June 16, 2021

BIR RULING NO. SH30-208-21

Par. 3, Sec. 4, Art. XIV of the 1987 Constitution; Section 30 (H) of the NIRC of 1997, as amended; RMO No. 44-2016; BIR Ruling No. 789-2019

Kinect Academy, Inc.
574 Delos Reyes St., San Vicente
Gapan City, Nueva Ecija, 3105

Attention: *AAA*

Gentlemen :

This refers to your letter dated June 28, 2020, applying on behalf of **KINECT ACADEMY, 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 **KINECT ACADEMY, INC.** with BIR Taxpayer's Identification No. (TIN) _____, 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. CN201427349.

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.*:

Copyright 2021 CD Technologies Asia, Inc.

"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 non-stock and non-profit educational institution; x x x."

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." [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]

In the submitted Treasurer's Affidavit of **KINECT ACADEMY, INC.** dated January 31, 2020, it was disclosed that BBB is receiving monthly honorarium equivalent to five thousand pesos (P5,000.00).

Moreover, in the submitted Sworn Statement as to the Reason of Compensation of **KINECT ACADEMY, INC.** dated August 7, 2020, it was also disclosed that BBB, a member of the board with a declared monthly allowance, is being reimbursed for the accumulation of per diems, travel expenses, and other miscellaneous fees which is capped at the amount of five thousand pesos (P5,000.00). However, there is no indication that accumulated per diems pertain to expenses actually incurred by BBB for reimbursement and it is on top of travel expenses and other miscellaneous expenses. Notably, a member of the Board of Trustees is entitled to monthly allowance.

The giving of monthly honorarium to the members of the Board of Trustees is considered as distribution of equity (including the net income) of **KINECT 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 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, **KINECT ACADEMY, INC.** cannot be qualified as a non-stock,

Copyright 2021 CD Technologies Asia, Inc.

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."* [3] *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."* [4] (BIR Ruling No. 466-2014 dated November 19, 2014)

In view of the foregoing, the request of **KINECT ACADEMY, 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 educational corporation. Therefore, **KINECT ACADEMY, INC.** shall be treated as an ordinary corporation subject to (30%) income tax rate pursuant to Section 27 (A) and other internal revenue taxes imposed by the National Internal Revenue Code of 1997, as amended.

Please be guided accordingly.

Very truly yours,

(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.
3. *Ibid*.
4. *Quezon City and The City Treasurer of Quezon City vs. ABS-CBN Broadcasting Corporation*, [G.R. No. 166408, 6 October 2008].

Copyright 2021 CD Technologies Asia, Inc.