REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

Quezon City

Sec. 30 (E) of the NIRC of 1997, as amended: RMC 64-2016		544-2017

Person to Contact: Chief, Law Div.
Tel. Nos.: 926-55-36/ 927-09-63

Date: November 23, 2017

THE PHILIPPINE FOUNDATION FOR CULTURAL AND EDUCATIONAL DEVELOPMENT INC.
Rm. 202 Alexander House, 132 Amorsolo St.
Legaspi Village, Makati City 1229

Attention: **JOYCELYN K. TAÑADA**
Executive Director / Corporate Secretary

Gentlemen:

This refers to your letter dated November 24, 2016 duly indorsed by Revenue District Office No. 47, East Makati, requesting revalidation of a certificate of tax exemption enjoyed by a non-stock corporation or association organized and operated exclusively for cultural and educational purposes under Section 30(E) of the Tax Code of 1997, as amended.

It is represented that **The Philippine Foundation for Cultural and Educational Development Inc.** with Taxpayer's Identification No. , is a non-stock, non-profit corporation duly organized under the laws of the Philippines; that it is registered with the Securities and Exchange Commission (SEC) under Registration No. 28182; and that the purposes for which it was incorporated are the following:

1) To establish, maintain, subsidize and operate centers for cultural, educational and spiritual formation of students, professional men and all others who may be so interested in such a formation, such as residences, cultural centers, school of all levels, vocational and technical schools;

2) To promote human, technical and spiritual formation of farmers and skilled non-skilled laborers;

3) To promote and undertake research activities and projects in the physical, technological and agricultural sciences in order to contribute to the scientific and technological advancement of the Phils.;

4) To promote and undertake the publication and distribution or sale of books, magazines, pamphlets and other publications;
5) To promote eventually the formation of associations of persons who are interested in helping the Foundation accomplish its aim;

6) To establish, set up and maintain scholarship funds, endowment funds, professorial chairs, special funds, etc. in any school or center put by the Foundation and utilize such funds to give scholarships, fellowships, assistantships, grants-in-aid, research grants, publication grants, building and/or equipment grants, operational grants, and the like to deserving institutions, as well as individuals pursuing the goals of the foundation, and in aid of these purposes to receive grants, requests, donations from all sources whether it be in cash, property or otherwise;

7) To build, improve, enlarge, equip, subsidize or similarly assist technical schools, libraries, laboratories, workshops and other educational accessories, be it run by Foundation or other institutions;

8) To purchase such materials, equipment and supplies as may be necessary for the operations of the centers conducted by the Foundation;

9) To engage the services of such workers, employees or agents as may be desired or needed in the accomplishments of the goal of the Foundation;

10) To contract for the purchase, lease or hire of such rights, leases, licenses, franchises, certificates or permits of such equipment, materials or supplies as said Foundation may desire or need for its purpose;

11) To purchase, lease or otherwise acquire such land with or without buildings and other improvements as the Foundation may require; and to sell, mortgage or dispose of and transfer such land or portions thereof, together with its improvements, for such considerations and under such terms, stipulations and conditions as the Board may deem necessary, proper or convenient in carrying out its purposes;

12) To issue bonds, with or without mortgage of properties off any nature of this Foundation, under such terms, stipulations and conditions of the Board;

13) To accept donation of properties, movable or immovable, in fee simple, or in trust, and in the latter cases, under such terms and conditions as maybe imposed to the primary purposes for which the Foundation is organized;

14) To lease or convey by way of grant grounds, buildings equipment or other real and movable property of the Foundation to any institution engaged in activities which are within the specific aims and purposes of the Foundation.

In reply, Section 30 (E) of the National Internal Revenue Code (NIRC) of 1997, as amended, provides, viz:

> *"Sec. 30. Exempt from Tax on Corporations. - The following organizations shall not be taxed under this Title in respect to income received by them as such:*
>
> *xxx xxx xxx*
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> *(E) Non-stock corporations or associations 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 shall belong to or inure to the benefit of any member, organizer, officer or any specific person." (Emphasis supplied)*

Thus, a corporation is exempt from tax on its income (*other than income of whatever kind and character from its properties, real or personal*) if such corporation meets two test: (a) must be organized and operated for one or more of the specified purposes; and (b) no part of its net income must inure to the benefit of private stockholders or individuals (RMC 064-2016).

Section 7, Article III of the By-Laws of **The Philippine Foundation for Cultural and Educational Development Inc.** however, provides that if the trustee serves as an officer of the Foundation, he may receive compensation as may be set by the Board of Trustees, which is contrary to the requirements that its earnings or asset shall not inure to the benefit of any of its trustees or officers as provided under RMC 064-2016 dated June 20, 2016.

Moreover the amended Articles of Incorporation provides that among its objectives are: (a) *to contract for the purchase, lease or hire of such rights, leases, licenses, franchises, certificates or permits of such equipment, materials or supplies as said Foundation may desire or need for its purpose*; (b) *to purchase, lease or otherwise acquire such land with or without buildings and other improvements as the Foundation may require; and to sell, mortgage or dispose of and transfer such land or portions thereof, together with its improvements, for such considerations and under such terms, stipulations and conditions as the Board may deem necessary, proper or convenient in carrying out its purposes*; (c) *to issue bonds, with or without mortgage of properties off any nature of this Foundation, under such terms, stipulations and conditions of the Board*; and (d) *to accept donation of properties, movable or immovable, in fee simple, or in trust, and in the latter cases, under such terms and conditions as maybe imposed to the primary purposes for which the Foundation is organized*; all of which are contrary to the organizational and operational tests provided under RMC 064-2016. Since the corporation or association failed to meet these tests, it appears that the activities being carried on by the Foundation is similar to organizations operated for profit. Thus, **The Philippine Foundation for Cultural and Educational Development Inc.** is organized and operated principally for profit.

Please bear in mind that, "*being a non-stock and/or non-profit corporation does not, by this reason alone, completely exempt an institution from tax.*" [1] Thus, "*statutes granting*

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[1] CIR vs. St. Luke's Medical Center, Inc. [G.R. No. 195909 & G.R. No. 195960, 26 September 2012].

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on language in law too plain to be mistaken. Otherwise stated, taxation is the rule, exemption is the exception. The burden of proof rests upon the party claiming the exemption to prove that it is in fact covered by the exemption so claimed."[2]

IN VIEW OF THE FOREGOING, this Office is of the opinion that The Philippine Foundation for Cultural and Educational Development Inc. does not qualify for exemption under Section 30 (E) of the Tax Code of 1997, as amended. It is therefore liable for Income Taxes imposed under Title II of the same Code and other applicable taxes such as Value-Added Tax (VAT) or Percentage Tax.

Very truly yours,

CAESAR R. DULAY
Commissioner of Internal Revenue
011366

Cc:
The Revenue District Officer
Revenue District Office No. 47, East Makati

K-1/spf

[2] Quezon City and The City Treasurer of Quezon City vs. ABS-CBN Broadcasting Corporation [G.R. No. 166408, 6 October 2008].