October 11, 2019

BIR RULING NO. 617-19

Section 30 (E) of the NIRC of 1997, as amended; BIR Ruling Nos. 466-2014; 803-2018 & 1015-2018; RMC 51-2014

Arcinas & Arcinas Attorneys-at-Law
Rm. 2K Edificio Enriqueta, 422 N.S. Amoranto St.
corner D. Tuason Ave., Quezon City

Attention: *AAA*

Gentlemen :

This refers to your letter dated November 11, 2013, requesting on behalf of your client, **PHILIPPINE RADIO EDUCATIONAL AND INFORMATION CENTER, INC.** (the Corporation), for tax exemption certificate being enjoyed by a non-stock, non-profit corporation or association organized and operated exclusively for religious purposes under Section 30 (E) of the Tax Code of 1997, as amended.

It is represented that the **PHILIPPINE RADIO EDUCATIONAL AND INFORMATION CENTER, INC.** with Taxpayer's Identification No. 000-000-000-000 and Certificate of Registration No. OCN 3RC0000150615, is a non-stock, non-profit corporation registered with the Securities and Exchange Commission (SEC) bearing SEC Registration No. 18722; and that the purposes [1] for which it was incorporated are as follows:

1. To serve as a center, thru the media of radio, television and other similar means of transmission, for the dissemination of information calculated to foster the democratic way of government and to evoke a genuine love for God and country;

2. To enlighten and struck the people, and to direct their minds and hearts toward higher and spiritual things;

3. To use all modem of mass communications to serve the people by giving them wholesome programs of information and entertainment;

4. To encourage various types of religious educational, cultural and information programmes and to organize and coordinate them with

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one another;

5. To strengthen the bonds between people thru education and information so that they may have a more respectful understanding of each other and assist one another in times of crisis;

6. To construct, maintain and operate radio broadcasting and television stations as well as private fixed point-to-point relay and land base stations in the Philippines for educational, cultural and informational purposes and in the public interest;

7. To own and to acquire, by purchase or lease, such real and personal property as may be necessary or convenient for any of the purposes herein expressed;

8. To acquire, by donation, such real and personal property as may be necessary or appropriate for the attainment of the objectives of the corporation;

9. In general, to carry on any other lawful venture whatsoever in connection with the foregoing or which is calculated directly or indirectly to promote the interest of the people and to have and exercise all the rights, powers and privileges which are or may hereafter be conferred by the laws of the Philippines upon said corporation.

In reply, please be informed that Section 30 (E) 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
>
> *(E) Non-stock corporations or associations 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." (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*

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not for profit." [3]

Revenue Memorandum Circular 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 Tax 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. Whether prohibited inurement has occurred is a question to be determined with regard to all of the facts and circumstances. Prohibited inurement includes the payment of compensation, salaries, or honorarium to its trustees or organizers.

A perusal of the documents submitted shows that, under Section 5 Article III of the By-Laws, the Directors are entitled to receive compensation for their services as may be, from time to time, fixed by the members in an annual or special meeting. As stated in the Treasurer's Certification by **PHILIPPINE RADIO EDUCATIONAL AND INFORMATION CENTER, INC.** _____ BBB, dated November 22, 2013, "*The total compensation of the Officers as of December 21, 2012 was PESOS: FOUR MILLION THREE HUNDRED EIGHTY THOUSAND (P4,380,000.00)*."

The payment of compensation is considered distribution of equity (including the net income) and a form of private inurement which the law prohibits in the organization and operation of a non-stock, non-profit corporation. This act is 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 association's purposes and all its activities conducted not for profit." Thus, **PHILIPPINE RADIO EDUCATIONAL AND INFORMATION CENTER, INC.**, cannot be qualified as a non-stock, non-profit corporation under Section 30 (E) of the Tax 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]

In view of the foregoing, the request of **PHILIPPINE RADIO EDUCATIONAL AND INFORMATION CENTER, 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-stock, non-profit corporation. Therefore, **PHILIPPINE RADIO EDUCATIONAL AND INFORMATION CENTER, INC.** shall be treated as an ordinary corporation subject to thirty percent (30%) income tax rate pursuant to Section 27 (A) and other applicable internal revenue taxes imposed by the Tax Code of 1997, as amended.

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Please be guided accordingly.

Very truly yours,

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

Footnotes

1. 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. *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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