April 2, 2018

BIR RULING NO. 564-18

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

La Consolacion College Valenzuela, Inc.
St. Jude Street, Malinat,
Valenzuela City 1444

Attention: *AAA*

Gentlemen :

This refers to your letter dated November 09, 2016 applying on behalf of **LA CONSOLACION COLLEGE VALENZUELA, 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.

It is represented that **LA CONSOLACION COLLEGE VALENZUELA, INC.** with BIR Taxpayer's Identification No. (TIN) 000-000-000-000 and Certificate of Registration No. OCN 4RC0000443444 dated January 01, 1997, 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. 33946; and that the purposes [1] for which the association was incorporated are:

a) *To establish, maintain, operate a Catholic School, to provide a formal and non-formal venue of education dedicated to the formation and the development of socially-conscious, value-oriented, Filipino Christian graduate with knowledge, skills and competencies, to enable him to meet the needs of every changing situation in search for Christ through service to others in the efforts of building Christian Communities.*

b) *To provide courses of study in the elementary, secondary, and tertiary levels for which the usual certificates and/or diploma may be awarded and the appropriate honors conferred.*

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c) *To acquire or obtain any government authority or entity, national or municipal, foreign or domestic or otherwise; or from any corporation, company, association or persons, such as character, franchise, licenses, rights, privileges, assistance, financially or otherwise, and concessions, which are necessary for the attainment of purpose of the school.*

d) *And generally, to do all and everything lawful and proper which may be necessary or expedient for the accomplishment of any of the purposes or any of the objective or purposes of the school.*

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 nonstock and nonprofit 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 from income tax under Section 30 of the National Internal Revenue Code, 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 **LA CONSOLACION COLLEGE VALENZUELA, INC.**, it was disclosed that Board of Directors are entitled to

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Honoraria. Sec. 12, Article IV of the amended By-Laws, which was also affirmed by _____ BBB of **LA CONSOLACION COLLEGE VALENZUELA, INC.** in the certification dated June 19, 2017, states that:

> *"SECTION 12. COMPENSATION. — The Members of the Board shall serve without salary or compensation but they shall be given honorarium in the performance of duties."*

The giving of honoraria to the members of the Board of Directors is considered a distribution of the equity (including the net income) of **LA CONSOLACION COLLEGE VALENZUELA, 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, **LA CONSOLACION COLLEGE VALENZUELA, INC.** cannot be qualified as a non-stock, non-profit corporation under Section 30 (H) 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 **LA CONSOLACION COLLEGE VALENZUELA, 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, **LA CONSOLACION COLLEGE VALENZUELA, 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,

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

Footnotes

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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. *CIR vs. St. Luke's Medical Center, Inc.* [G.R. No. 195909 & G.R. No. 195960, 26 September 2012].
5. Note from the Publisher: Copied verbatim from the official copy. Missing Footnote text.

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