

# **18<sup>th</sup> National Convention of Arch/Diocesan Financial Administrators of the Philippines**

Hotel Tavern, Surigao City  
June 20-24, 2016

# **I. IS IT WORTH TO CREATE A FOUNDATION?**

## **2 KINDS OF PERSONS UNDER THE CIVIL CODE:**

**1. NATURAL PERSON – ARTS. 40-43**

**2. JURIDICAL PERSON – ART. 44**

**a.) PUBLIC CORPORATION**

**b.) PRIVATE CORPORATION**

## **KINDS OF PRIVATE CORPORATION:**

**1. STOCK CORPORATION**

**2. NON-STOCK CORPORATION**

**SEE SECTION 3, TITLE 1, CORPORATION CODE**

**NON-STOCK CORPORATION – ONE WHERE NO PART OF ITS INCOME IS DISTRIBUTABLE AS DIVIDENDS TO ITS MEMBERS, TRUSTEES, OR OFFICERS, SUBJECT TO THE PROVISIONS OF THIS CODE ON DISSOLUTION: PROVIDED THAT ANY PROFIT WHICH A NON-STOCK CORPORATION MAY OBTAIN AS AN INCIDENT TO ITS OPERATION SHALL, WHENEVER NECESSARY OR PROPER, BE USED FOR THE FURTHERANCE OF THE PURPOSE OR PURPOSES FOR WHICH THE CORPORATION WAS ORGANIZED, SUBJECT TO THE PROVISIONS OF THIS TITLE. (sec. 87, Corporation Code)**

**PURPOSES – FORMED OR ORGANIZED FOR:**

- a.) CHARITABLE;**
- b.) RELIGIOUS;**
- c.) EDUCATIONAL;**
- d.) PROFESSIONAL;**
- e.) CULTURAL;**
- f. ) FRATERNAL ;**
- g.) LITERARY;**
- h.) SCIENTIFIC;**
- i.) SOCIAL;**
- j.) CIVIC SERVICE;**
- k.) OR, SIMILAR PURPOSES LIKE TRADE, INDUSTRY, AGRICULTURAL AND LIKE CHAMBERS, OR ANY COMBINATION THEREOF. (SEC. 88, IBID)**

## **NON-STOCK CORPORATION CAN BE:**

- 1. FOUNDATION**
  
- 2. RELIGIOUS CORPORATIONS**
  - a.) CORPORATION SOLE**
  - b.) RELIGIOUS SOCIETY**
  
- 3. FEDERATIONS**
  
- 4. ASSOCIATIONS**

**A FOUNDATION IS A NON-STOCK, NON-PROFIT CORPORATION ESTABLISHED FOR THE PURPOSE OF EXTENDING GRANTS OR ENDOWMENTS TO SUPPORT ITS GOALS OR RAISING FUNDS TO ACCOMPLISH CHARITABLE, RELIGIOUS, EDUCATIONAL, ATHLETIC, CULTURAL, LITERARY, SCIENTIFIC, SOCIAL WELFARE OR OTHER SIMILAR OBJECTIVES (Sec. 1 of SEC Memorandum Circular No. 8 Series of 2006).**

# **GUIDELINES/ REQUIREMENTS ON THE REGISTRATION OF FOUNDATIONS:**

## **1. NAME VERIFICATION**

## **2. ARTICLES OF INCORPORATION AND BY-LAWS**

**NOTE: “No part of the income which the association may obtain as an incident to its operation shall be distributed as dividends to its members, trustees or officers subject to the provisions of the Corporation Code on the dissolution”.**



- 3. AFFIDAVIT OF AN INCORPORATOR UNDERTAKING TO CHANGE CORPORATE NAME.**
  
- 4. LIST OF MEMBERS CERTIFIED BY THE CORPORATE SECRETARY.**
  
- 5. LIST OF CONTRIBUTORS AND AMOUNT CONTRIBUTED AS CERTIFIED BY THE TREASURER.**

**ADDITIONAL REQUIREMENTS IN ACCORDANCE WITH  
SEC MEMO CIRCULAR NO. 8, SERIES OF 2006:**

- 6. NOTARIZED CERTIFICATION OF BANK DEPOSIT OF THE AMOUNT OF NOT LESS THAN ONE MILLION PESOS (P1,000,000,000.00); AND,**
- 7. STATEMENT OF WILLINGNESS TO ALLOW COMMISSION TO CONDUCT AN AUDIT.**
- 8. APPLICANT' S CORPORATE NAME SHALL CONTAIN THE WORD "FOUNDATION."**

