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; and BIR Ruling No. 159-11.
#025-2016
1-11-2016

EXCELSIOR SCHOOL, INC.
2504 Lakandula St., Sto. Rosario,
Angeles City, Pampanga

Attention: **Corazon S. Sugay**
President

Mesdames:

This refers to your letter dated December 6, 2013, applying, on behalf of **EXCELSIOR SCHOOL, INC.**, for a tax exemption ruling under Section 30 (H) of the Tax Code of the Philippines, as amended.

It is represented that **EXCELSIOR SCHOOL, INC.**, with Taxpayer's Identification No. , is a non- stock, non-profit corporation duly organized under the laws of the Philippines; that it is registered with the Securities and Exchange Commission (SEC) under Company Registration No. dated July 13, 2005; that among the purposes for which it was incorporated is *to establish and operate an educational institution which shall provide course of study in pre-elementary, elementary and secondary subject to the laws of the Philippines;* and that the Department of Education (DepEd) has issued Government Recognition No. , series of for the SPED Program (Pre-Elementary and Elementary) dated September 14, 2007.

In support of its request, **EXCELSIOR SCHOOL, INC.** has completely submitted the following general documentary requirements:

1) Letter application for tax exemption;

2) SEC Certified true copies of the following:

   a. Certificate of Incorporation;

   b. Articles of Incorporation which includes the following provisions:

      i. That the corporation is non-stock, non-profit;
      ii. That the primary purpose for which it was created is one of those enumerated under Sec. 30 of the Tax Code of 1997, as amended;
      iii. No part of the net income of the educational institution shall inure to the benefit of any member of the Board of Trustees;

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iv. The members of the Board of Trustees do not receive any compensation; and
v. In case of dissolution, assets of the corporation shall be transferred to similar institution or to the government.

c. By-Laws;

3) Certification under Oath by an executive officer 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;

4) Certified true copy of BIR Certificate of Registration;

5) Original copy of the Certification under Oath by the Treasurer of the corporation certifying that no amount of income, compensation, salaries or any emoluments is being paid by the corporation to its trustees and officers;

6) Original Copy of the Certification issued by the Regional Director of Revenue Region No. 4 - City of San Fernando certifying that the corporation or association has no pending tax liabilities (delinquent account);

7) Certified true copies of the Income Tax Returns and Financial Statements for the last three (3) years of operation; and

8) Statement under Oath by an executive officer of its modus operandi.

In addition, **EXCELSIOR SCHOOL, INC.** being a non-stock and non-profit educational institution, it also submitted the following documents:

1) Certified true copy of the government recognition to operate as an educational institution issued by the DepEd;

2) Certification issued by the DepEd that it is operating in good standing; and

3) Original copy of Certificate of utilization of annual revenues and assets by the Treasurer.

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 xxx 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 Tax Code." (Section 27 [B] of the Tax Code of 1997, as amended; *Commissioner of Internal Revenue v. 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 **EXCELSIOR SCHOOL, 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, **EXCELSIOR 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, **EXCELSIOR SCHOOL, 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 (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 Nine Hundred Nineteen Thousand and Five Hundred Pesos (P1,919,500.00) which tax payment may legitimately be passed on to buyers of such goods and services. (Revenue Regulations No. 16-2011)

Hence, as long as **EXCELSIOR 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. 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

(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 **EXCELSIOR SCHOOL, INC.** as ancillary activities and the same are located within its premises.

In addition, gifts, donations and other contributions received by **EXCELSIOR 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 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 **EXCELSIOR 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.

EXCELSIOR SCHOOL, 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, **EXCELSIOR 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.

Moreover, **EXCELSIOR 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 **EXCELSIOR SCHOOL, 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)

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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