April 13, 2018

BIR RULING NO. 695-18

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

St. Francis Academy of Sta. Teresita, Incorporated
National Highway, Villasta, Teresita, Cagayan 3512

Attention: *AAA*

Gentlemen :

This refers to your letter dated November 09, 2016, applying on behalf of **ST. FRANCIS ACADEMY OF STA. TERESITA, INCORPORATED**, for tax exemption certificate being enjoyed by non-stock, non-profit educational institution under Section 30 (H) of the National Internal Revenue Code of 1997, as amended.

It is represented that **ST. FRANCIS ACADEMY OF STA. TERESITA, INCORPORATED** with Taxpayer's Identification No. (TIN) 000-000-000-000 and Certificate of Registration No. OCN 4RC0001050945 dated June 25, 2013, is a non-stock, non-profit religious educational institution 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. 51236; that the purpose for which the corporation was incorporated is *to give a sound, complete and general secondary education to children and youth in the Philippines and to promote their intellectual and moral development*; and that it was permitted and granted the following Government Recognitions by the Department of Education (DepEd):

Government Recognition/ Permit No.	Date issued	Degree/Program	Effective School Year
S-055, s. 2015	July 20, 2015	Senior High School Program Academic Track: Humanities and Social Sciences (HUMSS) Strand General Academic (Gas) Strand	2016-2017
09 s. 2004	Oct. 05, 2004	Pre-elementary and Elementary (Grades I-VI) Courses	2004-2005
48 s. 1974	May 31, 1974	Complete Secondary Course (Day) under the 2-2 Plan	-

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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 an educational institution to be exempt from tax as provided under Revenue Memorandum Order (RMO) No. 44-2016 dated July 25, 2016; to wit:

a) It is a **non-stock, non-profit educational institution**; and

b) Its revenues are actually, directly and exclusively used for educational purposes. (Emphasis supplied)

Under the above quoted provisions, one of the requirements for an educational institution to be exempt from income tax pursuant to the provisions of paragraph 3, Section 4, Article XIV of the 1987 Constitution, in relation to Section 30 (H) of the National Internal Revenue Code of 1997, as amended, and RMO No. 44-2016, is to be organized as a non-stock, non-profit educational institution. However, in the instant case, the submitted Articles of Incorporation of **ST. FRANCIS ACADEMY OF STA. TERESITA, INCORPORATED** disclosed that its registration with the SEC is only a non-stock corporation. Consequently, it cannot be qualified as a non-profit educational institution under Section 30 (H) of the National Internal Revenue Code of 1997, as amended. Therefore, it 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.

Please bear in mind that, *"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*

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burden of proof rests upon the party claiming the exemption to prove that it is in fact covered by the exemption so claimed." [1]

Please be guided accordingly.

Very truly yours,

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

Footnotes

1. *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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