January 24, 2020

BIR RULING NO. SH30-019-20

Section 30 (H) of the NIRC of 1997, as amended; RMO No. 20-2013; RMC No. 051-14; BIR Ruling No. 466-2014

Mary the Queen College (Pampanga), Inc.
MQC Bldg., Jose Abad Santos Ave.
San Matias, Guagua, Pampanga 2003

Attention: *AAA*

Gentlemen :

This refers to your letter dated June 27, 2018, applying on behalf of **MARY THE QUEEN COLLEGE (PAMPANGA), INC.** for tax exemption certificate being enjoyed by non-stock, non-profit corporation or association under Section 30 (H) of the National Internal Revenue Code (NIRC) of 1997, as amended.

It is represented that **MARY THE QUEEN COLLEGE (PAMPANGA), INC.** with BIR Taxpayer's Identification No. (TIN) 000-000-000-000 and Certificate of Registration No. OCN 4RC0001052810 dated June 18, 2003, 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. CN200260042; and that the purposes [1] for which the association was incorporated is *"to establish, operate and maintain schools and/or colleges similar educational institutions offering nursery, pre-school, kindergarten, elementary, high school, college education and technical vocational education and training subject to the laws of the Philippines; and to receive tuitions and miscellaneous fees, accept donations, endowments, grants, legacies and instruments/devices conformably with existing applicable statutes."*

In reply, please be informed that Section 30 of the National Internal Revenue Code of 1997, as amended, enumerates the non-stock and/or non-profit corporations/associations/organizations that are exempt from income tax in respect to income received by them as such. Section 30 (H) of the National Internal Revenue Code of

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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 nonstock and nonprofit educational institution;*"
>
> xxx xxx xxx"

"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]

Revenue Memorandum Circular (RMC) No. 51-2014 has clarified that in order for an entity to qualify as a non-stock and/or non-profit corporation/association/organization exempt from income tax under Section 30 of the NIRC of 1997, as amended, its earnings or assets shall not inure to the benefit of any of its trustees, organizers, officers, members or any specific person. The following are considered "inurements" of such nature:

1. *The payment of compensation, salaries, or honorarium to its trustees or organizers*; x x x.

In the submitted documents of **MARY THE QUEEN COLLEGE (PAMPANGA), INC.**, it was disclosed that Board of Directors are entitled to per diem. Treasurer's Certification by Corporate Treasurer Reynaldo S. David of **MARY THE QUEEN COLLEGE (PAMPANGA), INC.**, dated May 15, 2018, states that:

> *"x x x. That the corporation is paying the Board of Trustees a per diem/transportation allowance of P2,000.00 each upon attendance during board meetings which is done twice a year, for a total of P20, 000.00 for a fiscal year. x x x"*

The giving of per diem to the members of the Board of Directors is considered a distribution of the equity (including the net income) of **MARY THE QUEEN COLLEGE (PAMPANGA), 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 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, **MARY THE QUEEN COLLEGE (PAMPANGA), INC.** cannot be qualified as a non-stock, non-profit corporation under

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Section 30 (H) of the NIRC 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] ***(BIR Ruling No. 466-2014 dated November 19, 2014)***.

In view of the foregoing, the request of **MARY THE QUEEN COLLEGE (PAMPANGA), INC.** to be exempted from income tax on its income as a Section 30 (H) corporation is hereby denied as it failed to prove that it is a non-profit corporation. Therefore, **MARY THE QUEEN COLLEGE (PAMPANGA), 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 NIRC of 1997, as amended.

Please be guided accordingly.

Very truly yours,

CAESAR R. DULAY
Commissioner of Internal Revenue

Footnotes

1. Amended Articles of Incorporation adopted on June 07, 2013.
2. Section 87, Corporation Code.
3. *CIR vs. St. Luke's Medical Center, Inc.*, G.R. Nos. 19909 and 195960 dated 26 September 2012.
4. *Ibid.*
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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