REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

Quezon City

Section 30 of the National Internal Revenue Code of 1997, as amended
BIR Ruling No. 001-2017; BIR Ruling No. 444-2014
574-2017
12-7-2017

AGUILAR-MENESES FOUNDATION, INC.
16th floor, The Paragon Corporate Centre, Industry St.
Madrigal Business Park, Alabang, Muntinlupa City

Attention: **<u>Ms. Ma. Cynthia A. Meneses</u>**
Treasurer

Gentlemen:

This refers to your letter dated April 27, 2016, as indorsed by the Regional Director, Revenue Region No. 8, Makati City, through 1st Indorsement dated June 21, 2016, requesting on behalf of **AGUILAR-MENESES FOUNDATION, INC.** for the issuance of a certificate of tax exemption enjoyed by non-stock, non-profit corporation or association pursuant to Section 30 of the National Internal Revenue Code (NIRC) of 1997, as amended.

It is represented that **AGUILAR-MENESES FOUNDATION, INC.** with BIR Taxpayer's Identification No. (TIN) and Certificate of Registration No. dated December 9, 2014, is a non-stock, non-profit association duly organized and existing under the laws of the Republic of the Philippines; that it is registered with the Securities and Exchange Commission (SEC) under Company Registration No. and with SEC Certificate of Incorporation dated October 24, 2014; and that the purpose for which it was organized is "*to promote, encourage and assist researches and studies on scientific, technological, economic, environmental, cultural and other social concerns, finance scholarship and research grants, and the creation of professional chairs in these fields,*" among others.

In reply, please be informed that **this Office cannot as yet issue the requested Certificate of Tax Exemption** because **AGUILAR-MENESES FOUNDATION, INC.** has to prove by actual operation for at least three (3) years that it is really an association exempt from income tax under Section 30 of the National Internal Revenue Code of 1997, as amended. ***(BIR Ruling No. 001-2017 dated January 05, 2017)***

In the meantime, **AGUILAR-MENESES FOUNDATION, INC.** can file the necessary annual information return instead of an income tax return on or before the fifteenth (15th) day of the fourth (4th) month following the end of its taxable year as required under Section 24 of Revenue Regulations No. 2-40 dated February 10, 1940.[1] Based on such information return, we shall conduct the necessary investigation on the activities undertaken during the period. The letter of exemption shall thereafter be issued depending upon the result of our investigation.

Thus, **AGUILAR-MENESES FOUNDATION, INC.** is subject to the corresponding internal revenue taxes imposed under the National Internal Revenue Code of 1997, as amended, on its income derived from any of its properties, real or personal, or any activity conducted for profit regardless of the disposition thereof, which income should be returned for taxation.

Likewise, interest income from currency bank deposits and yield or any other monetary benefits from deposit substitute instruments and from trust funds and similar arrangements, and royalties derived from sources within the Philippines are subject to the twenty percent (20%) final withholding tax: provided, however, that interest income derived by it from a depository bank under the expanded foreign currency deposit system shall be subject to 7-1/2% final withholding tax pursuant to Section 27 (D) (1), in relation to Section 57 (A), both of the National Internal Revenue Code of 1997, as amended. ***(BIR Ruling No. 444-2014 dated October 30, 2014)***

Also, it should be understood that **AGUILAR-MENESES FOUNDATION, INC.** shall be constituted as withholding agent of the government if it acts as an employer and its employee receives compensation income subject to the withholding tax under Section 79 (A), Chapter XIII, Title II of the National Internal Revenue Code of 1997, as amended, as implemented by Revenue Regulations No. 2-98, as amended, or if it makes income payments to individuals or corporations subject to the expanded withholding tax provided for in Section 57 (B) of the National Internal Revenue Code of 1997, as amended, also as implemented by Revenue Regulations No. 2-98, as amended.

Moreover, under Section 235 of the National Internal Revenue Code of 1997, as amended, any provision of existing general and special law to the contrary notwithstanding, the books of accounts and other pertinent records of tax-exempt organization or grantees of tax incentives shall be subject to examination by the BIR for purposes of ascertaining compliance with the conditions under which it has been granted tax exemptions or tax incentives, and its tax liabilities, if any.