- 9. ENDORSEMENT FROM THE FOLLOWING GOVERNMENT AGENCIES:**
- a.) Charitable Institutions – Department of Social Welfare and Development (DSWD)**
  - b.) Education Institutions**
    - i. Elementary to High school – Department of Education (DepEd)**
    - ii. College, Tertiary Course – Commission on Higher Education (CHED)**
    - iii. Technical Vocational Course – Technical Education Skills and Development Authority (TESDA)**
  - c. Hospitals/ Health Maintenance Organizations – Department of Health (DOH)**

**NOTE: UNDER SEC MEMO CIRCULAR 1, SERIES OF 2004, AN ADDITIONAL REQUIREMENT DURING THE APPLICATION FOR REGISTRATION IS A **MODUS OPERANDI OR PLAN OF OPERATION**, TO BE EXECUTED UNDER OATH BY THE PRESIDENT SETTING FORTH THE MODE OF OPERATION OF THE FOUNDATION, SOURCE OF ITS FUNDS, PROPOSED APPLICATION OF FUNDS AND PROSPECTIVE BENEFICIARIES OF GRANTS OR ENDOWMENTS. (SEC. 2,a)**

## **ANNUAL REPORTORIAL REQUIREMENTS:**

- 1. GENERAL INFORMATION SHEET;**
- 2. AUDITED FINANCIAL STATEMENT;**
- 3. SWORN STATEMENT OF ITS PRESIDENT AND TREASURER ON THE FOLLOWING INFORMATION THAT RELATES TO THE PRECEDING FISCAL YEAR:**
  - a.) SOURCE AND AMOUNT OF FUNDS;**

**b.) PROGRAM/ ACTIVITY PLANNED, ONGOING AND ACCOMPLISHED:**

**i. COMPLETE NAME, ADDRESS AND CONTACT NUMBER OF PROJECT OFFICER-IN-CHARGE;**

**ii. COMPLETE ADDRESS AND CONTACT NUMBER OF PROJECT OFFICE; AND**

**c.) APPLICATION OF FUNDS.**

**4. CERTIFICATION FROM THE OFFICE OF THE MAYOR, OR THE OFFICE OF THE BARANGAY CAPTAIN, OR THE HEAD OF EITHER THE DSWD, OR DOH, ON THE EXISTENCE OF THE SUBJECT PROGRAM/ ACTIVITY IN THE LOCALITY ON WHICH IT EXERCISES JURISDICTION.**

**NOTE: FOUNDATION SHALL ALLOW SEC'S REPRESENTATIVES ACCESS TO ITS CORPORATE AND ACCOUNTING BOOKS, RECORDS, NAMES OF BENEFICIARIES, AGREEMENTS ENTERED INTO, CORRESPONDENCES AND ALL PERTINENT DOCUMENTS FOR THE PRECEDING 5 YEARS.**

**NOTE: UNDER SEC MEMO CIRCULAR NO. 4, SERIES OF 2013, AN ADDITIONAL REQUIREMENT TO BE FILED WITH THE ANNUAL AUDITED FINANCIAL STATEMENT IS A SWORN STATEMENT OF THE PRESIDENT AND TREASURER ON THE ACCURACY AND COMPLETENESS OF THE FOLLOWING SCHEDULE:**

a.) **SCHEDULE OF SOURCES OF FUNDS OTHER THAN CONTRIBUTIONS AND DONATIONS. THIS SCHEDULE SHALL PROVIDE THE NATURE AND AMOUNT OF EACH ITEM;**



