June 28, 2018

BIR RULING NO. 1035-18

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

City of San Jose del Monte Elementary and Secondary School Publication Advisers Association (CESSPAA), Inc.
DepEd CSJDM Division Office, San Ignacio St.,
Poblacion, City of San Jose del Monte,
Bulacan 3023

Attention: *AAA*

Gentlemen :

This refers to your letter dated June 15, 2016 applying on behalf of the **CITY OF SAN JOSE DEL MONTE ELEMENTARY AND SECONDARY SCHOOL PUBLICATION ADVISERS ASSOCIATION (CESSPAA), INC.** ("**CESSPAA, INC.**" for brevity) for tax exemption certificate being enjoyed by non-stock, non-profit corporation or association under Section 30 (E) of the National Internal Revenue Code of 1997, as amended.

It is represented that **CESSPAA, INC.** with BIR Taxpayer's Identification No. (TIN) 000-000-000-000 and Certificate of Registration No. OCN 4RC0000894653 dated August 27, 2015, is a non-stock 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. CN201516761; and that the purposes [1] for which the corporation was incorporated are:

1. *To be the primary organization that develops the practice of campus journalism in the City of San Jose del Monte;*

2. *Develop well-rounded school publication advisers and campus journalists;*

3. *Instill excellence, camaraderie and leadership through various campus journalism contests;*

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4. *Provide trainings and seminars for members regarding campus journalism and school publication management; and*

5. *Establish an award-giving body that will recognize campus journalists, school publication advisers, and professionals that exhibit excellence and leadership in print, broadcast, and online journalism.*

In reply, please be informed that Section 30 (E) 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
>
> *(E) Non-stock 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;*** *x x x"* (Emphasis supplied)

"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]

Revenue Memorandum Circular (RMC) No. 51-2014 has 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 National Internal Revenue Code 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;*

xxx xxx xxx

Under Section 8, Article II of the submitted By-Laws of **CESSPAA, INC.**, it provides that:

> *"Section 8. Compensation. — No Trustee shall receive any salary for his or her services in his or her capacity as a Trustee* ***but may be given honorarium as the***

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association approves it through a resolution." (Emphasis supplied)

The giving of honorarium to the Board of Trustees is considered distribution of the net income of **CESSPAA, INC.** It is a form of 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.

Moreover, in the Memorandum for the Revenue District Officer of Revenue District Office No. 25-B, Sta. Maria, Bulacan, it states that the activities and objectives of **CESSPAA, INC.** are not in any way related to the promotion/propagation of Culture, the purpose for which the application for tax exemption was based, under Section 30 (E) of the National Internal Revenue 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 **CESSPAA, INC.** to be exempted from income tax on its income as a Section 30 (E) corporation is hereby denied as it failed to prove that it is a non-profit corporation. Therefore, it shall be subject to thirty percent (30%) corporate income tax pursuant to Section 27 (A) of the National Internal Revenue Code of 1997, as amended.

Please be guided accordingly.

Very truly yours,

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

Footnotes

1. Second Provision, Articles of Incorporation.
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. *CIR vs. St. Luke's Medical Center, Inc.* [G.R. No. 195909 & G.R. No. 195960, 26 September 2012].
5. *Quezon City and The City Treasurer of Quezon City vs. ABS-CBN Broadcasting Corporation* [G.R. No. 166408, 6 October 2008].

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