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

Section 30 (E) of the National Internal Revenue Code of 1997, as amended
BIR Ruling No. 001-2017; BIR Ruling No. 444-2014
561-2017
12-6-2017

YOUR KIDS MY KIDS FOUNDATION, INC.
3/F Don Bosco Provincial House, A. Arnaiz Cor.,
Chino Roces Ave., Brgy. Pio del Pilar, Makati City

Attention: <u>FR. ARMANDO D. ROBLEZA, SDB</u>
President

Gentlemen:

This refers to your letter dated February 15, 2015 requesting on behalf of **YOUR KIDS MY KIDS FOUNDATION, INC.** for a Tax Exemption Certificate pursuant to Section 30 (E) of the National Internal Revenue Code of 1997, as amended.

It is represented that **YOUR KIDS MY KIDS FOUNDATION, INC.** with BIR Taxpayer's Identification No. (TIN) and Certificate of Registration No. OCN dated August 20, 2014, is a non-stock, non-profit corporation 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 July 31, 2014; and that the purposes[1] for which the corporation was incorporated are:

1. *To engage in social and religious activities for upliftment of poor and marginalized Filipino youth, and to this end, establish, support and operate any religious charitable, benevolent, scientific, social, educational, literary, recreational activities which will directly or indirectly provide moral and material assistance to the poor and the underprivileged; assist the youth, fight juvenile delinquency and community deterioration; develop skills for greater employment opportunities and higher standard of living; establish, maintain and operate youth centers, nutrition centers; grant scholarship and other forms of assistance through non-profit projects;*

2. *To own, purchase, acquire, hold, sell, lease, exchange, mortgage, land, buildings, real, personal and intangible properties; to receive donations, grants, gifts, bequests and legacies as the objectives and purposes of the corporation may requires and to generate funds for the profitable exploitation of its properties, subject to such limitations and restrictions as may be prescribed by law;*

3. *To solicit, receive, hold and administer property, real or personal, donated, devised or granted to it, including those that may be given in trust for any of the above-mentioned purposes;*

[1] Article II, Articles of Incorporation of Your Kids My Kids Foundation, Inc.

4. *To collect, invest and reinvest all money and income coming to it and hold the same for the pursuance of the objectives of the corporation;*

5. *To organize, conduct and carry on any activity whatsoever which is necessary for or incidental to the purposes; and*

6. *To cooperate and collaborate with government institutions, other non-governmental organizations, groups, associations and communities involved in undertaking projects consistent with the purposes of the foundation.*

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

In the meantime, **YOUR KIDS MY KIDS FOUNDATION, INC.** can file the necessary annual information return instead of an income tax return on or before the fifteenth (15^{th}) day of the fourth (4^{th}) month following the end of its taxable year as required under Section 24 of Revenue Regulations No. 2-40 dated February 10, 1940.[2] 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, **YOUR KIDS MY KIDS 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 **YOUR KIDS MY KIDS 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

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

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].***

Value-Added 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 **YOUR KIDS MY KIDS 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 VAT.

Notwithstanding that it is a non-stock, non-profit corporation, its purchase of goods or properties or services and importation of goods shall nevertheless be subject to the 12% VAT pursuant to Sections 106 to 108 of the said Code.

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, **YOUR KIDS MY KIDS 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 NIRC 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 latest Articles of Incorporation which must specifically include and clearly state the following provisions:

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

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

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

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

5. *In case of dissolution, assets of the corporation shall be transferred to a similar institution or to the government.* (Revenue Memorandum Circular No. 51-2014)

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

E. *Original copy* of a Certification under Oath by an executive officer of the corporation 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 corporation.*

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

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

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

I. *Original copy* of a Certification issued by the Revenue District Office (RDO) where the corporation is registered that the corporation 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; and

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

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

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. 08 – Makati City
Attention: Revenue District Office No. 48 – West Makati