April 16, 2018

BIR RULING NO. 716-18

Section 30 (E) of the NIRC of 1997, as amended; BIR Ruling #217-14 & #310-11; RMC 51-2014

Cavite Medical Society and Its Auxiliary Medical Foundation, Inc.
1st Street, Aguinaldo Hi-way, Cavite Civic Center
Imus, Cavite 4103

Attention: *AAA*

Gentlemen :

This refers to your letter dated August 24, 2016, requesting on behalf of **CAVITE MEDICAL SOCIETY AND ITS AUXILIARY MEDICAL FOUNDATION, INC.** (the Corporation), for tax exemption certificate being enjoyed by a non-stock corporation or association organized and operated exclusively for charitable purposes under Section 30 (E) of the Tax Code of 1997, as amended.

It is represented that the Corporation with Taxpayer's Identification No. 000-000-000-000, is organized as a non-stock, non-profit corporation registered with the Securities and Exchange Commission (SEC) bearing SEC Registration No. AN091-194043 dated August 2, 1991; and that the primary purpose for which it was incorporated is to provide free medical services to indigents and continuing medical education to the members of the organization.

Section 30 (E) exempts from income tax organizations organized and operated exclusively for charitable purposes. One of the requirements for exemption of a charitable organization is that no part of the net earnings of the organization may inure to the benefit of any private 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 *(RMC 51-2014)*. Thus, the granting by the organization of per diems constitutes prohibited inurement.

Along with police power and eminent domain, taxation is one of the three basic and necessary attributes of sovereignty. Thus, the State cannot be deprived of this most

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essential power and attribute of sovereignty by vague implications of law. Rather, being derogatory of sovereignty, the governing principle is that tax exemptions are to be construed in *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority; and he who claims an exemption must be able to justify his claim by the clearest grant of statute. Taxes being the lifeblood of the government that should be collected without unnecessary hindrance, every precaution must be taken not to unduly suppress it. *(BIR Ruling No. 310-2011 dated August 22, 2011)*

A perusal of the documents submitted shows that the Board of Trustees are entitled to receive *per diems* as provided under Section 6, Article III of the By Laws. Such transactions are considered distribution of the 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 violates the requirement that no part of the net income or assets of the corporation shall inure to the benefit of any individual or specific person.

Thus, **CAVITE MEDICAL SOCIETY AND ITS AUXILIARY MEDICAL FOUNDATION, INC.** cannot be qualified as a non-stock, non-profit corporation under Section 30 (E) of the National Internal Revenue Code of 1997, as amended. It is therefore liable for income taxes imposed under Title II of the National Internal Revenue Code of 1997, as amended.

Please be guided accordingly.

Very truly yours,

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

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