REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE
Quezon City

Section 30 (H) of the NIRC of 1997, as amended; RMO No. 20-2013; RMC No. 051-14
BIR Ruling No. 466-2014
SH3O- 0207 - 2020
MAR 10 2020

CALAYAN EDUCATIONAL FOUNDATION, INCORPORATED
Red-V, Lucena City, Quezon 4301

Attention : DR. JAIME M. BUZAR
President

Gentlemen:

This refers to your letter dated November 14, 2013, applying on behalf of **CALAYAN EDUCATIONAL FOUNDATION, INCORPORATED** 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. 9, San Pablo City, dated October 21, 2014.

It is represented that **CALAYAN EDUCATIONAL FOUNDATION, INCORPORATED** with BIR Taxpayer's Identification No. (TIN) /and Certificate of Registration No. dated July 21, 1997, 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. ; and that the purposes[1] for which the association was incorporated are:

1. *To establish, conduct, manage and carry on principally the operations of a school of nursing and midwifery; secondarily, to offer other college courses leading to various Baccalaureate Degrees and thirdly, to include in its curriculum such terminal courses as Food Technology, Secretarial Sciences, etc. Thirdly, to adopt all of the above in addition to the requisite legal and appropriate measures to attain university status; and fourthly, to establish extensions and branches in other parts of the Philippines to form a university system to be headed most preferably by incumbent Trustee/s from extended family of Dr. Emeterio Calayan, Jr. whether as a group or individually.*
2. *To conduct and operate such schools in accordance with the latest and modern methods and practice of educational institutions in the Philippines.*
3. *To grant diplomas and certificates and to confer degrees upon its graduates as may be authorized by law which shall entitle the possessors thereof to all the immunities and privileges in accordance with the standards and regulations of the Supreme Court, Commission on Higher Education, the Department of Education, the Technical Skills Development Authority, Professional Regulation Commission and such other regulatory government agencies as provided by law.*

[1] Per Amended Articles of Incorporation adopted on February 09, 2009.

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4. *To use and dedicate the net income from the operation solely for the maintenance, operation and extension of the institution which are or may hereafter be organized and established by this corporation, no part of the said net income to be distributed to, or to inure to the benefit of, any member of the corporation, to purchase, own, hold, acquire by acts intervivos or mortis causa, or otherwise accept such property, real or personal, as may be necessary, convenient or appropriate for any of the purposes herein expressed; and, generally, to perform all and everything necessary and proper for the attainment of the purposes or the furtherance of any of the powers above set forth, either alone or in association with other corporations or individuals including the exercise of the power and attributes conferred upon corporations in general or organized under the laws of the Philippines and upon corporations of like or similar nature in particular.*
5. *To establish, conduct, manage and carry on, fourthly, the operations of a preschool, preparatory, kindergarten, primary, elementary, secondary and graduate schools in accordance with the latest and modern methods and practice of like educational institutions in the Philippines and abroad.*
6. *To enter into and/or constitute consortia, partnerships and syndicates with other educational entities; to members of associations with such other similar institutions in the Philippines and abroad; to engage in joint concerns for the exchange of students, faculty, technology, information and such other materials to foster its goal of affording global education to its students.*
7. *To receive donation from commercial, government, private and industrial Sectors for the establishment of scholarships for deserving students and professional chairs for qualified faculty members; to apply said donations likewise for the creation and maintenance of other facilities life libraries, various laboratories and related facilities.*

In reply, please be informed that Section 30 of the National Internal Revenue Code of 1997, as amended, enumerates the non-stock and/or non-profit corporations/associations/ organizations that are exempt from income tax in respect to income received by them as such. 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;"*
>
> *xxx xxx xxx"*

"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

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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

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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; xxx.*

In the submitted documents of **CALAYAN EDUCATIONAL FOUNDATION, INCORPORATED**, it was disclosed that Board of Trustees are entitled to per diem. Article III of the Amended By-Laws of **CALAYAN EDUCATIONAL FOUNDATION, INCORPORATED**, adopted on March 04, 2011, states that:

> *"**ARTICLE III. Board of Trustees** – xxx. Trustees are entitled to reasonable per diems according to the tenets of corporate governance for public accountability."*

Additionally, officers and trustees are entitled to a monthly endowment for life beginning immediately after their retirement. Article V of the Amended By-Laws of **CALAYAN EDUCATIONAL FOUNDATION, INCORPORATED**, adopted on March 04, 2011, states that:

> *"**ARTICLE V. Emeritus Title** – The Board of Trustees, by majority vote, shall authorize the grant of "emeritus" privilege and distinction to officer or trustees, including but not limited to, its founders, former: Chairpersons, Presidents, Deans, heads of academic departments or full professors with at least twenty (20) years of continuous and meritorious service to the Corporation, likewise, for such reasons the Board of Trustees may deem proper. The honorees shall be entitled to a monthly endowment equivalent to thirty percent (30%) of their last monthly basic salary for life beginning immediately after their retirement. The Board of Trustees shall formulate the implementing rules within one year (1) after effectivity of these By-Laws and ratified by a majority vote of all the members of the Corporation."*

The giving of per diem/honorarium and endowment to the members of the Board of Trustees is considered a distribution of the equity (including the net income) of **CALAYAN EDUCATIONAL FOUNDATION, INCORPORATED.** 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, **CALAYAN EDUCATIONAL FOUNDATION, INCORPORATED** cannot be qualified as a non-stock, non-profit corporation 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.*"[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 **CALAYAN EDUCATIONAL FOUNDATION, INCORPORATED** 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

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[4] Ibid.

[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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corporation. Therefore, **CALAYAN EDUCATIONAL FOUNDATION, INCORPORATED** 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,

CAESAR R. DULAY
Commissioner of Internal Revenue

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COPY FURNISHED:

REVENUE REGION NO. 09 – San Pablo City
Attention: Revenue District Office No. 60 – Lucena City