REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE
Quezon City

Sec. 30(H), NIRC	000-00	CT- 182-21

Person to Contact: Chief, Law & Legislative Division
Tel Nos. 926-55-36/927-09-63

Date: MAY 19 2021

DIVINE LIGHT ACADEMY, INC.
No. 7 Rosal St., Doña Manuela Subd.
Las Piñas City

Attention: **Atty. Eranio L. Punsalan**

This refers to your letter dated December 16, 2019 requesting on behalf of **Divine Light Academy, Inc. (DLAI)** for reconsideration of BIR Ruling No. 727-2019 dated December 5, 2019 denying its request for renewal of its tax exemption.

The pertinent portion of the aforesaid Ruling provides:

> "The payment of salaries and other incentives to members of the Board of Trustees is considered a distribution of the equity (including the net income) of DIVINE LIGHT ACADEMY, 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 asset devoted to the institution's purposes and all its activities conducted not for profit.' Thus, DIVINE LIGHT ACADEMY, INC. cannot be qualified as a non-profit educational institution under Section 30 (H) of the National Internal Revenue Code of 1997, as amended."

It is argued that there was no misrepresentation in the sworn certification issued by the treasurer of DLAI that its trustees do not receive any amount of income, compensation, salaries, per diem or any emoluments from the school since the Alpha List for the year 2013 shows that Dr. Leonila D. Sese, Engr. Antonio D. Sese, and Rodel D. Aurelio received compensation income as officers of the company and not by reason of their being members of the board of trustees.

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While it is true that the aforesaid Trustees are receiving compensations or emoluments, they do so not as Trustees of DLAI but as officers of the corporation.

In reply, please be informed that the Supreme Court, in the case of *Western Institute of Technology, Inc., et. al vs. Ricardo T. Salas, et. al., G.R. No. 113032, August 21, 1997*, held:

"The pertinent section of the Corporation Code provides:

> *Sec. 30. Compensation of directors – In the absence of any provision in the by-laws fixing their compensation, the directors shall not receive any compensation, as such directors except for reasonable per diems: Provided, however, That any such compensation (other than per diems) may be granted to directors by the vote of the stockholders representing at least a majority of the outstanding capital stock at a regular or special stockholders' meeting. In no case shall the total yearly compensation of directors, as such directors, exceed ten (10%) percent of the net income before income tax of the corporation during the preceding year.*

There is no argument that directors or trustees, as the case may be, are not entitled to salary or other compensation when they perform nothing more than the usual and ordinary duties of their office. This rule is founded upon the presumption that directors/trustees render service gratuitously, and that the return upon their shares adequately furnishes the motives for service, without compensation. Under the foregoing section, there are only two (2) ways by which members of the board can be granted compensation apart from reasonable per diems: (1) ***when there is a provision in the by-laws fixing their compensation****; and (2) when the stockholders representing a majority of the outstanding capital stock at a regular or special stockholders' meeting agree to give it to them.*

This proscription, however, against granting compensation to directors/trustees of a corporation is not a sweeping rule. Worthy of note is the clear phraseology of Section 30 which states: '. . . [T]he directors shall not receive any compensation, as such directors, ...' The phrase 'as such directors' is not without significance for it delimits the scope of the prohibition to compensation given to them for services performed purely in their capacity as directors or trustees. ***The unambiguous implication is that members of the board may receive compensation, in addition to reasonable per diems, when they render services to the corporation in a capacity other than as directors/trustees."*** *(Emphasis provided)*

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The High Court in the above decision categorically ruled that corporate officers who are at the same time directors or trustees of the corporation are entitled to additional compensation other than reasonable per diems.[1]

We note that in a resolution of the Board of Trustees dated December 7, 2013, it was adopted and approved that the Chairman, President, Vice-President, Treasurer, and Secretary shall be compensated or remunerated fairly, reasonably, and equitably. For such purpose, it was resolved that an Ad Hoc Compensation Committee be designated to formulate the reasonable compensation for each of the above corporate positions. Dr. Leonila D. Sese, Engr. Antonio D. Sese, and Rodel D. Aurelio (former Trustee) were duly elected officers of DLAI who were receiving their compensations as such officers of the corporation.[2]

Sections 1 to 5 of Article IV of the By-laws enumerate the corresponding duties of the abovementioned officers. Clearly, Dr. Leonila D. Sese, Engr. Antonio D. Sese, and Rodel D. Aurelio received compensation not in their capacity as members of the board, but rather as officers of the corporation as authorized by the corporation's By-laws.

Such being the case, your request for reconsideration of the ruling denying DLAI's request for renewal of its tax exemption is GRANTED and BIR Ruling No. 727-2019 is hereby REVERSED and SET ASIDE.

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,

CAESAR R. DULAY
Commissioner of Internal Revenue

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[1] SEC Opinion dated August 19, 1992
[2] See Alpha List for 2014 to 2016