November 19, 2018

BIR RULING NO. 1390-18

PD 442, as amended; 000-00

Technical Education and Skills Development Authority
Aklan Provincial Office
Cor. Veterans Ave. & Regalado Streets, Kalibo, Aklan

Attention: *Edwin S. Villanueva*
Provincial Director

Gentlemen :

This refers to your letter dated January 4, 2011 duly endorsed by Revenue Region No. 11-Iloilo City, requesting clarification regarding Item F No. 2 of Department Order No. 68-04 of the Department of Labor and Employment.

Item F No. 2 of Department Order No. 68-04 entitled GUIDELINES IN THE IMPLEMENTATION OF THE KASANAYAN AT HANAPBUHAY PROGRAM (Apprenticeship and Employment Program) provides:

> *F. INCENTIVES TO PARTICIPATING ENTERPRISES*
>
> *Participating enterprises shall be entitled to any of the following:*
>
> xxx xxx xxx
>
> *2. an additional deduction from taxable income of one-half (1/2) of the value of labor training expenses incurred for developing the productivity and efficiency of apprentices shall be granted to the person or enterprise organizing an apprenticeship program: Provided, however, that such deduction shall not exceed ten (10%) percent of direct labor wage; and, that the person or enterprise who wishes to avail himself or itself of this incentive should pay his apprentices the minimum wage. (As provided for under Book II, Title II, Chapter I, Article 71 of the Labor Code)*

In reply, please be informed that Article 71 of the Presidential Decree No. 442, as amended, known as "Labor Code of the Philippines," provides, *viz.*:

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Article 71. *Deductibility of training costs. An additional deduction from taxable income of one-half (1/2) of the value of labor training expenses incurred for developing the productivity and efficiency of apprentices shall be granted to the person or enterprise organizing an apprenticeship program: Provided, That such program is duly recognized by the Department of Labor and Employment: Provided, further, That such deduction shall not exceed ten (10%) percent of direct labor wage: and Provided, finally, That the person or enterprise who wishes to avail himself or itself of this incentive should pay his apprentices the minimum wage.*

Moreover, DOLE Department Order No. 68-04: Guidelines in the Implementation of the Kasanayan at Hanapbuhay Program (An Apprenticeship and Employment Program) pertinently provides:

B. Definition of Terms

1. ***Apprenticeship*** *— training within employment involving a* ***contract between an apprentice and an enterprise on an apprenticeable occupation***.

2. ***Apprentice — a person undergoing training for an approved apprenticeable occupation*** *during an established period and covered by an apprenticeship agreement.*

3. ***Apprenticeship Agreement*** *— a contract wherein a prospective enterprise binds himself to train the apprentice who, in turn, accepts the terms of* ***training for a recognized apprenticeable occupation*** *emphasizing the rights, duties and responsibilities of each party.*

4. ***Apprenticeable Occupation — an occupation officially approved for apprenticeship by TESDA***.

xxx xxx xxx

G. Registration of Apprenticeship Program

The enterprise shall register its apprenticeship program with any of the TESDA Provincial Offices. It shall submit the following:

1. Letter of Application;

2. Certification that the number of apprentices to be hired is not more than 20 percent of the total regular workforce; and

3. Skills Training Outline.

No enterprise shall be allowed to hire apprentices unless its apprenticeship program is registered and approved by TESDA.

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H. Apprenticeship Agreement

No apprenticeship training will commence until an Apprenticeship Agreement has been forged between an enterprise and an apprentice.

In view of the foregoing, the amount actually, directly and exclusively incurred under the "An Apprenticeship and Employment Program" of the duly approved employer's apprenticeship program by the TESDA is deductible from taxable income equivalent to fifty percent (50%) of the value of labor training expenses incurred for developing the productivity and efficiency of apprentices, if the said deduction does not exceed 10% of the direct labor wage and the apprentices are paid the minimum wage.

Prior approval from the TESDA is necessary to ensure that only employers in the highly technical industries may employ apprentices and only in apprenticeable occupations. Thus, under RA 7796, employers can only hire apprentices for apprenticeable occupations which must be officially endorsed by a tripartite body and approved for apprenticeship by the TESDA. This is to ensure the protection of apprentices and to obviate possible abuses by prospective employers who may want to take advantage of the lower wage rates for apprentices and circumvent the right of the employees to be secure in their employment. [1]

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,

(SGD.) CAESAR R. DULAY
Commissioner of Internal Revenue

Footnotes

1. CENTURY CANNING CORPORATION v. COURT OF APPEALS and GLORIA C. PALAD, G.R. No. 152894 dated August 17, 2007.

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