November 29, 2019

BIR RULING NO. 706-19

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

Asian College of Science and Technology Foundation (Dumaguete), Inc.
Acsat Bldg., Dr. V. Locsin St.,
Taclobo, Dumaguete City,
Negros Oriental 6200

Attention: *AAA*

Gentlemen :

This refers to your undated letter applying on behalf of **ASIAN COLLEGE OF SCIENCE AND TECHNOLOGY FOUNDATION (DUMAGUETE), INC.**, 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 **ASIAN COLLEGE OF SCIENCE AND TECHNOLOGY FOUNDATION (DUMAGUETE), INC.**, with BIR Taxpayer's Identification Number (TIN) 000-000-000-000 and Certificate of Registration No. OCN 2RC0000635304 dated June 13, 2006, is a non-stock, non-profit educational institution providing higher education program in accordance with up to date and modern educational theories and methods; and that it was permitted and granted the following Government Provisional Permits by the Department of Education (DepEd), Region VII, Central Visayas:

Government Provisional Permit No.	Date issued	Degree/Program	Effective School Year
		Technical Vocational Livelihood Track — Home Economics Strand with	

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275, Series of 2015	November 17, 2015	Specialization in Cookery and Information and Communications Technology Strand with Specialization in Computer Hardware Servicing	2016-2017
010, Series of 2015	April 07, 2015	Technical-Vocational Track — Home Economics Strand (with Specializations in Housekeeping, Food and Beverage Services and Tourism Promotion Services), Industrial Arts Strand (with Specialization in Consumer Electronics Servicing), Information and Communications Technology Strand (with Specializations in Animation and Computer Programming) Academic Track — Accountancy, Business and Management (SBM) Strand	2015-2016

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:

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,*

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whenever necessary or proper, be used for the furtherance of the purpose or purposes for which the corporation was organized." [1] "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.*" [2]

In the submitted Certification, as certified to under oath by the _____ [3] of **ASIAN COLLEGE OF SCIENCE AND TECHNOLOGY FOUNDATION (DUMAGUETE), INC.** dated June 28, 2017, the Members of the Board of Trustees are receiving per diem/honorarium.

The payment of per diem/honorarium to the members of the Board of Trustees is considered a distribution of the equity (including the net income) of **ASIAN COLLEGE OF SCIENCE AND TECHNOLOGY FOUNDATION (DUMAGUETE), 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, **ASIAN COLLEGE OF SCIENCE AND TECHNOLOGY FOUNDATION (DUMAGUETE), 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.*" [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 **ASIAN COLLEGE OF SCIENCE AND TECHNOLOGY FOUNDATION (DUMAGUETE), 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, **ASIAN COLLEGE OF SCIENCE AND TECHNOLOGY FOUNDATION (DUMAGUETE), 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.

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Very truly yours,

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

Footnotes

1. Section 87, Corporation Code.
2. *CIR vs. St. Luke's Medical Center, Inc.*, G.R. Nos. 195909 and 195960 dated 26 September 2012.
3. AAA.
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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