April 16, 2018

BIR RULING NO. 735-18

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

San Pedro College of Business Administration, Inc.
Old National Highway, San Pedro, Laguna 4023

Attention: *AAA*

Gentlemen :

This refers to your letter dated October 17, 2016, applying on behalf of **SAN PEDRO COLLEGE OF BUSINESS ADMINISTRATION, 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, which was forwarded to this Office by Revenue Region No. 9B (LaQueMar), San Pablo City, Laguna, through 4th Indorsement dated May 3, 2017.

It is represented that **SAN PEDRO COLLEGE OF BUSINESS ADMINISTRATION, INC.** with BIR Taxpayer's Identification No. (TIN) 000-000-000-000 and Certificate of Registration No. OCN 1RC0000811584 dated October 25, 1999, is a non-stock, non-profit 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. 133326 and with SEC Certificate of Incorporation dated June 20, 1986; that the purposes [1] for which the corporation was incorporated are:

a. *To establish an instruction of learning to offer college courses in order to help the Filipino Youth in acquiring high academic standards of instruction, cultural, vocational, or otherwise, as well as contribute to the advancement of the socio-economic development of the country;*

b. *To promote the principles of a sound, complete, and general education according to the individual and pressing needs of our modernizing society;*

c. *To provide courses of study that will promote the advancement of knowledge*

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and human welfare and desirable cultural values;

d. *To purchase, acquire, hold, sell, lease, exchange, mortgage or otherwise deal in real and personal property in the furtherance of the aims and purposes of the corporation;*

e. *To assist the government in its drive to decongest METRO MANILA by establishing schools in the provinces; and*

f. *To do and perform any and all such other powers and duties as are necessary to the attainment of the objectives or as are incidental to the purposes for which the corporation is organized.*

and that it was permitted and granted the following Government Recognitions (GR) by the Commission on Higher Education:

G.R. No.	Date Issued	Degree/Program	Academic Year
017 s. 2010	Feb. 16, 2010	Bachelor of Science in Computer Engineering (BSCpE)	2009-2010
018 s. 2010	Feb. 16, 2010	Bachelor of Science in Industrial Engineering (BSIE)	2009-2010
085 s. 2004	June 07, 2004	Bachelor of Science in Information Technology (BSIT)	2004-2005
066 s. 2003	June 05, 2003	Bachelor of Science in Tourism (BST)	2003-2004
082 s. 2001	Aug. 21, 2001	Bachelor of Elementary Education (BEED)	2001-2002
081 s. 2001	Aug. 21, 2001	Bachelor of Secondary Education (BSED-Majors in English, Mathematics and General Science)	2001-2001
128 s. 2001	Dec. 19, 2001	AB in Psychology	2001-2002
035 s. 1998	Mar. 09, 1998	Master of Business Administration	1997-1998
036 s. 1998	Mar. 09, 1998	Master of Government Management	1997-1998
015 s. 1996	Mar. 15, 1996	Bachelor of Science in Hotel and Restaurant Management (BSHRM)	1996-1997

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*

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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, 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 Corporate Treasurer and Corporate Auditor [4] of **SAN PEDRO COLLEGE OF BUSINESS ADMINISTRATION, INC.**, it was disclosed that the corporation had paid a total of One Million Pesos (Php1,000,000.00) for the Fiscal Year Ended April 30, 2016, to its trustees, corporate officers and other executive officers, representing salaries, compensation, and other emoluments.

The payment of salaries, compensation, and other emoluments to the members of the Board of Trustees is considered a distribution of the equity (including the net income) of **SAN PEDRO COLLEGE OF BUSINESS ADMINISTRATION, 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, **SAN PEDRO COLLEGE OF BUSINESS ADMINISTRATION, 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*

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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 **SAN PEDRO COLLEGE OF BUSINESS ADMINISTRATION, 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, **SAN PEDRO COLLEGE OF BUSINESS ADMINISTRATION, 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.

Please be guided accordingly.

Very truly yours,

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

Footnotes

1. Second Article, 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. Sarah Claire N. Ching-Legaspi and Rexton J. Ching dated September 14, 2016, notarized on October 27, 2016.
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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