April 30, 2018

BIR RULING NO. 755-18

Par. 3, Sec. 4, Art. XIV of the 1987 Constitution; Sections 30 (E) and (H) of the NIRC of 1997, as amended; RMO Nos. 20-2013 and 44-2016

General Emilio Aguinaldo Medical School Foundation, Inc.
Salitran II, Dasmariñas, Cavite 4114

Attention: *AAA*

Gentlemen :

This refers to your application on behalf of **GENERAL EMILIO AGUINALDO MEDICAL SCHOOL FOUNDATION, INC.**, doing business under the name and style of Emilio Aguinaldo College Medical Center-Cavite, for the issuance of a tax exemption certificate being enjoyed by non-stock, non-profit corporation under Sections 30 (E) and (H) of the National Internal Revenue Code of 1997, as amended.

It is represented that **GENERAL EMILIO AGUINALDO MEDICAL SCHOOL FOUNDATION, INC.** with BIR Taxpayer's Identification No. (TIN) 000-000-000-000 and Certificate of Registration No. OCN 1RC0000596682 dated July 13, 1979, 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. 87517; that the purposes [1] for which the corporation was incorporated are:

1. *To establish, equip, operate, manage, staff, administer, own and/or maintain a hospital or hospitals, medical and chemical laboratories and such other enterprises which may have similar or analogous undertaking or dedicated to services in connection therewith in the Philippines and/or abroad;*

2. *To function and operate as a private science and research foundation in line and in compliance with the policies and objectives enunciated in Republic Act 2067 creating the National Science Development Board, for the good of mankind and the People of the Philippines in*

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particular;

3. *To provide financial support, within the Philippines and abroad, for the studies of selected students and for the attendance of scientific conferences by qualified and competent scholars;*

4. *To support and finance publication of reports prepared under the auspices of this Foundation;*

5. *To organize, staff and finance research projects which may be established in furtherance of the purposes and objectives of this Foundation;*

6. *To receive and/or give grants, gifts, legacies, donations, contributions, endowments and financial aids or loans from any source whatsoever, and to make use of them in operating enterprises, activities and business as may be necessary to carry out the objectives of this Foundation;*

7. *To invest or exchange any portion of its donations, revenues, earnings or capital in the purchase or acquisition of shares of stocks or bonds of other corporations, and in real estate and other kinds of investments, and to these ends, to deal with any manner whatsoever with any of its holdings, properties, investments and shares of stocks as the corporation may devise or need from time to time to carry out the purposes and objectives of this Foundation;*

8. *To organize, conduct and carry on the operation of health sciences educational institutions such as Medicine, Dentistry, Nursing, Midwifery, Pharmacy, Physical Medicine and other health sciences. These institutions will be operated in accordance with accepted methods and practices employed by health science educational institutions in the Philippines and abroad;*

9. *To promote and be fully responsible for the scientific development of the said institutions of medicine and other allied health sciences for its hospitals, clinics and dispensaries and other affiliations and for the amplication of its work in the interest of public and private health;*

10. *Generally, to do all such things, transact such activities, exercise such power and authority as may be directed necessary, suitable or proper for the accomplishment of any of the purposes or the attainment of any one or more of the objects herein enumerated or which shall appear at any time conducive to, or expedient for the foundation, it being expressly understood however, that whatever assets that may remain at the expiration of the term of existence or dissolution of the*

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foundation for any cause provided by law, shall be conveyed or disposed of in trust to a successor foundation to be organized by members of this Foundation on the date of its dissolution, or to another accredited NGO or organization of similar purposes, or would be distributed by a competent court of justice to another accredited NGO to be used in such manner as in judgment of said court shall best accomplish the general purpose for which the dissolved organization was organized; and that since the purpose and essence of this foundation is purely humanitarian, scientific, educational and philanthropic, it is expressly declared that this is a corporation not for gain or individual profit, thus no dividend shall ever be declared or paid to any of its members, nor shall any part of the net income or asset of the corporation belong to or inure to the benefits of any members, organizer, officer or any specific person and that all members of the Board of Trustees do not receive compensation or remuneration for their services to the aforesaid organization and that the level of administrative expenses shall not exceed thirty (30%) percent of the total donations received and of total expenses for the taxable year.

and that it was granted a Certificate of Accreditation for Clinical Laboratory/Health Facility for the Training of Medical Technology Interns, by the Commission on Higher Education.

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, Sections 30 (E) and (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:*
>
> *(E) Non-stock corporation or association organized and operated exclusively for religious, charitable, scientific, athletic, or cultural purposes, or for the rehabilitation of veterans,* ***no part of its net income or asset shall belong to or inure to the benefit of any member, organizer, officer or any specific person****;*
>
> XXX XXX XXX
>
> *(H) A* ***non-stock and non-profit*** *educational institution; x x x"* (Emphasis

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supplied)

"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 assets devoted to the institution's purposes and all its activities conducted not for profit."* [3]

As certified to under oath by the _____ [4] of **GENERAL EMILIO AGUINALDO MEDICAL SCHOOL FOUNDATION, INC.**, the Members of the Board of Trustees are receiving emoluments consisting of _____ Pesos (Php_____) every meeting conducted once every quarter.

The payment of such emoluments and other benefits to the members of the Board of Trustees is considered a distribution of the equity (including the net income) of **GENERAL EMILIO AGUINALDO MEDICAL SCHOOL FOUNDATION, 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 assets devoted to the institution's purposes and all its activities conducted not for profit." Thus, **GENERAL EMILIO AGUINALDO MEDICAL SCHOOL FOUNDATION, INC.** cannot be qualified as a non-profit corporation under Sections 30 (E) and (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 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, your request on behalf of **GENERAL EMILIO AGUINALDO MEDICAL SCHOOL FOUNDATION, INC.** to be exempted from income tax on its income as a corporation under Sections 30 (E) and (H) is hereby denied as it failed to prove that it is a non-profit corporation. Therefore, **GENERAL EMILIO AGUINALDO MEDICAL SCHOOL FOUNDATION, INC.** shall be treated as a proprietary educational institution and hospital 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.

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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. AAA, dated May 17, 2017.
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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