Furthermore, it is subject to the payment of the annual registration fee of Five Hundred Pesos (PhP500.00) as prescribed in Section 236 (B) of the National Internal Revenue Code of 1997, as amended. It is also required to issue duly registered receipts or sales or commercial invoices for each sale or transfer of merchandise or for services rendered which are not directly related to the activities for which the Association is registered under Section 6 (C) in relation to Section 237 of the same Code ***[Revenue Memorandum Circular (RMC) No. 76-2003].***

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[1] Collector vs. Sinco, G.R. L-9276 dated October 23, 1956

Value-Added Tax/Percentage Tax

Section 105 of the National Internal Revenue Code of 1997, as amended, provides that:

> "***SEC. 105. Persons Liable.*** - *Any person who, in the course of trade or business, sells, barters, 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 the same Code.*
>
> *xxx xxx xxx*
>
> *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, non-profit 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.*
>
> *xxx xxx xxx"*

Accordingly, if **AGUILAR-MENESES FOUNDATION, INC.** is engaged in the sale of goods or services in the course of a business pursuit, including transactions incidental thereto, in general, it shall be liable for 12% VAT, in case the gross receipts from such sales exceed One Million Nine Hundred Nineteen Thousand Five Hundred Pesos (₱1,919,500.00), or to the 3% percentage tax, if gross receipts do not exceed ₱1,919,500.00.

It must be noted that VAT is an indirect tax payable by the seller and not by the purchaser of goods. Being an indirect tax, the amount of tax may 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.

However, revenue from contributions and donations, not being derived from sale of services or sale of goods made in the course of business but rather in connection with its non-stock, non-profit activities, is exempt from the 12% VAT.

Finally, for purposes of securing a Certificate of Tax Exemption after the three (3)-year period, **AGUILAR-MENESES FOUNDATION, INC.** is required to submit the following documents pursuant to **Revenue Memorandum Order (RMO) No. 20-2013 dated July 22, 2013:**

A. *Original copy* of application letter for issuance of Tax Exemption Ruling. The letter shall cite the particular paragraph of Section 30 of the National Internal Revenue Code of 1997, as amended, under which the application for exemption / revalidation is being based;

B. *SEC Certified true copy* of its Certificate of Incorporation;

C. *SEC Certified true copy* of its Articles of Incorporation or latest Amended Articles of Incorporation which must specifically include and clearly state the following provisions:

   1. *That the association is non-stock, non-profit;*

   2. *That the primary purpose for which the association was created is one of those enumerated under Sec. 30 of the National Internal Revenue Code of 1997, as amended;*

   3. *That no part of the net income of the association shall inure to the benefit of any its members or private individual;*

   4. *That the trustees of the non-profit association do not receive any compensation; and*

   5. *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* (Revenue Memorandum Circular No. 51-2014);

D. *SEC Certified true copy* of its By-Laws or latest Amended By-Laws;

E. *Original copy* of a Certification under Oath by an executive officer of the association as to:

   1. *all previous amendments / changes in the Articles of Incorporation and By-laws* (If there are no amendments / changes, the Certification shall state this fact);

   2. *manner of activities; and*

   3. *the sources and disposition of income, if any, of the subject association;*

F. *Certified true copy* of its BIR Certificate of Registration;

G. *Original copy* of a Certification under Oath by the treasurer of the association as to the amount of income, compensation, salaries or any emoluments paid by the association to its trustees, officers and other executive officers;

H. *Original copy* of a Certification issued by the Revenue District Office (RDO) where the association is registered that the association is not the 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 copy* of a Certification issued by the RDO on the status thereof;

I. *Certified true copies* of its Income Tax Returns or Annual Information Returns and Financial Statements for the last three (3) years of operation; and

J. *Original copy* of a Statement under Oath by an executive officer of the association as to its *modus operandi* which shall include:

   1. *A full description of the past, present, and proposed activities of the association;*

   2. *A narrative description of anticipated receipts and contemplated expenditures; and*

   3. *A detailed description of all revenues which it seeks to be exempted from income tax. All other revenues which are not included in the statement or application shall be subject to income tax.*

This ruling is being issued on the basis of the foregoing facts as represented. However, if upon investigation, it will be ascertained that the facts are different, then this ruling shall be considered null and void.

Very truly yours,

CAESAR R. DULAY
Commissioner of Internal Revenue
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COPY FURNISHED:

REVENUE REGION NO. 8 – Makati City
Attention: Revenue District Office No. 53B – Muntinlupa City