June 8, 2021

BIR RULING NO. SH30-198-21

Section 30 (H) of the NIRC of 1997, as amended; RMO No. 20-2013; RMC No. 051-14; BIR Ruling No. 466-2014

Office of the Superintendent of Diocesan Schools
St. Jude Parish School, Governor's Drive, Trece Martires City

Attention: *AAA*

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BBB

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Gentlemen :

This refers to your letter dated July 3, 2017, applying on behalf of **ST. MARY MAGDALENE SCHOOL (PAROCHIAL), INC.** for tax exemption certificate being enjoyed by non-stock, non-profit corporation or association under Section 30 (H) of the National Internal Revenue Code (NIRC) of 1997, as amended, which was forwarded to this Office by Revenue Region No. 9A, CaBaMiRo, Sto. Tomas, Batangas, dated February 19, 2018.

It is represented that **ST. MARY MAGDALENE SCHOOL (PAROCHIAL), INC.** with BIR Taxpayer's Identification No. (TIN) _____ and Certificate of Registration No. 1RC0001315807 dated January 01, 1996 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. 0103704; and that the purposes [1] for which the association was incorporated are:

1. *To give a sound, complete and Catholic education to children and youth in the Philippines and to promote their intellectual and moral development.*

2. *To promote and facilitate social and professional relations, goodwill and*

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cooperation, among persons involved in the economic, educational and cultural activities.

3. *To conduct or participate in seminars, symposiums, group discussions, radio programs, television programs, or film presentations related to the economic, educational and cultural aspects.*

4. *To prepare, negotiate, sign and implement agreements or contracts with any agency, enterprise or instrumentally, whether public or private, in the Philippines in relation to economic, educational and cultural matters.*

5. *To advance the mutual interests of members of this corporation in relation, educational and cultural aspects.*

6. *To raise funds by membership contribution and/or solicit contributions and donations from all sources to pay for the expenses of this corporation.*

7. *To do any and all proper things for the advancement of the legitimate interests of the members of this Corporation, including mutual assistance in whatever form agreed upon among themselves in case of need; and*

8. *To do all things necessary, suitable, and/or proper for the accomplishment of the above purposes, and any one or more of them.*

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." (Emphasis supplied)*

Likewise, Section 30 (H) of the National Internal Revenue 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; x x x" (Emphasis supplied)*

"Non-stock" means *"no part of its income is distributable as dividends to its members,*

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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]

There are two requisites in order for an educational institution to be exempt from tax as provided under Revenue Memorandum Order (RMO) No. 44-2016 dated July 25, 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. (Emphasis supplied)*

Under the above quoted provisions, one of the requirements for an educational institution to be exempt from income tax pursuant to the provisions of paragraph 3, Section 4, Article XIV of the 1987 Constitution, in relation to Section 30 (H) of the National Internal Revenue Code of 1997, as amended, and RMO No. 44-2016, is to be organized as a non-stock, non-profit educational institution. However, in the instant case, the submitted Articles of Incorporation of **ST. MARY MAGDALENE SCHOOL (PAROCHIAL), INC.** disclosed that its registration with the SEC is only as a non-stock corporation.

Moreover, Revenue Memorandum Circular (RMC) No. 51-2014 had clarified that in order for an entity to qualify as a non-stock and/or non-profit corporation/association/organization exempt from income tax under Section 30 of the NIRC of 1997, as amended, its earnings or assets shall not inure to the benefit of any of its trustees, organizers, officers, members or any specific person. The following are considered "inurements" of such nature:

> *1. The payment of compensation, salaries, or honorarium to its trustees or organizers; x x x.*

In the submitted documents of **ST. MARY MAGDALENE SCHOOL (PAROCHIAL), INC.**, it was disclosed that Directors are entitled to compensation. Article II, Section 4 of the By-Laws of **ST. MARY MAGDALENE SCHOOL (PAROCHIAL), INC.** adopted on March 20, 1982, states that:

> *"**ARTICLE II.** — x x x. 4. Directors, as such, shall receive such compensation for their services as may be from time to time fixed by the board of directors subject to the approval of the members."*

The giving of per diem/honorarium and endowment to the members of the Board of

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Directors is considered a distribution of the equity (including the net income) **ST. MARY MAGDALENE SCHOOL (PAROCHIAL), 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, **ST. MARY MAGDALENE SCHOOL (PAROCHIAL), INC.** cannot be qualified as a non-stock, non-profit corporation under Section 30 (H) of the NIRC of 1997, as amended

In view of the foregoing, the request of **ST. MARY MAGDALENE SCHOOL (PAROCHIAL), INC.** to be exempted from income tax on its income as a Section 30 (H) corporation is hereby denied as it failed to prove that it is a non-profit corporation. Therefore, **ST. MARY MAGDALENE SCHOOL (PAROCHIAL), INC.** shall be treated as an ordinary corporation subject to thirty percent (30%) income tax rate pursuant to Section 27 (A) and other internal revenue taxes imposed by the NIRC of 1997, as amended.

Please be guided accordingly.

Very truly yours,

(SGD.) CAESAR R. DULAY
Commissioner of Internal Revenue

Footnotes

1. Per Amended Articles of Incorporation adopted on February 09, 2009.
2. Section 87, Corporation Code.
3. *CIR vs. St. Luke's Medical Center, Inc.*, G.R. Nos. 195909 and 195960 dated 26 September 2012.

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