corporation exempt from income tax, it must demonstrate that its earnings or assets do not inure to the benefit of any of its trustees, organizers, officers, members or any specific person. It must not be organized or operated for the benefit of private interests such as specific individuals, incorporators or his family, shareholders of the organization, or persons controlled directly or indirectly by such private interests. The organization must serve a public rather than a private purpose.

A. The following are considered "inurements" of such nature:

- 1) The payment of compensation, salaries, or honorarium to its trustees or organizers;
- 2) The payment of exorbitant or unreasonable compensation to its employees;
- 3) The provision of welfare aid and financial assistance to its members. An organization is not exempt from income tax if its principal activity is to receive and manage funds associated with savings or investment programs, including pension or retirement programs. This does not cover a society, order, association, or non-stock corporation under Section 30(C) of the NIRC providing for the payment of life, sickness, accident and other benefits exclusively to its members or their dependents;
- 4) Donation to any person or entity (except donations made to other entities formed for the purpose/purposes similar to its own);

- 5) The purchase of goods or services for amounts in excess of the fair market value of such goods or value of such services from an entity in which one or more of its trustees, officers or fiduciaries have an interest; and
- 6) 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, its constitutive documents 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.

V. TAXATION OF ORGANIZATIONS AND CORPORATIONS UNDER SEC. 30 OF THE NIRC OF 1997, AS AMENDED

A. Income Tax Exemption, Not Absolute

- 1) Income tax exemption covers only the income derived by the corporation in furtherance of the purposes for which it was organized under Section 30 of the NIRC of 1997.
- 2) Section 30 corporations are still subject to the corresponding internal revenue taxes imposed under the NIRC of 1997 on income derived from any of their properties, real or personal, or any activity conducted for profit regardless of the disposition thereof (i.e. interest income from bank deposits, gains from investments, rental income from real or personal properties), which income should be reported for taxation purposes.
- 3) The interest income from currency bank deposits and yield or any other monetary benefit from deposit substitute instruments and from trust funds and similar arrangement, and royalties derived from sources within the Philippines of organizations under Section 30 are subject to the 20% final withholding tax. Moreover, the interest income derived by them from a depository bank under the expanded foreign currency deposit system shall be subject to 15%² final withholding tax pursuant to Section 27(D)(1) in relation to Section 57(A), both of the NIRC of 1997, as amended.

B. Obligation as Withholding Agent for the Government

- 1) The tax exemption granted under Section 30 of the NIRC of 1997 does not cover withholding taxes on compensation income of the employees of the corporation, or the withholding tax on income payments to persons subject to tax pursuant to Section 57 of the NIRC of 1997. The corporation or association is therefore constituted as a withholding agent for the government if it acts as an employer and any of its employees receives compensation income subject to withholding tax under Section 79(A), Chapter XIII, Title II of the NIRC of 1997, as implemented by Revenue Regulations No. 2-98, or if it makes income payments to individuals or corporations subject to the withholding tax provided for in Section 57 of the NIRC of 1997, also as implemented by Revenue Regulations No. 2-98, as amended.

C. Liability for Value-Added Tax (VAT)/Percentage Tax

- 1) Purchase of goods or properties or services and importation of goods by a corporation organized and operated as a Section 30 corporation shall be subject to the 12% VAT pursuant to Section 107 of the NIRC of 1997, as amended.

² As amended by Republic Act No. 10963

It should be noted that VAT is an indirect tax payable by the seller and not by the purchaser of goods. However, being an indirect tax, it can be shifted or passed on to the buyer/purchaser, transferee or lessee of the goods, properties or services. Once shifted to the buyer/customer as an addition to the cost of goods or services sold, it is no longer a tax but an additional cost which the buyer/customer has to pay in order to obtain the goods or services. Thus, the shifting of the VAT to it does not make it the person directly liable and therefore, it cannot invoke its tax exemption privilege under Section 30 of the NIRC of 1997 to avoid the passing on or shifting of the VAT.

2) Section 105 of the NIRC of 1997 provides that 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 under Sections 106 to 108 of the same code.

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 non-stock, nonprofit private organization (irrespective of the disposition of its net income and whether or not it sells its good exclusively to members or its guests), or government entity.

Hence, if the corporation is engaged in the sale of goods or services in the course of a business pursuit, including transactions incidental thereto, its revenues derived therefrom shall be subject to the 12% VAT, in case the gross receipts from such sales exceed Three Million Pesos (₱3,000,000.00), or to the 3% percentage tax, if gross receipts do not exceed ₱3,000,000.00.