**b.) SCHEDULE OF CONTRIBUTIONS AND DONATIONS THAT IS PREPARED IN ACCORDANCE WITH THE PRESCRIBED FORM OF SEC;**

**c.) SCHEDULE OF DISBURSEMENTS ACCORDING TO SOURCES AND ACTIVITIES. THIS SCHEDULE SHALL PROVIDE THE NATURE AND AMOUNT OF EACH ITEM. IF MATERIAL IN AMOUNT (10% OR MORE OF THE TOTAL), THE DETAILS OF SUCH DISBURSEMENT SHALL LIKEWISE BE INDICATED.**

**d.) SCHEDULE OF APPLICATION OF FUNDS  
WITH THE FOLLOWING INFORMATION ON  
ACTIVITIES ACCOMPLISHED, ON-GOING AND  
PLANNED:**

**(i) COMPLETE NAME, ADDRESS AND  
CONTACT NUMBER OF THE PROJECT  
OFFICER-IN-CHARGE; AND,**

**(ii) COMPLETE ADDRESS AND CONTACT  
NUMBER OF PROJECT OFFICE.**

e.) AS SUPPORTING DOCUMENTS TO THE ABOVE INFORMATION, COPIES OF THE **CERTIFICATIONS** FROM THE OFFICE OF THE MAYOR OR THE HEAD OF EITHER THE DSWD OR DOH, ON THE EXISTENCE OF THE SUBJECT PROGRAM OR ACTIVITY IN THE LOCALITY ON WHICH IT EXERCISES JURISDICTION.

**NOTE:** GRANTS, BEQUESTS, DEVISES AND GIFTS OF MONEY OR PROPERTY, AMOUNTING TO P100,000.00 OR MORE FROM EACH CONTRIBUTOR OR DONOR SHALL BE REPORTED.

**\*\* FUNDS OF THE FOUNDATION SHOULD BE DEPOSITED IN A BANKING INSTITUTION REGULATED BY THE BANGKO SENTRAL NG PILIPINAS. (Sec. 8)**

**PENALTY FOR NON-COMPLIANCE:**

- 1. FINE OF NOT LESS THAN P10,000.00.**
- 2. NON-SUBMISSION FOR 2 CONSECUTIVE YEARS – REVOCATION OF REGISTRATION.**

**NOTE: Foundations are exempt from income tax pursuant to Section 30 of the Tax Reform Act of 1997 (R.A. 8424). However, income derived from its properties, real or personal, or from any of its activities conducted for profit regardless of the disposition made of such income, is subject to tax. The BIR shall issue a Certificate of Registration to the foundation as Qualified Donee Institution.**

## **PHILIPPINE COUNCIL FOR NGO CERTIFICATION, OTHERWISE KNOWN AS “PCNC”**

**-ESTABLISHED BY SIX OF THE COUNTRY’S LARGEST NATIONAL NGO NETWORKS, NAMELY, THE CAUCUS OF DEVELOPMENT NGO NETWORKS, THE PHIL. BUSINESS FOR SOCIAL PROGRESS, THE ASSOCIATION OF FOUNDATIONS, THE BISHOPS-BUSINESSMEN CONFERENCE FOR HUMAN DEVELOPMENT, THE NATIONAL CONFEDERATION OF COOPERATIVES, AND THE NATIONAL COUNCIL FOR SOCIAL DEVELOPMENT.**

- ON JAN. 29, 1998, A MOA BETWEEN PCNC AND THE DEP' T. OF FINANCE WAS SIGNED, AND, LATER ON, THE BIR, ISSUED REVENUE REGULATION NO. 13-98 ON DEC. 8, 1998, WHERE **PCNC HAS BEEN DESIGNATED AS THE GOVERNMENT'S PARTNER IN A SYSTEM OF ACCREDITATION**, TO DETERMINE THE QUALIFICATION OF NON-STOCK CORPORATIONS FOR ACCREDITATION AS DONEE INSTITUTION. THUS, CHARITABLE CONTRIBUTIONS OR GIFTS SHALL BE ALLOWED AS **DEDUCTIBLE BUSINESS EXPENSES FOR INCOME TAX PURPOSES.**

