REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

Quezon City

Section 4(3), Article XIV, 1987 Constitution; Sections 27 (A),(B),(D)(1), 30(H); 57; 101(A)(3); 105; 109(H), 235; 236(B); 237 of the 1997 Tax Code, as amended; Department Order No. 137-87, as amended by Department Order No. 92-88; Department Order No. 149-95; RMC No. 76-2003
BIR Ruling No. 459-13; BIR Ruling No. 455-13; BIR Ruling No. 438-13; BIR Ruling No. 059-13; BIR Ruling No. 548-12
#006-2016
1-8-2016

FELICIANO & KHAN LAW OFFICES
3rd Floor EMF Building
7426 Santillan Street
Makati City 1230

Attention : **Maria Lourdes C. Feliciano-Khan**

Gentlemen:

This refers to your letter dated December 18, 2013, requesting in behalf of **MATER ECCLESIAE SCHOOL, INC.** for a certificate of tax exemption enjoyed by non-stock, non-profit educational institutions pursuant to Paragraph 3, Section 4, Article XIV of the 1987 Constitution and Section 30 (H) of the Tax Code of 1997, as amended.

It is represented that **MATER ECCLESIAE SCHOOL, INC.** with Taxpayer Identification Number (TIN) , is a non-stock, non-profit educational institution duly organized under the laws of the Philippines; that it is registered with the Securities and Exchange Commission (SEC) under Company Registration No. 158740 dated 6 January 1989; that the purposes for which it is formed is:

> " *The establishment of an institution of learning offering pre-elementary and elementary, secondary, special education vocational, technical and college courses dedicated to the spiritual, moral and academic instruction of students in accordance with the values, ethics*

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and precepts of the Roman Catholic faith, as well as to contribute to the socio-economic development of the country.

And in pursuance of said purpose, the corporation shall have the following powers:

1. *To grant scholarships, financial aid and other forms of assistance or support services to deserving but financially deprived students, teachers, volunteers, support staff and their families;*

2. *To organize, operate and maintain canteens, stores, bookstores, school dormitories, printing and publishing establishments, or otherwise engage in education-related, ancillary, supportive activities;*

3. *To establish, organize and operate programs and activities that educate and allow its students to engage in community and nation-building through religious and charitable activities and projects.*

4. *To purchase, acquire, hold, sell, lease, exchange, mortgage or otherwise acquire by purchase, donation, devise, gifts, bequests or otherwise deal in real and personal property as may be necessary or useful to carry out the objects and purposes of the corporation;*

5. *To borrow money and to mortgage its properties, real or personal as security for the corporation's obligations;*

6. *To import goods, supplies and equipment, purchased by or donated to the school, to be used by the school in its operation or in the furtherance of its purposes or in direct distribution to the beneficiaries of the programs and activities pursuant to the purposes for which this corporation is organized; and*

7. *To otherwise engage in any activity or do such things connected with the growth, development and operation of the school, or which may be directly or indirectly incidental to the attainment of the above purposes, or any of them."*

and that the Department of Education (DepEd) has issued Certification dated 10 December 2013 certifying that **MATER ECCLESIAE SCHOOL, INC.** is in the Masterlist of Private Schools, Division of Laguna, School Year 2013-2014" and "that the said school has been operating in good standing since school year 1989-1990. It has the following Government Recognition (GR) No. 012, s. 1996 to operate the complete secondary course, effective as of 1996-1997; GR No. 069, s. 1995 to operate the first to fourth curriculum year for School Year 1995-1996 only; GR No. 013, S. 1991 for the Nursery, Kindergarten and Preparatory to Grade 1 of the Pre-Elementary Course effective as of May 24, 1991. GR No. K-82, R1, s. 1990 to operate Nursery, Kindergarten and Preparatory to Grade I of

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the Pre-Elementary Course for the School Year 1990-1991; GR No. E-012 s. 1994 for the Grades I-VI of the Elementary Course effective as of SY 1994-1995; GR No. E-051 s. 1994 for the Grades I-VI of the Elementary Course for the School Year 1994-1995 only.

In support of its request, **MATER ECCLESIAE SCHOOL, INC.** submitted the following documents:

