April 4, 2019

BIR RULING NO. 235-19

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

Victory Christian Fellowship of Nueva Vizcaya, Inc.
2/F Raquel Tan Bldg., District IV,
Bayombong, Nueva Vizcaya 3700

Attention: *AAA*

Gentlemen :

This refers to your letter dated November 20, 2017 applying in behalf of **VICTORY CHRISTIAN FELLOWSHIP OF NUEVA VIZCAYA, INC.** for tax exemption certificate being enjoyed by non-stock, non-profit corporation or association under Section 30 (E) of the National Internal Revenue Code (NIRC) of 1997, as amended, which was forwarded to this Office by Revenue Region No. 3, Tuguegarao City, dated January 30, 2018.

It is represented that **VICTORY CHRISTIAN FELLOWSHIP OF NUEVA VIZCAYA, INC.** with BIR Taxpayer's Identification No. (TIN) 000-000-000-000 and Certificate of Registration No. OCN 4RC0001043716 dated December 11, 2014, 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 (SEC) under Company Registration No. CN201433156; and that the purposes [1] for which the association was incorporated is for the administration and management of its secular affairs, properties and temporalities.

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 (E) of the National Internal Revenue Code of 1997, as amended, provides, *viz.*:

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"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) Nonstock 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;"

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 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 "increments" of such nature:

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

xxx xxx xxx

5. When upon dissolution and satisfaction of all liabilities, its remaining assets are distributed to its trustees, organizers, officers or members. Its assets must be dedicated to its exempt purpose. Accordingly, its ***constitutive documents must expressly provide that in the event of dissolution, its assets shall be distributed to one or more entities formed for the purpose/purposes similar to its own, or to the Philippine government for public purposes."***

In the submitted documents of **VICTORY CHRISTIAN FELLOWSHIP OF NUEVA VIZCAYA, INC.**, it was disclosed that Members of Council are allowed to receive allowance. Article VI of the Amended By-Laws of **VICTORY CHRISTIAN FELLOWSHIP OF NUEVA VIZCAYA, INC.**, states that:

"Section 4. ***Remuneration****. — The members of the Council are not entitled to*

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receive salaries from the society. However, whenever the funds of the society may so permit, the members of the Council may be allowed to receive reasonable allowance as may be approved by majority of the members for their individual sustenance and that of their respective family, and token gifts whether in cash or in kind from the society as expression of appreciation for their voluntary service."

The giving of allowance to the members of Council is considered a distribution of the equity (including the net income) of **VICTORY CHRISTIAN FELLOWSHIP OF NUEVA VIZCAYA, INC.** This is a form of private inurement which the law prohibits in the organization and operation of a non-stock, non-profit corporation. Moreover, the Articles of Incorporation and By-Laws of **VICTORY CHRISTIAN FELLOWSHIP OF NUEVA VIZCAYA, INC.** does not contain provisions that expressly provide that in the event of dissolution, its assets shall be distributed to one or more entities formed for the purpose/purposes similar to its own, or to the Philippine government for public purposes. 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, **VICTORY CHRISTIAN FELLOWSHIP OF NUEVA VIZCAYA, INC.** cannot be qualified as a non-stock, non-profit corporation 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) (BIR Ruling No. 466-2014 dated November 19, 2014)***

In view of the foregoing, the request of **VICTORY CHRISTIAN FELLOWSHIP OF NUEVA VIZCAYA, 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, **VICTORY CHRISTIAN FELLOWSHIP OF NUEVA VIZCAYA, 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 National Internal Revenue Code of 1997, as amended.

Please be guided accordingly.

Very truly yours,

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

Footnotes

1. First, 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. *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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