**TO APPLY FOR ACCREDITATION, THE ORGANIZATION HAS TO BE:**

- 1. A NON-STOCK, NON-PROFIT DOMESTIC CORPORATION OR ASSOCIATION, ORGANIZED UNDER PHILIPPINE LAWS;**
- 2. OPERATED EXCLUSIVELY FOR RELIGIOUS, SCIENTIFIC, CULTURAL, EDUCATIONAL, OR SOCIAL WELFARE PURPOSES, YOUTH AND SPORTS DEVELOPMENT, OR FOR THE REHABILITATION OF VETERANS.**
- 3. FORMALLY OPERATING FOR AT LEAST ONE (1) YEAR.**



**NOTE:** PCNC ACCREDITATION MAY BE GOOD FOR ONE (1), THREE (3) OR FIVE (5) YEARS.

**ON THE BASIS OF THIS PCNC ACCREDITATION, THE BUREAU OF INTERNAL REVENUE WILL ISSUE THE CERTIFICATION OF REGISTRATION AS A QUALIFIED DONEE INSTITUTION (Executive Order 720, April 11, 2008)**

## **TAX SAVINGS OF A FOUNDATION:**

- 1. FOUNDATIONS ARE EXEMPT FROM 30% INCOME TAX WITH RESPECT TO FUNDS GENERATED FROM DONATIONS, GRANTS, AND OPERATIONS GEARED TOWARDS THE FULFILLMENT OF ITS PURPOSE.**
- 2. VALUE ADDED TAX (VAT) EXEMPTION – VAT IS A BUSINESS TAX IMPOSED UPON THOSE WHO IN THE ORDINARY COURSE OF TRADE OR BUSINESS**

**SELLS, BARTERS, EXCHANGES, LEASES GOODS OR PROPERTIES, RENDERS SERVICE, AND THOSE WHO IMPORTS GOODS. CONTRIBUTIONS AND DONATIONS TO FOUNDATIONS AND NON-STOCK, NON-PROFIT CORPORATIONS ARE NOT TREATED AS ONE RECEIVED IN THE COURSE OF BUSINESS OR TRADE AND SO NOT SUBJECT TO 12% VAT.**

**HOWEVER, IF TO RAISE FUNDS, FOUNDATION ENGAGES IN BUSINESS (SALE), 12% SHALL BE IMPOSED.**

- 3. 100% DEDUCTIBLE EXPENSE – EXTENDED TO DONORS OF FOUNDATION ONCE IT IS DULY ACCREDITED BY THE BIR THROUGH THE PCNC AS A DONEE INSTITUTION. – CORPORATE SOCIAL RESPONSIBILITY.**
  - A PHILANTHROPY INCENTIVE**

## **CONCLUSION:**

**IT IS WORTH TO CREATE A FOUNDATION IF IT WILL REALLY OPERATE IN ACCORDANCE WITH THE PURPOSE FOR WHICH IT IS CREATED.**

**HOWEVER, IF THE PURPOSE IS SIMPLY TO RAISE FUNDS OR TO USE IT AS A TAX SHIELD, IT IS BETTER TO THINK NOT ONCE, TWICE BUT SEVEN TIMES BECAUSE OF THE RESPONSIBILITY ATTACHED TO IT, I.E., THE COMPLIANCE OF THE ANNUAL REPORTORIAL REQUIREMENTS OF SEC.**

## **II. ARE RELIGIOUS STORES COVERED BY TAXES?**

**IN AN INTERVIEW LAST JANUARY 2016, BIR COMMISSIONER KIM JACINTO-HENARES SAID THAT “WHAT ARE EXEMPTED FROM TAX ARE ONLY THOSE THINGS OR SERVICES WHICH ARE IN THE PERFORMANCE OF THEIR RELIGIOUS FUNCTION”.**

**SHE FURTHER SAID THAT ONLY THE CHURCH IS EXEMPT. A RELIGIOUS STORE IS NOT A CHURCH. PRODUCTS SOLD BY RELIGIOUS STORES ARE LEVIED A 12 PERCENT VALUE ADDED TAX AND SHOULD BE PART OF THEIR TOTAL INCOME. THE INCOME, IS ALSO CHARGED WITH INCOME TAX..**

