June 27, 2018

BIR RULING NO. 1025-18

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

Amigo School of Calinan, Inc.
Dr. Alejandro De Lara St.,
Calinan, Davao City 8000

Attention: *AAA*

Gentlemen :

This refers to your letter dated April 22, 2015, applying on behalf of **AMIGO SCHOOL OF CALINAN, INC.**, for tax exemption certificate being enjoyed by non-stock, non-profit educational institution under Section 30 (H) of the National Internal Revenue Code of 1997, as amended, which was forwarded to this Office by Revenue Region No. 19, Davao City, through 1st Indorsement dated March 28, 2017.

It is represented that **AMIGO SCHOOL OF CALINAN, INC.** with BIR Taxpayer's Identification No. (TIN) 000-000-000-000 and Certificate of Registration No. OCN 2RC0000903714 dated February 19, 1998, is a non-stock, non-profit corporation 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. D199700188 and with SEC Certificate of Incorporation dated February 21, 1997; that the purposes [1] for which the corporation was incorporated are:

1. *That the said corporation shall aim to operate and establish a school which will offer courses in pre-school, elementary and secondary levels of education*;

2. *To serve the educational needs of the community in providing the young children a balance education, their physical and intellectual development. While this may prove to be a terminal paint for some, yet the quality and scope of training offered is to be of such a nature that its graduate can readily continue in further education on level as they train for services*;

Copyright 2020 CD Technologies Asia, Inc.

3. *To promote the development of the body, mind and soul, which has to do with the whole period of existence possible to man that will prepare the students for the joy of service in this world, and for the higher joy of wider service in the world to come, as the Holy Bible says: "Train up a child in the way he should go, and when he is old, he will not depart from it." Proverbs 22:6*;

4. *The school is intended to serve as a barrier against the wide spreading corruption, to provide for the mental welfare of the youth, and to promote the prosperity of the nation by furnishing it with men and women qualified to act as future leaders and counselors*;

5. *That the corporation shall be maintained by means of tuition fees, registration fees, campus fee and other necessary fees that it may collect from the students enrolling therein*;

6. *To receive gifts, legacies, donations, and to acquire, purchase, make loans, lease, mortgage, and to hold title to, within the limits prescribed by law, it being, however, expressly understood that this corporation is not for personal profit or gain to any individual but all its property and effects must be used and expanded in carrying into effects the aim and objectives of its existence.*

and that it was permitted and granted the following Government Recognitions by the Department of Education (DepEd), Region XI, Davao City:

Government Recognition R XI No.	Date issued	Degree/Program	Effective School Year
03 s. 2013	February 11, 2013	Grade 7 to 4th Year Levels (Secondary Education Program)	2013-2014
017 s. 2014	May 16, 2014	Kindergarten, Grades I-VI	2014-2015

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."* (Emphasis Supplied)

Likewise, Section 30 (H) of the National Internal Revenue Code of 1997, 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*

Copyright 2020 CD Technologies Asia, Inc.

them as such:

xxx xxx xxx

*(H) A **non-stock and non-profit** educational institution; x x x"* (Emphasis supplied)

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."* [2] "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."* [3]

In the submitted Articles of Incorporation of **AMIGO SCHOOL OF CALINAN, INC.**, it was disclosed that its registration with the SEC is only non-stock corporation. Moreover, as certified to under oath by its Corporate Treasurer, [4] the Members of the Board of Trustees are receiving monthly allowances from the corporation.

The payment of allowances to members of the Board of Trustees is considered a distribution of the equity (including the net income) of **AMIGO SCHOOL OF CALINAN, 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, **AMIGO SCHOOL OF CALINAN, INC.** cannot be qualified as a 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."* [5] 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*

Copyright 2020 CD Technologies Asia, Inc.

exemption to prove that it is in fact covered by the exemption so claimed." [6]

In view of the foregoing, the request of **AMIGO SCHOOL OF CALINAN, 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 institution. Therefore, **AMIGO SCHOOL OF CALINAN, INC.** shall be treated as a proprietary educational institution subject to ten percent (10%) preferential rate pursuant to Section 27 (B) of 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. Second Article, Articles of Incorporation.
2. Section 87, Corporation Code.
3. *CIR vs. St. Luke's Medical Center, Inc.*, G.R. Nos. 195909 and 195960 dated 26 September 2012.
4. BBB, dated April 24, 2015.
5. *CIR vs. St. Luke's Medical Center, Inc.* [G.R. No. 195909 & G.R. No. 195960, 26 September 2012].
6. *Quezon City and The City Treasurer of Quezon City vs. ABS-CBN Broadcasting Corporation* [G.R. No. 166408, 6 October 2008].

Copyright 2020 CD Technologies Asia, Inc.