1.) Original copy of application letter for issuance of Tax Exemption Ruling;
2.) Certified true copy of the Amended Articles of Incorporation which includes the following provisions:
    a. That the corporation is non-stock , non-profit;
    b. That the primary purpose for which it was created is to establish and conduct an educational institution under Section 30 (H) of the Tax Code of 1997, as amended;
    c. It does not contemplate the distribution of gains, profits or dividends to its members. No part of its property, income or asset shall, at anytime during its existence, inure to the benefit of any member, trustee, officer, any private person, corporation or association have any pecuniary right or interest in the profits of the corporation;
    d. No member of the Board of Trustees shall receive compensation by virtue of her position as trustee of the corporation";
    e. In case of dissolution, all assets remaining after payment of liabilities shall go to another non-stock, non-profit corporation or non-government organization (NGO) of the religious congregation of the Daughters of Virgin Mary Immaculate to be designated by the Superior General of said religious congregation, subject to the approval of the Board of Trustees and members of this corporation; in the absence thereof, to the state, or to be distributed by a competent court of justice to another NGO to be used in such manner as in the judgment of said court, shall best accomplish the general purpose for which this corporation was organized;
3.) Certified true copy of the amended By- Laws;
4.) Original copy of Certification under Oath by its Treasurer/CFO as to: (i) all previous amendments/changes in the Articles of Incorporation and By-Laws, (ii) manner of activities, and (iii) the sources and disposition of income of the subject corporation or association;
5.) Certified true copy of the Certificate of Registration with the BIR;
6.) Original copy of the Certification under Oath by the Treasurer/CFO certifying that the School's trustees and corporate officers do not receive any remuneration or compensation from the School;
7.) Original copy of the Certification issued by the Revenue District Officer, RDO No. 57, Biñan, Laguna, that the corporation has no outstanding liability;
8.) Certified true copies of the Income Tax Returns or Annual Information Returns and Financial Statements of the corporation for the last three (3) years;
9.) Original copy of a statement under Oath its as to its *modus operandi;*
10.) Certified true copy of Government (DepEd) Recognition Certificates;

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11.) Certificate of Good Standing issued by DepEd Region IV-Calabarzon; and
12.) Original copy of Certification under oath by its Treasurer/CFO as to the utilization of annual revenues and assets.

In reply, please be informed that paragraph 3, Section 4, Article XIV of the 1987 Constitution provides, viz.:

> *"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."*

Likewise, Section 30 (H) of the 1997 Tax Code, 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*
>
> *(H) A non-stock and non-profit educational institution; xxx."*

A non-stock, non-profit educational institution is exempt from tax on all revenues derived in pursuance of its purpose as an educational institution and used actually, directly and exclusively for educational purposes. The exemption contemplated herein refers to internal revenue taxes imposed by the National Government on all revenues and assets of non-stock, non-profit educational institutions used actually, directly and exclusively for educational purposes. *(BIR Ruling No. 459-13 dated December 6, 2013)*

Private non-profit educational institutions whose gross income from unrelated trade, business or other activity does not exceed fifty percent (50%) of their total gross income derived from all sources, shall pay a tax of ten percent (10%) on their taxable income, except those covered by Section 27(D) of the Tax Code of 1997, as amended. However, if their gross income from unrelated trade, business or other activity exceeds fifty percent (50%) of their total gross income derived from all sources then the entire taxable income shall be subject to the regular corporate income tax rate prescribed under Section 27 (A) of the Tax Code of 1997, as amended." *(Section 27 (B) of the Tax Code of 1997, as amended and Commissioner of Internal Revenue vs. St. Luke's Medical Center, Inc., G. R. Nos. 195909 and 195960 dated 26 September 2012)*

Unrelated trade, business or other activity means any trade, business or activity, the conduct of which is not substantially related to the exercise or performance by such educational institution of its primary purpose or function. *(Section 27 [B], Tax Code of 1997)*

From the foregoing, and since **MATER ECCLESIAE SCHOOL, INC.** is a non-stock and non-profit educational institution as contemplated under the said provisions, it is

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exempt from the payment of taxes and duties on all its revenues and assets used actually, directly and exclusively for educational purposes. *(BIR Ruling No. 459-13 dated December 6, 2013)*

However, **MATER ECCLESIAE SCHOOL, INC.** shall be subject to internal revenue taxes on income from trade, business or other activity, the conduct of which is not related to the exercise or performance by such educational institutions of their educational purposes or functions. (Sec. 2, Finance Department Order No. 137-87, as amended by Finance Department Order No. 92-88)

Likewise, **MATER ECCLESIAE SCHOOL, INC.** gross receipts from operations as a non-stock, non-profit educational institution are exempt from value-added tax (VAT) pursuant to Section 109 (1)(H) of the 1997 Tax Code, as amended.

However, other activities involving sale of goods and services not in connection with its primary purposes are subject to the 12% VAT imposed under Sections 106 and 108 of the Tax Code of 1997, as amended, or 3% percentage tax imposed under Section 116 in relation to Section 109 (1)(V) of the same Code if the gross sales or receipts from such sale of goods and services do not exceed One Million Nine Hundred Nineteen Thousand Five Hundred Pesos (P1,919,500.00) which tax payment may legitimately be passed on to buyers of such goods and services. *(BIR Ruling No. 455-13 dated November 27, 2013)*

Hence, as long as **MATER ECCLESIAE SCHOOL, INC.** will not engage in the regular conduct or pursuit of a commercial or economic activity including transactions incidental thereto, it will remain exempt from VAT. *(BIR Ruling No. 438-13 dated November 21, 2013)*

Moreover, the tax exemption granted to it as a non-stock, non-profit corporation under Section 30 of the Tax Code of 1997 covers only income taxes for which it is directly liable. It should be noted that VAT is an indirect tax payable by the seller and not by the purchaser of goods. However, being an indirect tax, it can be shifted or passed on to the buyer/purchaser, transferee or lessee of the goods, properties or services. Once shifted to the buyer/customer as an addition to the cost of goods or services sold, it is no longer a tax but an additional cost which the buyer/customer has to pay in order to obtain the goods or services.

