Bringing In Revenues
for Nation-Building

REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

BAGONG PILIPINAS

Sections 105 & 108 of the Tax Code, as amended
OT- 047.2025
APR 04 2025

JESUIT COMMUNICATIONS FOUNDATION, INC.
Sonolux Bldg., Seminary Drive, Ateneo de Manila University
Loyola Heights, Quezon City 1108

Attention: **Reńe DG. Bañez**
Advisor to JesCom Board

This refers to your request to amend the Certificate of Tax Exemption of Jesuit Communications Foundation, Inc. (JesCom) to include tax exemption from income tax and value-added tax (VAT), and to issue revised Certificate of Registration (BIR Form No. 2303) to reflect the new coverage of the tax exemption.

It is represented that JesCom is a non-stock, non-profit corporation. It was organized primarily to provide support to the task of the Catholic Church in the Philippines and in other parts of Asia to integrate the faith and life of the faithful through any means of communications for evangelization and total human development.

On December 16, 2022, the Bureau of Internal Revenue (BIR), through Revenue Region No. 7A – Quezon City, has issued CTE No. i-EXEMPT which provides among others that JesCom is exempt from income tax on the following revenues or receipts:

1. Proceeds from distribution of liturgical and inspirational music, religious books, videos, songbooks for liturgical music and other merchandize;
2. Proceeds from the use of sound studio, facilities, equipment and video production assistance;
3. Donation from media ethics training services offered to priests, nuns and lays;
4. Royalties from mechanical and synchronization, licenses, public performance, and print of the Foundation's religious music, television and radio shows; and
5. Other types of donations arising from fund-raising activities.

JesCom now seeks to be exempt not only from income tax but also from VAT on the above-mentioned revenues or receipts.

It is your considered position that the said sources of receipts are not only exempt from income tax but likewise from VAT. This position is anchored on the case of Association of Non-Profit Clubs, Inc. (ANPC) vs. BIR.[1] According to you, the Supreme Court articulated clearly the distinction between "capital" and "income". Similarly, the receipts and various sources of funds for JesCom are not for business but primarily intended for JesCom's general operation, activities and the entire communications infrastructure for evangelization and human development. As such, the said receipts cannot be classified as the income of JesCom from whatever source that are subject

[1] G.R. No. 228539, June 26, 2019.

to income tax. The same only form part of capital from which no income tax may be collected or imposed.

You also mentioned that in the same case, the Supreme Court declared as invalid the BIR's interpretation that membership fee, association dues, and the like are part of the gross receipts of recreational clubs that are subject to VAT. In equal footing, you posit that the receipts of JesCom are likewise not subject to VAT as there is no sale, barter or exchange of commercial goods or services. Moreover, JesCom being a non-stock, non-profit religious institution is among the entities covered by Section 30 of the National Internal Revenue Code of 1997 (Tax Code), as amended, and therefore is at a different and higher level that recreational clubs because they are excluded under said section.

In reply, please be informed that Section 105 of the Tax Code, 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 this Code.*
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> *The value-added tax is an indirect tax and the amount of tax may be shifted or passed on to the buyer, transferee or lessee of the goods, properties or services. This rule shall likewise apply to existing contracts of sale or lease of goods, properties or services at the time of the effectivity of Republic Act No. 7716.*
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> *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, nonprofit 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.*
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> *xxx xxx xxx"*
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> (Emphasis and underscoring supplied)

The provision clarifies that even a non-stock, non-profit organization, among others, is liable to pay VAT on the sale of goods or services. VAT is a tax on transactions, imposed at every stage of the distribution process on the sale, barter, exchange of goods or property, and on the performance of services, even in the absence of profit attributable thereto. The term "in the course of trade or business" requires the regular conduct or pursuit of a commercial or an economic activity regardless of whether the entity is profit-oriented.

The definition of the term "in the course of trade or business" applies to all transactions. Any person who, in the course of trade or business, sells, barters or exchanges goods and services, is liable to pay VAT. It likewise stresses that even a non-stock, non-profit organization or government entity is liable to pay VAT for the sale of goods and services.

