May 10, 2018

BIR RULING NO. 803-18

Section 30 of the Tax Code of 1997, as amended

Philippine Guidance and Counseling Association, Inc.
Room 108 Phil. Social Center Building
Commonweath Avenue, Quezon City

Attention: *AAA*

Madam :

This refers to your letter dated November 3, 2016, received via indorsement dated March 28, 2017 from Revenue Region No. 7, Quezon City, requesting for issuance of a certificate of tax exemption pursuant to Section 30 (A) of the National Internal Revenue Code of 1997, as amended.

It is represented that **PHILIPPINE GUIDANCE AND COUNSELING ASSOCIATION, INC.** with BIR Taxpayer's Identification No. (TIN) 000-000-000-00000 and Certificate of Registration No. OCN 3RC0000723090 dated November 11, 2015, is a non-stock, non-profit association 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. 37373 and with SEC Certificate of Amended Articles of Incorporation dated July 13, 2016; and that the purpose for which the association was incorporated are as follows:

a. To improve the standards of guidance and personnel work;

b. To promote and stimulate the exchange of professional experience through international, national, regional and/or local meetings;

c. To stimulate, promote and support researches and other professional activities that will contribute to the improvement of education;

d. To disseminate pertinent and valuable professional activities that will contribute to the improvement of education (as amended on May 14, 1997); and

e. To bring together and unite in action all guidance and personnel

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workers for a better understanding and acceptance of the principles and professional standards of guidance and personnel movement.

In reply, Section 30 (A) of the National Internal Revenue Code (NIRC) 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
>
> *(A)* ***Labor, agricultural or horticultural*** *organization not organized principally for profit." (Emphasis supplied)*

After a careful evaluation, considering that the purpose for which the association was incorporated and the nature of the activities being performed by the Company are not among those contemplated by the above-stated provision, your request for tax exemption as a non-stock non-profit association under Section 30 (A) of the Tax Code of 1997, as amended, is hereby denied for lack of legal basis.

It should be noted that in the "industry classification" of the SEC and Bureau of Internal Revenue (BIR), the Company is registered as performing "activities of professional organizations."

In addition, being registered as a non-stock and non-profit corporation does not, by this reason alone, completely exempt an institution from tax. *(Commissioner of Internal Revenue vs. St. Luke's Medical Center, Inc., G.R. No. 195909 & G.R. No. 195960, 26 September 2012)*

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. *(Quezon City and The City of Treasurer of Quezon City vs. ABS-CBN Broadcasting Corporation, G.R. No. 166408, 6 October 2008)*

"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."* [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]

It is noted that while Amended Articles of Incorporation provides that "the trustees

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of the non-profit association do not receive any compensation or remuneration," the Certificate under Oath executed by the Treasurer on October 11, 2016 provides that members of the Board of Directors are paid an amount of _____ (P_____) monthly.

The payment of monthly transportation allowance to members of the Board of Directors are considered distribution of equity (including the net income) of the Philippine Guidance and Counseling Association, Inc. These are forms of private inurements which the law prohibits in the organization and operation of a non-stock, non-profit associations. These acts are 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 association's purposes and all its activities conducted not for profit." Thus, Philippine Guidance and Counseling Association, Inc. *shall be treated as an ordinary corporation subject to regular corporate income tax* and the applicable internal revenue taxes imposed by the Tax Code of 1997, as amended.

Moreover, Section 105 of the Tax Code of 1997 provides that any person who, in the course of trade or business, sells, barters, exchanges, leases goods or properties, renders services, and any person who imports goods shall be subject to the value-added tax (VAT) imposed in Sections 106 and 108 of the same Code.

The phrase "in the course of trade or business" means the regular conduct or pursuit of a commercial or an economic activity, including transactions incidental thereto, by any person regardless of whether or not the person engaged therein is a non-stock, non-profit private organization (irrespective of the disposition of its net income and whether or not it sells exclusively to members or their guests), or government entity.

Accordingly, if Philippine Guidance and Counseling Association, Inc. is engaged in the sale of goods or services in the course of a business pursuit, including transactions incidental thereto, in general, it shall be liable to 12% VAT, in case the gross receipts from such sales is One Million Nine Hundred Nineteen Thousand Five Hundred Pesos (P1,919,500.00), or to the 3% percentage tax, if gross receipts do not exceed P1,919,500.00.

Notwithstanding that it is a non-stock, non-profit corporation, its purchase of goods or properties or services and importation of goods shall nevertheless be subject to the 12% value added tax pursuant to Sections 106 and 107 of the National Internal Revenue Code of 1997, as amended.

Please be guided accordingly.

Very truly yours,

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(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.

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