July 24, 2018

BIR RULING NO. 1107-18

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

Toyota Motor Philippines
School of Technology, Inc.
Toyota Special Economic Zone,
Santa Rosa-Tagaytay Highway,
Pulong Sta. Cruz, Sta. Rosa City,
Laguna 4026

Attention: *AAA*

Gentlemen :

This refers to your letter dated August 27, 2013, applying on behalf of **TOYOTA MOTOR PHILIPPINES SCHOOL OF TECHNOLOGY, INC. DOING BUSINESS UNDER THE NAME AND STYLE OF TMP TECH ("TMP TECH" for brevity)**, 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.

It is represented that **TMP TECH** with BIR Taxpayer's Identification No. (TIN) 000-000-000-000 and Certificate of Registration No. OCN 1RC0000627724 dated May 15, 2013, 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. CN201306949 and with SEC Certificate of Incorporation dated April 10, 2013; that the purposes [1] for which the corporation was incorporated are:

1. *To establish and operate an educational institution offering technical vocational education and training courses and an assessment center emphasizing intellectual, physical, social, cultural and moral character development of its students;*

2. *To build, operate and maintain offices, laboratories, dormitories, canteens, ancillary services and related facilities to support the*

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operation of the school;

3. *To purchase, acquire, hold, lease, sell and convey real and personal properties necessary for the furtherance of its primary objective;*

4. *To accept donations in properties, whether real or personal, to be used and utilized for the advancement of the primary purpose of the Corporation;*

5. *To borrow or raise money to meet the financial requirements of the corporation;*

6. *To hire teachers, professionals, consultants, administrative staff and other personnel for teaching and non-teaching positions; and*

7. *To do and perform all acts incidental, necessary, suitable or proper for the accomplishment of the purposes of the Corporation including the exercise of such powers conferred upon by law.*

and that it was permitted and granted by the Technical Education and Skills Development Authority (TESDA), Region IV-A (CALABARZON), a Certificate of Technical Vocational Education and Training (TVET) Program Registration No. 201304032114 to offer a program in Automotive Servicing NC II with a 532-Hour duration.

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 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

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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 Certification under oath by the _____ of **TMP TECH**, AAA, dated November 11, 2013, it was disclosed that **TMP TECH** pays Php_____ annually to its Board of Trustees and advisers in the form of transportation allowance.

The payment of allowances to members of the Board of Trustees is considered a distribution of the equity (including the net income) of **TMP TECH**. 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, **TMP TECH** 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."* [4] 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."* [5]

In view of the foregoing, the request of **TMP TECH** 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, **TMP TECH** 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,

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(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. *CIR vs. St. Luke's Medical Center, Inc.* [G.R. No. 195909 & G.R. No. 195960, 26 September 2012].
5. *Quezon City and The City Treasurer of Quezon City vs. ABS-CBN Broadcasting Corporation* [G.R. No. 166408, 6 October 2008].

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