Section 108 of the Tax Code, as amended, defines the phrase "sale of services" as the performance of all kinds of services for others for a fee, remuneration or consideration. It is immaterial whether the primary purpose JesCom's general operation, activities and the entire communications infrastructure for evangelization and human development is not for realizing profit, for purposes of determining liability for VAT on services rendered. As long as the entity

provides service for a fee, remuneration or consideration, then the service rendered is subject to VAT.

At any rate, it is a rule that because taxes are the lifeblood of the nation, statutes that allow exemptions are construed strictly against the grantee and liberally in favor of the government. Otherwise stated, any exemption from the payment of a tax must be clearly stated in the language of the law; it cannot be merely implied therefrom. In the case of VAT, Section 109, of the Tax Code, as amended, clearly enumerates the transactions exempted from VAT. The services rendered by JesCom do not fall within the exemptions.

It is worth noting that the Supreme Court, in the case of *ANPC vs. BIR*, stated that:

> *"Membership fees, assessment dues, and the like are not subject to VAT because in collecting such fees, the club is not selling its service to the members. Conversely,* ***the members are not buying services from the club when dues are paid; hence, there is no economic or commercial activity to speak of*** *as these dues are devoted for the operations/maintenance of the facilities of the organization. As such, there could be no 'sale, barter or exchange of goods or properties, or sale of a service' to speak of, which would then be subject to VAT under the 1997 NIRC."* (Emphasis supplied)

The foregoing however does not apply to JesCom due to the clear difference between the transactions. It does not receive payment for the maintenance and operations of its facilities but instead for the services it offers.

The difference essentially lies in the way the transactions are structured. In the case of ANPC, it receives membership dues from its members solely for the purpose of the upkeep of the club facilities. Club members pay not for the privilege of using the club's facilities but for their maintenance. JesCom receives payments from its customers for the privilege of using its liturgical and inspirational music, religious books, videos, songbooks for liturgical music and other merchandise; sound studio, facilities, equipment and video production assistance; media ethics training services offered to priests, nuns, and lays; mechanical synchronization licenses, public performance, and print of the Foundations' religious music, television and radio shows; and video and audio equipment and instruments, and other communications and studio room and facilities, which is basically a sale of service contemplated under Section 108 of the Tax Code, as amended.

In the same vein, JesCom cited the discussion on income as distinguish to capital to wit:

> *"Income as contrasted with capital or property is to be the test. The essential difference between capital and income is that* ***capital is a fund; income is a flow. A fund of property existing at an instant of time is called capital. A flow of services rendered by that capital by the payment of money from it or any other benefit rendered by a fund of capital in relation to such fund through a period of time is called income.*** *Capital is wealth, while income is the service of wealth.*
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> xxx xxx xxx
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> *As correctly argued by ANPC, membership fees, assessment dues, and other fees of similar nature only constitute contributions to and/or replenishment of the funds for the maintenance and operations of the facilities offered by recreational clubs to their exclusive members.* ***They***

OT- 047.2025
APR 04 2025

represent funds 'held in trust' by these clubs to defray their operating and general costs and hence, only constitute infusion of capital. " (Emphasis and underscoring supplied)

In the case of JesCom, their receipts are considered income and not capital. The amount they receive is from a flow of services rendered by capital. Their capital is their liturgical and inspirational music, religious books, videos, songbooks for liturgical music and other merchandise; sound studio, facilities, equipment and video production assistance; media ethics training services offered to priests, nuns, and lays; mechanical synchronization licenses, public performance, and print of the Foundations' religious music, television and radio shows; and video and audio equipment and instruments, and other communications and studio room and facilities, for which they get paid for. By selling the right to use their properties, their capital serves to acquire income. This is opposed to membership fees, assessment dues, and other fees of similar nature since, by their very nature, they are contributions only and are treated as funds held in trust by clubs. Meanwhile, the funds JesCom collects are not held in trust for members but are theirs solely, which they can dispose of in any manner whatsoever. Only in this particular case, they decided to utilize it to provide support to the task of the Catholic Church in the Philippines and in other parts of Asia to integrate the faith and life of the faithful through any means of communications for evangelization and total human development. Simply doing this, however, does not automatically convert JesCom's income to capital.

Please be guided accordingly.

Very truly yours,

ROMEO D. LUMAGUI, JR.
Commissioner of Internal Revenue

K-1-FFR

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