July 24, 2018

BIR RULING NO. 1111-18

Par. 3, Sec. 4, Art. XIV of the 1987 Constitution; Sec. 30 (H) of the NIRC of 1997, as amended; RMO No. 44-2016; 000-00

Southpoint School, Inc.
Datu Loho-F. Torres Ext.
Ma-a Davao City 8000

Attention: *AAA*

Gentlemen :

This refers to your letter dated August 17, 2004 applying on behalf of **SOUTHPOINT SCHOOL, INC.** for (renewal of) 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 January 25, 2016.

It is represented that **SOUTHPOINT SCHOOL, INC.** with BIR Taxpayer's Identification No. (TIN) 000-000-000-00000 and Certificate of Registration No. OCN 2RC0000694194 dated January 1, 1996, 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. DN095000188 and with SEC Certificate of Incorporation dated March 23, 1995; that the purpose for which the corporation was incorporated is "*to operate a pre-school and learning center to serve the needs of the children of Davao City and to charge and collect reasonable tuition and other fees from each children for such service*"; [1] and that it was permitted and granted Government Recognition No. R-XI No. 7, series of 2007, dated December 26, 2007, by the Department of Education (DepEd) to offer and operate Secondary course.

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***

Copyright 2020 CD Technologies Asia, Inc.

used actually, directly, and exclusively for educational purposes shall be exempt from taxes and duties." (Emphasis supplied)

In relation thereto, Section 30 (H) of the National Internal Revenue Code (NIRC) 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)

Thus, 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]

Section 5 of Article II of the By-Laws of **SOUTHPOINT SCHOOL, INC.** however provides that *"trustee, as such, shall receive such compensation for their services as may be from time to time fixed by the Board of Trustees. Initially, Trustees shall be entitled to a per diem of P50.00 each for every meeting they actively and personally attended."*

It should be noted that the payment of compensation to the trustees are considered distribution of equity (including the net income) of **SOUTHPOINT SCHOOL, INC.** along with the grant of per diem to the Board of Trustees. These are forms of private inurements which the law prohibits in the organization and operation of a non-stock, non-profit corporation. These acts are 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, **SOUTHPOINT SCHOOL, INC.** cannot be qualified as a non-profit educational institution under Section 30 (H) of the NIRC of

Copyright 2020 CD Technologies Asia, Inc.

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 **SOUTHPOINT SCHOOL, 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, **SOUTHPOINT SCHOOL, INC.** shall be treated as a proprietary educational institution subject to ten percent (10%) preferential rate pursuant to Section 27 (B) of the NIRC 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. *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].

Copyright 2020 CD Technologies Asia, Inc.