April 13, 2018

BIR RULING NO. 693-18

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

Manila Tytana Colleges, Inc.
Metropolitan Park, Pres. D. Macapagal Blvd.,
Brgy. 076, Pasay City 1300

Attention: *AAA*

Gentlemen :

This refers to your letter dated October 28, 2015, applying on behalf of **MANILA TYTANA COLLEGES, INC.** for revalidation of its tax exemption pursuant to Section 30 (H) of the National Internal Revenue Code of 1997, as amended.

It is represented that **MANILA TYTANA COLLEGES, INC.** with BIR Taxpayer's Identification No. (TIN) 000-000-000-000 and Certificate of Registration No. OCN 9RC0000299655 dated November 24, 1993, is a non-stock 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. ANO93-003843; that the primary purpose for which the corporation was incorporated is *"to organize, establish, maintain and conduct an institution of learning which will emphasize intellectual, physical, technical, social, cultural and moral character development and to this end, to own and operate schools offering collegiate, tertiary level and/or post-graduate courses following such method of instruction and curricula approved by the proper government authorities and subject to all government laws, rules and regulations"*; [1] and that it was permitted and granted the following Government Recognitions:

Recognition Number	Degree/Program	Date Issued	Issued by
098 s. 1981	Bachelor of Science in Nursing	August 18, 1981	Ministri ng Edukasyon at Kultura (Ministry of Education and Culture), Maynila
005 s. 1985	Bachelor of Science,	March 18, 1985	Ministri ng Edukasyon, Kultura

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	Majors in Zoology and Psychology		at Isports, Pambansang Punong Rehiyon, Banawe, Lungsod Quezon
001 s. 2010	Bachelor of Science in Holistic Nutrition with Culinary Arts	January 4, 2010	Commission on Higher Education-National Capital Region
043 s. 2011	Bachelor of Science in Hotel and Restaurant Management	April 12, 2011	Commission on Higher Education-National Capital Region
019 s. 2012	Bachelor of Science in Information Technology	March 13, 2012	Commission on Higher Education-National Capital Region
012 s. 2013	Bachelor of Science in Entrepreneurship	March 15, 2013	Commission on Higher Education-National Capital Region
013 s. 2013	Bachelor of Science in Business Administration, Major in Human Resource Development Management, Operations Management, Financial Management, Marketing Management and Business Economics	March 19, 2013	Commission on Higher Education-National Capital Region

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)

Likewise, 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; 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:

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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 certification under oath by the _____ [4] of **MANILA TYTANA COLLEGES, INC.**, it was disclosed that for School Year 2012-2013, a total of _____ Pesos (Php_____) were paid to its trustees, advisers and officers in the form of per diem and transportation allowances.

The giving of per diem and transportation allowances to the members of the Board of Trustees is considered a distribution of the equity (including the net income) of **MANILA TYTANA COLLEGES, 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 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 institution's purposes and all its activities conducted not for profit." Thus, **MANILA TYTANA COLLEGES, INC.** cannot be qualified as a non-profit educational institution 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.*" [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 **MANILA TYTANA COLLEGES, 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, **MANILA TYTANA COLLEGES, INC.** shall be treated as a proprietary educational institution subject to ten percent (10%) preferential rate pursuant to Section 27 (B) of the National Internal Revenue 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. 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. AAA.
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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