July 24, 2018

BIR RULING NO. 1103-18

Par. 3, Sec. 4, Art. XIV of the 1987 Constitution; Sec. 30 (H) of the NIRC of 1997, as amended; RMO No. 44-2016

San Miguel Academy, Inc.
San Miguel Academy Building,
San Nicolas, Masantol, Pampanga

Attention: *AAA*

Gentlemen :

This refers to your letter dated December 16, 2013 applying on behalf of **SAN MIGUEL ACADEMY, INC.** for tax exemption certificate being enjoyed by non-stock, non-profit educational institution under Section 30 (H) of the National Internal Revenue Code of 1997, as amended, which was forwarded to this Office by Revenue Region No. 4, City of San Fernando, Pampanga, through 4th Indorsement dated September 21, 2015.

It is represented that **SAN MIGUEL ACADEMY, INC.** with BIR Taxpayer's Identification No. (TIN) 000-000-000-000 and Certificate of Registration No. OCN 4RC0000378228 dated August 25, 1999, 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. 0000016977 and with SEC Certificate of Incorporation dated May 25, 1960; that the purpose for which the corporation was incorporated is *"to operate and maintain a private high school (generally second level) and a private senior high school"*; [1] and that it was permitted and granted Government Recognition No. S-096, series of 2007, dated September 27, 2007, by the Department of Education (DepEd) to offer and operate Secondary course.

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)

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Likewise, Section 30 (H) of the National Internal Revenue Code (NIRC) 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)

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 (RMO) 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.

"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 Audited Comparative Financial Statements of **SAN MIGUEL ACADEMY, INC.** for the taxable years 2010, 2011, 2012, and 2013, an account for "Members Drawings" consistently appears as a deduction from the total amount of donations and net income in the computation of its Total Net Worth as reported in the capital/equity portion of the Balance Sheets and for which account there is no explanation. Moreover, as certified to under oath by its Chairperson and President, the five Members of the Board of Trustees receive monthly allowances in the amount of fifteen thousand pesos (Php15,000.00) each.

A "drawing account" is *"an accounting record used in a business organized as a sole proprietorship or a partnership, under which all distributions made to the owners of the business are recorded."* [4] By reporting a "members drawing account" in the financial statements of **SAN MIGUEL ACADEMY, INC.**, in effect proves that the members are "drawing" funds from the school for their personal account.

The drawing of funds by the members of the Board of Trustees is therefore considered a distribution of the equity (including the net income) of **SAN MIGUEL ACADEMY, INC.**, along with the grant of monthly allowances to the members of the

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Board of Trustees. These are forms of private inurements which the law prohibits in the organization and operation of a non-stock, non-profit corporation. These acts are not in accordance with the definition of "non-profit" 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." Thus, **SAN MIGUEL ACADEMY, INC.** cannot be qualified as a non-profit educational institution under Section 30 (H) of the NIRC 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."* [5] 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."* [6]

In view of the foregoing, the request of **SAN MIGUEL ACADEMY, 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 educational institution. Therefore, **SAN MIGUEL ACADEMY, INC.** shall be treated as a proprietary educational institution subject to ten percent (10%) preferential rate pursuant to Section 27 (B) of the NIRC of 1997, as amended.

Please be guided accordingly.

Very truly yours,

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

Footnotes

1. Second Article, Latest Amended 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. http://www.accountingtools.com/questions-and-answers/what-is-a-drawing-account.html.
5. *CIR vs. St. Luke's Medical Center, Inc.* [G.R. No. 195909 & G.R. No. 195960, 26 September 2012].
6. *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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