REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE
National Office Building
Quezon City

Par. 3, Sec. 4, Art. XIV of the 1987 Constitution; Sections 30 (E) and (H) of the NIRC of 1997, as amended; RMO Nos. 20-2013 and 44-2016
BIR Ruling Nos. 466-14 & 1111-18
SH80- 063-2024

OCT 18 2024

F.E.I.H. SCHOOL OF MAKATI INC.
Lot 26 & 27 Blk 95 Waterlily St.
Brgy. Rizal, Makati City 1208

Attention: **Mr. Jedidiah Jireh M. Anciano**
School President

Gentlemen:

This refers to your letter, applying on behalf of **F.E.I.H. SCHOOL OF MAKATI INC.** for the issuance of a certificate of tax exemption enjoyed by a non-stock, non-profit corporation or association organized and operated exclusively for educational purposes under Section 30(H) of the National Internal Revenue Code (Tax Code) of 1997, as amended.

It is represented that **F.E.I.H. SCHOOL OF MAKATI INC.** with Taxpayer's Identification No. and Certificate of Registration No. OCN dated August 29, 2001, 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 under Company Registration No. ; and that the primary purpose[1] for which the association was incorporated *is to establish and operate a non-stock and non-profit educational institution or learning center which shall provide courses of study in Pre-school /Elementary and High School subject to the laws of the Philippines*; and that it was granted a Certificate of Good Standing by the Department of Education National Capital Region on December 5, 2022.

In reply, please be informed that paragraph 3, Section 4, Article XIV of the 1987 Constitution states that:

> "All revenues and assets of non-stock, non-profit educational institutions used actually, directly, and exclusively for educational purposes shall be exempt from taxes and duties."

Similarly, Section 30 (H) of the Tax Code of 1997, as amended, provides, viz:

> "Sec. 30. Exempt from Tax on Corporations. - The following organizations shall not be taxed under this Title in respect to income received by them as such:
>
> xxx xxx xxx
>
> (H) A non-stock and non-profit educational institution; xxx."

Moreover, there are two requisites in order for a non-stock, non-profit educational institution to be exempt from tax as provided under Revenue Memorandum Order No. 44-2016; to wit:

a) It is a non-stock, non-profit educational institution; and
b) Its revenues are actually, directly and exclusively used for educational purposes.

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[1] Articles of Incorporation, adopted on August 14, 2001.

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"Non-stock" means "no part of its income is distributable as dividends to its members, trustees, or officers" and that any profit "obtained as an incident to its operations shall, whenever necessary or proper, be used for the furtherance of the purpose or purposes for which the corporation was organized".[2] "Non-profit" means that "no net income or asset accrues to or benefits any member or specific person, with all the net income or asset devoted to the institution's purposes and all its activities conducted not for profit".[3]

In the submitted documents of **F.E.I.H. SCHOOL OF MAKATI INC.**, it was disclosed in the 2021 Annual Financial Statement that the Fringe Benefit covers 40% of its operating expenses, and that there was no such expense in the previous years. In addition, the President's Affidavit/Certification states that most of these benefits went to the teachers and staff allowances, bonus and incentives, including a quarter's allowance for its personnel.

The giving of too many allowances and incentives to the teachers and staff of the institution is considered as distribution of equity (including the net income) of **F.E.I.H. SCHOOL OF MAKATI INC.** This is a form of private inurement which the law prohibits in the organization and operation of a non-stock, non-profit corporation. This act violates the requirement that no part of the net income or assets of the corporation shall inure to the benefit of any individual or specific person. Thus, **F.E.I.H. SCHOOL OF MAKATI INC.** cannot be qualified as a non-stock, non-profit educational institution under Section 30 (H) of the Tax Code of 1997, as amended.

Please bear in mind that, "*being a non-stock and/or non-profit corporation does not, by this reason alone, completely exempt an institution from tax*".[4] Thus, "*statutes granting tax exemptions are construed **strictissimi juris** against the taxpayer and liberally in favor of the taxing authority. A claim of tax exemption must be clearly shown and based on language in law too plain to be mistaken. Otherwise stated, taxation is the rule, exemption is the exception. The burden of proof rests upon the party claiming the exemption to prove that it is in fact covered by the exemption so claimed*".[5] ***(BIR Ruling No. 466-2014 dated November 19, 2014)***

In view of the foregoing, the request of **F.E.I.H. SCHOOL OF MAKATI INC.** to be exempted from income tax on its income as a Section 30(H) institution is hereby denied as it failed to prove that it is a non-profit corporation. Therefore, **F.E.I.H. SCHOOL OF MAKATI INC.** shall be treated as a proprietary educational institution subject to ten percent (10%) preferential rate pursuant to Section 27(B) of the Tax Code of 1997, as amended.

Please be guided accordingly.

Very truly yours,

ROMEO D. LUMAGUI, JR.
Commissioner of Internal Revenue

Copy Furnished:
Revenue Region No. 8A
Attn: Revenue District Office No. 50 – South Makati

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[2] Section 87, Corporation Code
[3] CIR vs. St. Luke's Medical Center, Inc., G.R. Nos. 195909 and 195960 dated 26 September 2012
[4] Ibid.
[5] Quezon City and The City Treasurer of Quezon City vs. ABS-CBN Broadcasting Corporation [G.R. No. 166408, 6 October 2008].