Thus, the shifting of the VAT to it does not make it the person directly liable and therefore, it cannot invoke its tax exemption privilege under Section 30 of the Tax Code of 1997 to avoid the passing on or shifting of the VAT. *(BIR Ruling No. 059-13 February 11, 2013)*

Under Department Order No. 149-95 dated November 24, 1995 amending Department Order No. 137-87, interest income from currency bank deposits and yield from deposit substitute instruments used actually, directly and exclusively in pursuance of its purpose as an educational institution, are exempt from the 20% final tax and 7 ½ % tax on interest income under the expanded foreign currency deposit system imposed under Section

27(D)(1) of the Tax Code of 1997, subject to compliance with the conditions that as a tax-exempt educational institution it shall on an annual basis submit to the Revenue District Office concerned an annual information return and duly audited financial statement together with the following:

(a) Certification from their depository banks as to the amount of interest income earned from passive investment not subject to the 20% final withholding tax and 7 ½ % tax on interest income under the expanded foreign currency deposit system imposed by Section 27(D)(1) of the Tax Code of 1997;
(b) Certification of actual utilization of the said income; and
(c) Board Resolution by the school administration on proposed projects (i.e., construction and/or improvement of school buildings and facilities, acquisition of equipment, books and the like) to be funded out of the money deposited in banks or placed in money markets, on or before the 15th day of the fourth month following the end of its taxable year (Sec. 4, Finance Department Order No. 137-87).

Moreover, revenues derived from assets used in the operation of cafeterias/canteens and bookstores are exempt from taxation provided they are owned and operated by **MATER ECCLESIAE SCHOOL, INC.** as ancillary activities and the same are located within its premises.

In addition, gifts, donations, and other contributions received by **MATER ECCLESIAE SCHOOL, INC.** as an educational institution, are exempt from the payment of donor's tax pursuant to Section 101 (A)(3) of the Tax Code of 1997, as amended, subject to the condition that not more than 30% of said gift shall be used for administration purposes.

Donors cannot avail of full deductibility for purposes of computing taxable income under Revenue Regulations No. 13-98 without the accreditation of **MATER ECCLESIAE SCHOOL, INC.** as a donee institution with the Philippine Council for NGO Certification (PCNC). Organizations seeking certification shall file with the PCNC Secretariat a letter of intent to apply for certification and submit the necessary documents. If the applicant NGO has met the minimum criteria for certification, the Board gives a 3-year or 5-year certification to the organization and informs this Office which then issues to said organization a certification of Donee Institution Status.

MATER ECCLESIAE SCHOOL, INC. is advised to contact The Secretariat, Philippine Council for NGO Certification (PNCN), tel. nos. 782-1568, 715-9594, 715-2756 or telefax 715-2783.

It must be emphasized that its tax exemption does not cover withholding taxes. As an educational institution, **MATER ECCLESIAE SCHOOL, INC.** is constituted as withholding agent for the government required to withhold the tax on compensation income of its employees, or the withholding tax on income payments to persons subject to tax pursuant to Section 57 of the Tax Code of 1997, as amended.

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Moreover, **MATER ECCLESIAE SCHOOL, INC.** is also subject to the payment of the annual registration fee of Php500.00 as prescribed in Section 236 (B) of the Tax Code of 1997, as amended. It is also required under Section 6 (C) in relation to Section 237 of the same Code to issue duly registered receipts or sales or commercial invoices for each sale or transfer of merchandise or for services rendered which are not directly related to the activities for which they are registered. (RMC No. 76-2003)

Under Section 235 of the Tax Code of 1997, as amended, any provision of existing general or special law to the contrary notwithstanding, the Revenue District Officer shall conduct an audit of annual information return filed, the books of accounts and other pertinent records of **MATER ECCLESIAE SCHOOL, INC.** to determine compliance with the conditions set forth in the certificate of tax exemption and tax liabilities, if any. *(BIR Ruling No. 548-12 dated August 31, 2012)*

Please note that this tax exemption ruling shall be valid for a period of three (3) years from the date of issue, unless sooner revoked or cancelled.

The tax exemption ruling may be renewed upon filing of a subsequent application for Tax Exemption/Revalidation with the same requirements and procedures provided under Revenue Memorandum Order (RMO) No. 20-2013. Failure to renew the Tax Exemption Ruling shall be deemed a revocation thereof upon the expiration of the three (3)-year period. The new Tax Exemption Ruling shall be valid for another period of three (3) years, unless sooner revoked or cancelled.

This ruling is being issued on the basis of the foregoing facts as represented. However, if upon investigation, it will be ascertained that the facts are different, then this ruling shall be considered null and void.

Very truly yours,

KIM S. JACINTO-HENARES
Commissioner of Internal Revenue

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