REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

Quezon City

Section 4 (3), Article XIV 1987 Constitution; Sections 27 (D)(1), 30 (H); 101 (A)(3); 105; 109 (H) of the Tax Code of 1997, as amended
BIR Ruling No. 170-11; BIR Ruling No. 169-11; BIR Ruling No. 159-11
#023-2016
1-11-2016

DIVINE MERCY SCHOOL OF TAGUM, INC.
La Fortuna, Suaybaguio District
Magugpo North, Tagum City

Attention: **Jesus Emmanuel A. Zamora**
Corporate Secretary

Gentlemen:

This refers to your letter dated 28 July 2011 requesting for the issuance of a Certificate of Tax Exemption enjoyed by a non-stock, non-profit educational institution under Section 30 (H) of the Tax Code of 1997 as amended.

It is represented that **DIVINE MERCY SCHOOL OF TAGUM, INC.**, with Taxpayer's Identification No. 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. dated 9 August 2006; that the purposes for which the School is formed are:

1) *"To inspire all parents to send their children to schools of learnings through personal sacrifice and firm determination that in the end their children will be able to squeeze a decent living";*
2) *"To encourage and inspire a dynamic social order in the community through programs, development projects and other initiative leading to human and educational advancement";*
3) *"To promote common welfare and harmonious relationships among members of the association through consultative and democratic leadership";*
4) *"To accept donations, contributions, grants, bequests or gifts, in cash or in kind from government organizations and agencies, private entities or individuals to the end that the aforementioned purposes may be successfully attained";*
5) *"To be a leader in prounding the highest quality, socially, responsibly and cost-effective service";*
6) *"Supports to individuals so that they might live full and abundant lives";*

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7) *"To establish and operate an educational institution or learning center which shall provide courses of study in pre-school/grade school/high school/ college/ technical courses subject to the laws of the Philippines; and*
8) *"To cater and support individuals with disabilities also so that they might live full and abundant lives"*

and that **DIVINE MERCY SCHOOL OF TAGUM, INC.** was granted by the Department of Education (DepEd) Government Permit R-XI No. 220 s. 2012 to operate Preschool, Grades I-V (Renewal) and Grade VI (New)

In support of its request **DIVINE MERCY SCHOOL OF TAGUM, INC.** submitted on the following documents:

1) Letter application for tax exemption;
2) Certified true copy of the SEC Certificate of Incorporation;
3) Certified true copy of the SEC 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 an educational and conduct an educational institution under Section 30 (H) of the Tax Code of 1997, as amended;
   c) "No part of the income which the association may obtain as an incident to its operation shall be distributed as dividends to its members, trustees or officer"
   d) "That the trustees do not receive any compensation";
   e) "In case of dissolution, its assets shall be transferred to a similar institution or to the government"
4) Certified true copy of the SEC By-laws;
5) Certified true copy of the SEC 2011 General Information Sheet;
6) Certified true copies of the 2009, 2010 and 2011 Annual Income Tax Returns with attaching Financial Statements;
7) Certified true copy of DepEd Government Permit (R-XI) No. 220 s. 2012

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.:

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> *"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. 170-11 dated May 25, 2011 and BIR Ruling No. 159-11 dated May 19, 2011)

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. However, if their gross income from unrelated trade, business or other activity exceeds fifty percent (50%) of the 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 NIRC." *(Section 27 (B) of the NIRC* 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 **DIVINE MERCY SCHOOL OF TAGUM, INC.** is a non-stock and non-profit educational institution as contemplated under the said provisions, it is 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. 169 dated May 25, 2011)*

However, **DIVINE MERCY SCHOOL OF TAGUM, 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, **DIVINE MERCY SCHOOL OF TAGUM, INC.**'s 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.

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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 Five Hundred Thousand Pesos (P1,500,000.00[1]) which tax payment may legitimately be passed on to buyers of such goods and services. *(BIR Ruling No. 170-11 dated May 25, 2011 and BIR Ruling No. 159-11 dated May 19, 2011)*

Hence, as long as **DIVINE MERCY SCHOOL OF TAGUM, 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. 170-11 dated May 25, 2011 and BIR Ruling No. 159-11 dated May 19, 2011)*

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 service 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. 170-11 dated May 25, 2011 and BIR Ruling No. 159-11 dated May 19, 2011)*

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 1/2 % tax on interest income under the foreign currency deposit system imposed by Section 27 (D) (1) of the Tax Code of 1997;

(b) Certification of actual utilization of said income; and

[1] P1, 919,500.00 starting January 1, 2012

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(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 **DIVINE MERCY SCHOOL OF TAGUM, INC.** as ancillary activities and the same are located within its premises.

In addition, gifts, donations and other contributions received by **DIVINE MERCY SCHOOL OF TAGUM, 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 gifts 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 **DIVINE MERCY SCHOOL OF TAGUM, 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.

DIVINE MERCY SCHOOL OF TAGUM, INC. is advised to contact The Secretariat, Philippine Council for NGO Certification (PCNC), tel. nos. 7821-568; 7159-594; 7152-756 or telefax 7152-783.

It must be emphasized that its tax exemption does not cover withholding taxes. As an educational institution, **DIVINE MERCY SCHOOL OF TAGUM, 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.

Moreover, **DIVINE MERCY SCHOOL OF TAGUM, 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)

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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 **DIVINE MERCY SCHOOL OF TAGUM, INC.** to determine compliance with the conditions set forth in the certificate of tax exemption and tax liabilities, if any. *(BIR Ruling No. 170-11 dated May 25, 2011 and BIR Ruling No. 159-11 dated May 19, 2011)*

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 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 disclosed 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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JAN 05 2016