## **LEGAL BASIS:**

### **A. ARTICLE VI, SECTION 28 1987 CONSTITUTION**

**“3) Charitable institutions, churches and parsonages or convents appurtenant thereto, mosques, non-profit cemeteries, and all lands, buildings, and improvements, **actually, directly, and exclusively used** for religious, charitable, or educational purposes shall be exempt from taxation.”**



The phrase “exempt from taxation” as employed in Section 22(3), Article VI of the Constitution of the Philippines, **should not be interpreted to mean exemption from all kinds of taxes.** Statutes exempting charitable and religious property from taxation should be construed fairly though strictly and in such manner as to give effect to the main intent of the lawmakers. (*Roman Catholic Church vs. Hastrings* 5 Phil. 701.) XXX The exemption is only from the payment of taxes assessed on such properties enumerated, as **property taxes** XXX (*Lladoc v. CIR and CTA*, G.R. No. L-19201, June 16, 1965) .

## **B. NATIONAL INTERNAL REVENUE CODE**

**“SEC. 30. EXEMPTIONS FROM TAX ON CORPORATIONS. – THE FOLLOWING ORGANIZATIONS SHALL NOT BE TAXED UNDER THIS TITLE IN RESPECT TO **INCOME** RECEIVED BY THEM AS SUCH:**

**“(E) **NONSTOCK** 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 SHALL BELONG TO OR INURE TO THE BENEFIT** OF ANY MEMBER, ORGANIZER, OFFICER OR ANY SPECIFIC PERSON:**

**“NOTWITHSTANDING THE PROVISIONS IN THE PRECEDING PARAGRAPHS, THE **INCOME** OF WHATEVER KIND AND CHARACTER OF THE FOREGOING ORGANIZATIONS **FROM ANY OF THEIR PROPERTIES**, REAL OR PERSONAL, OR FROM ANY OF THEIR **ACTIVITIES CONDUCTED FOR PROFIT REGARDLESS OF THE DISPOSITION** MADE OF SUCH INCOME, SHALL BE SUBJECT TO TAX IMPOSED UNDER THIS CODE.”**

**INCOME NOT DERIVED FROM THEIR PROPERTIES, REAL OR PERSONAL, ARE EXEMPT. EXAMPLES ARE INCOME FROM THE CONDUCT OF STRICTLY RELIGIOUS ACTIVITIES, SUCH AS FEES RECEIVED FOR ADMINISTERING BAPTISMAL, SOLEMNIZING MARRIAGE, ATTENDING BURIALS, HOLDING MASSES, AND OTHER LIKE INCOME, IS EXEMPT.**

***AMERICAN BIBLE SOCIETY VS. CITY OF MANILA, G.R. L-9637, APRIL 30, 1957-*** “But as Ordinance No. 2529 of the City of Manila, as amended, is not applicable to plaintiff-appellant and defendant-appellee is powerless to license or tax the business of plaintiff Society involved herein for, as stated before, it **would impair plaintiff's right to the free exercise and enjoyment of its religious profession and worship, as well as its rights of dissemination of religious beliefs,** We find that Ordinance No. 3000, as amended is also inapplicable to said business, trade or occupation of the plaintiff”.

**NOTE: IN 2005, the late Senator Joker Arroyo warned the government that imposing taxes on the commercial operations of the church may result in backlash if it failed to justify the plan.**

**As he stated, it was very surprising to him, since the Catholic Church, the Philippine Independent Church and various Christian churches, as well as the Iglesia ni Cristo, had not been subjected to taxes for over 100 years.**

**Imposition of tax “would impair the constitutional guarantee of the freedom of exercise and enjoyment of religious profession and worship (De Leon, H. H. Textbook on the Philippine Constitution. 1999:88).**

## **CONCLUSION:**

**SALE OF RELIGIOUS ARTICLES MAY STILL BE EXEMPTED FROM INCOME TAX PROVIDED THAT:**

- 1. IT IS USED FOR EVANGELIZATION; AND,**
- 2. IT IS NOT FOR PROFIT.**



**MARAMING SALAMAT PO!**

atty. liza