April 13, 2018

BIR RULING NO. 694-18

Par. 3, Sec. 4, Art. XIV of the 1987 Constitution; Sec. 30 (H) of the NIRC of 1997, as amended; RMC No. 64-2016; 000-00

St. Anthony Montessori, Inc.
Brgy. Sto. Cristo, San Jose, Batangas, Philippines 4227

Attention: *AAA*

Gentlemen :

This refers to your letter dated December 27, 2016, applying on behalf of **ST. ANTHONY MONTESSORI, INC.** for the issuance of a certificate of tax exemption enjoyed by a non-stock corporation or association organized and operated exclusively for educational purposes under Section 30 (H) of the Tax Code of 1997, as amended.

It is represented that ST. ANTHONY MONTESSORI, INC. with BIR Taxpayer's Identification No. (TIN) 000-000-000-000 and Certificate of Registration No. OCN 2066-059-1505 dated September 4, 2006, is a "family owned stock corporation" [1] 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. CS200321898; and that the purposes [2] for which the association was incorporated are:

1. *To establish, organize and operate an institution of learning offering Pre-elementary, Elementary, Junior High School, and Senior High School levels. It shall maintain a high standard of academic excellence with an emphasis on the development of moral and spiritual values, personal discipline and the duties of good citizenship.*

2. *To cooperate willingly with the government in carrying out the objectives of education as embodied by the constitution of the Philippines and its implementing laws, rules and regulations.*

3. *To provide the children with meaningful experience that will enable*

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them to discover themselves, increase their growing awareness of people, places and events.

4. *To acquaint and enlighten the child of our Filipino culture and moral heritage worthy of emulation.*

5. *To provide the variety of school activities and social skills for the development for the personality of the child.*

6. *To develop in the children the 3R's and desirable values, wholesome attitude and behavior for a productive and well-rounded citizen (As amended on July 7, 2006).*

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."

In relation thereto, Section 30 (H) 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
>
> (H) A non-stock and non-profit educational institution; x x x."

"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." [3] "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." [4]

This was reiterated and further clarified by Revenue Memorandum Circular (RMC) No. 64-2016 dated June 20, 2016, to wit:

> "II. Clarifications on Section 30 Organizations:
>
> 1) Characteristics and Nature of Organizations and Corporations under Section 30 of the NIRC of 1997, as Amended

xxx xxx xxx

2) Use of Operational & Organizational Tests in Determining Entitlement to Exemption

xxx xxx xxx

3) Non-Profit, Inurement Prohibition

> Corporations in Section 30 are organized not for profit. "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."
>
> Therefore, 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 NIRC, as amended, it must thus demonstrate that its earnings or assets shall not inure to the benefit of any of its trustees, organizers, officers, members or any specific person. It must not be organized or operated for the benefit of private interests such as specific individuals, incorporators or his family, shareholders of the organization, or persons controlled directly or indirectly by such private interests. The organization must serve a public rather than a private purpose."

In the submitted documents of ST. ANTHONY MONTESSORI, INC., it was disclosed that under Art. III, Sec. 1e, of the corporation's By-Laws, the Board of Directors can establish pension, retirement, bonus, or other types of incentives for the employees, including officers and directors of the corporation; and Sec. 8 of the same Article, provides that by resolution of the Board, each Director shall receive reasonable per diem allowance for his attendance at each meeting of the Board. As compensation, the Board shall receive and allocate an amount not more than ten percent 10% of the net income before income tax of the corporation during the preceding year. Such compensation shall be determined and apportioned among the directors in such manner as the Board may deem proper. Moreover, Art. VI, Sec. 3 states that dividends shall be declared and paid out of the unrestricted retained earnings which shall be payable in cash, property, or stock to all stockholders on the basis of outstanding stock held by them, as often and at such time as the Board of Directors may determine and in accordance with law.

The giving of dividends and per diem allowances to the stockholders and members of the Board of Trustees are considered distribution of the equity (including the net income) of ST. ANTHONY MONTESSORI, 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

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the corporation shall inure to the benefit of any individual or specific person. Thus, ST. ANTHONY MONTESSORI, 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.

In view of the foregoing, the request of ST. ANTHONY MONTESSORI, INC. to be exempted from income tax on its income as a Section 30 (H) corporation is hereby denied for failure to prove that it is a non-profit educational institution. Therefore, **ST. ANTHONY MONTESSORI, INC.** shall be treated as a proprietary educational institution subject to ten percent (10%) preferential rate pursuant to Section 27 (B) of the NIRC of 1997, as amended.

Please be guided accordingly.

Very truly yours,

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

Footnotes

1. Notes to FS for FY 12/31/15 and 2014.
2. Amended Articles of Incorporation, adopted on 12/20/16.
3. Section 87, Corporation Code.
4. *CIR vs. St. Luke's Medical Center, Inc.*, G.R. Nos. 195909 and 195960 dated 26 September 2012.

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