VI. GUIDELINES IN THE PROCESSING AND ISSUANCE OF CERTIFICATE OF TAX EXEMPTION

A. Documentary Requirements.

1. Original application letter for issuance of Tax Exemption Ruling. The letter shall cite the particular paragraph of Section 30 of the NIRC, as amended, under which the application for exemption/revalidation is being based;

2. Certified true copy of the latest Articles of Incorporation (AOI) and By-Laws issued by the Securities and Exchange Commission (SEC). The AOI must expressly state the following provisions, to wit:

- i. It is a non-stock, non-profit corporation or association;
- ii. No part of the corporation or association's net income shall inure to the benefit of any private individual;
- iii. The trustees of the non-profit corporation or association do not receive any compensation or remuneration; and
- iv. In case 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.

3. Original Certification under Oath by an executive officer of the corporation or association as to: (i) full description of its past, present, and proposed activities, (ii) the sources and disposition of income, (iii) detailed description of all revenues which it seeks to be exempted from income tax, and (iv) amount of income, compensation, salaries or any emoluments paid by the corporation or association to its trustees, officers and other executive officers.

4. Original Certification issued by the RDO where the corporation or association is registered, indicating the TIN of the corporation, and certifying that said corporation is not subject of any pending investigation, on-going audit, pending tax assessment, administrative protest, claim for refund or issuance of tax credit certificate, collection proceedings, or a judicial appeal; or if there be any, the Original Certification issued by the RDO on the status thereof; and

5. Certified true copies of the Income Tax Returns or Annual Information Returns and Financial Statements of the corporation or association for the last three (3) years.

B. Procedure.

- a. The request for CTE shall be filed with the RDO where the corporation is registered. The RDO or his designated Revenue Officer of the Day must pre-evaluate the corporation's submission using the checklist (Annex "A"). If there is incomplete submission of the documentary requirements, the applicant shall be notified thereof and the entire documents shall be returned to the applicant for his completion.
- b. Upon receipt of the complete documentary requirements (docket) in support of the application, the concerned RDO personnel shall pre-evaluate the same and shall determine whether or not the applicant qualifies as an exempt corporation or association under Section 30 of the NIRC, as amended.
 - i. If based on the pre-evaluation, the RDO is of the position that the corporation or association is qualified, he shall prepare the CTE (Annex "B"), together with a memorandum stating the factual and legal basis for recommending the issuance of the CTE, and endorse the docket to the Office of the Regional Director. If the Regional Director concurs with the RDO's recommendation, he shall sign the CTE and issue the same to the requesting corporation. Otherwise, he shall return the docket to the RDO together with his findings/instructions.
 - ii. If the RDO is of the position that the corporation or association does not qualify, he shall notify in writing the applicant of such findings, stating the factual and legal bases for the denial. The applicant may appeal the denial to the Regional Director within thirty (30) days from the date of receipt of the written notice of denial.

If the application for tax exemption/revalidation is denied, the corporation or association shall be held liable for income tax and shall be accordingly assessed for deficiency taxes, inclusive of penalties and interest.

VII. VALIDITY OF TAX EXEMPTION RULING

A CTE issued under this Order shall be valid for a period of three (3) years from the date of effectivity specified in the Ruling, unless sooner revoked or cancelled. The CTE may be revalidated for another period of three (3) years under the same procedure set forth herein.

The Tax Exemption Ruling shall be deemed revoked if there are material changes in the character, purpose, or method of operation of the corporation or association which are inconsistent with the basis for its income tax exemption. The revocation takes effect as of the date of the material change.

VIII. QUARTERLY REPORT ON THE ISSUANCE OF CTEs

All Regional Directors are required to submit on or before the 20th day of the month following the end of each quarter a Quarterly Summary Report of all CTEs issued to Section 30 corporations together with copies of said CTEs to the Assistant Commissioner, Legal Service, for a centralized database of issued CTEs.

IX. TRANSITORY PROVISION

All applications for CTEs under Section 30 of the NIRC, as amended, filed with the Law and Legislative Division after the effectivity of this Order shall be transmitted to the concerned Revenue District Office for their appropriate processing.

X. REPEALING CLAUSE.

Any revenue issuance which is inconsistent with this Order is deemed revoked, repealed, or modified accordingly.

This Circular takes effect immediately and shall be given as wide a publicity as possible.

(Original Signed)
CAESAR R. DULAY
Commissioner of Internal Revenue

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