



Tax Law  
for  
Business

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*BDB Law's "Tax Law for Business" appears in the opinion section of **Business Mirror** every Thursday.*

## Tax exemption for NGOs

THE so-called pork-barrel scam and the alleged participation of some non-governmental organizations (NGOs) in it have been hogging the news lately. This gave a negative impression on the exact role and mission of some associations that were purportedly established as NGOs.

An NGO is supposed to be organized and operated exclusively for scientific, research, educational, character-building, youth- and sports-development, health, social-welfare, cultural or charitable purposes, or a combination of any of these. One of the notable purposes of an NGO is to engage in social-welfare, cultural and charitable activities. Because of the nature of these activities, these organizations are also classified as nonstock and nonprofit corporations.

There has been jurisprudence defining what constitutes purposes or activities aimed at promoting social welfare or considered as charitable. Similarly, there are several precedents defining what is a nonstock or nonprofit corporation or association. One of the latest decisions on these issues is G.R. 195909 and 195960 dated 26 September 2012, which was circularized by the Bureau of Internal Revenue (BIR) through Revenue Memorandum Circular 67-2012. To qualify as a charitable organization, an NGO must be a nonstock corporation or association; be organized exclusively for charitable purposes; be operated exclusively for charitable purposes; and ensure that no part of its net income or asset goes to or benefits a member, organizer, officer or any specific person.

Because of the nature of the activities of NGOs, and because they're supposed to be nonprofit, they are accorded certain tax concessions. Basically, a nonstock corporation organized for charitable, religious, scientific, athletic or cultural purposes and for the rehabilitation of veterans

is exempt from income tax. Also, donations to such an organization are exempt from donor's tax and deductible as expense on the part of the donor.

These tax concessions are not, however, automatic. Jurisprudence has emphasized that an institution cannot use its corporate form to prevent its profitable activities from being taxed. Being a nonstock and nonprofit corporation does not, by this reason alone, completely exempt an institution from tax. Activities for profit should not escape taxation. In other words, in evaluating the entitlement of these institutions to tax benefits and exemptions, the purposes, as stated in the incorporation or registration documents, are not sufficient. The actual activities of the organization should be considered. For income tax, for instance, the exemption does not extend to activities conducted for profit. Also, as these are supposed to be nonprofit, no part of the income or asset generated should inure to the benefit of a member, officer or any specific person.

With the pork-barrel scam affecting the image of NGOs, it is possible that the requirements for the enjoyment of their tax-exemption privileges may be questioned. It is fortunate, then, that the BIR issued Revenue Memorandum Order (RMO) 20-2013 at the right time. This RMO requires nonstock and nonprofit organizations to apply for a revalidation of their tax-exemption rulings issued prior to June 30, 2012. It is important for the BIR to monitor these corporations and associations in order to meet the following objectives: ensure compliance with the conditions attached to the tax exemption; ascertain the existence of other income derived from non-exempt activities and provide proper tax treatment thereon; enforce the payment of other taxes for which no exemption was granted under Philippine tax laws; and minimize tax leakages arising from inaccurate interpretation of relevant laws.

The role of NGOs in nation-building cannot be overemphasized. They undertake activities that would otherwise be conducted by the government. But if the organization is used for other purposes and hides under the cloak of its formal organization, it does not deserve the benefits accorded to a legitimate organization.

Indeed, there is reason to scrutinize the activities of nonstock and nonprofit organizations, in general, and NGOs, in particular. We just hope that with the implementation of RMO 20-2013, legitimate organizations are given their due, while the culprits are accorded the penalties they deserve.

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