REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

Quezon City

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
BIR Ruling Nos. 466-14 & 1111-18
0789-2019 DEC 13 2019

COLEGIO DE STO. NIÑO DE BUSTOS, INC.
797 Hilario St., Poblacion, Bustos
Bulacan 3007

Attention: **Robert S. Vicente**
Chairman of the Board and President

Gentlemen:

This refers to your letter dated June 24, 2017, applying on behalf of **COLEGIO DE STO. NIÑO DE BUSTOS, INC.** for the issuance of a certificate of tax exemption enjoyed by a non-stock, non-profit corporation or association organized and operated exclusively for educational purposes under Section 30(H) of the Tax Code of 1997, as amended.

It is represented that **COLEGIO DE STO. NIÑO DE BUSTOS, INC.** with BIR Taxpayer's Identification No. (TIN) and Certificate of Registration No. OCN dated May 30, 2000, 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. ; and that the primary purpose[1] for which the association was incorporated *is to establish and operate an educational institution which shall provide courses of study in Pre-Elem, Elementary, Secondary (First to Fourth Year) subject to the laws of the Philippines*; and that it was granted a Certificate of Good Standing by the Schools Division of Bulacan on November 8, 2017.

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."

Similarly, Section 30 (H) 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

[1] Articles of Incorporation, adopted on August 14, 2001.

(H) A non-stock and non-profit educational institution; xxx."

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 documents of **COLEGIO DE STO. NIÑO DE BUSTOS, INC.**, it was disclosed that Section 11, Article II of the By Laws, states that "by resolution of the Board, each trustees shall receive a reasonable per diem allowance for his attendance at each quarterly meeting of the Board. As compensation, the board shall receive and allocate an amount of not more than ten percent (10%) of the net income before income tax of the corporation during the preceding year. Such compensation shall be determined and appropriated among the trustees xxx xxx.". In addition, the Treasurer's Affidavit/Certification declares that:

> "members of the Board of Trustees and Officers of the **COLEGIO DE STO. NIÑO DE BUSTOS, INC.** are receiving renumeration for assuming the position as trustees as set by the board xxx."

The giving of compensation, salaries, benefits, allowances and per diems to the members of the Board of Trustees is considered as distribution of equity (including the net income) of **COLEGIO DE STO. NIÑO DE BUSTOS, 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, **COLEGIO DE STO. NIÑO DE BUSTOS, INC.** cannot be qualified as a non-stock, 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*"[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 **COLEGIO DE STO. NIÑO DE BUSTOS, 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 corporation. Therefore, **COLEGIO**

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[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] 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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DE STO. NIÑO DE BUSTOS, 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,

CAESAR R. DULAY
Commissioner of Internal Revenue

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COPY FURNISHED:

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Plaridel, Bulacan

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