June 11, 2019

BIR RULING NO. 351-19

Section 30 (E) of the NIRC of 1997, as amended; RMO No. 20-2013; RMC No. 051-14; BIR Ruling No. 466-2014

DEEP Scholars Association, Inc.
3/F DBP Bldg., Sen. Gil Puyat Ave.
cor. Makati Ave., Makati City 1200

Attention: *AAA*

Gentlemen :

This refers to your letter dated May 22, 2015 applying on behalf of **DEEP SCHOLARS ASSOCIATION, INC.** for tax exemption certificate being enjoyed by non-stock, non-profit corporation or association under Section 30 (E) of the National Internal Revenue Code (NIRC) of 1997, as amended, which was forwarded to this Office by Revenue Region No. 8, Makati City, through 1st Indorsement dated August 16, 2016.

It is represented that **DEEP SCHOLARS ASSOCIATION, INC.** with BIR Taxpayer's Identification No. (TIN) 000-000-000-000 and Certificate of Registration No. OCN 9RC0000403126 dated March 15, 2011, is a non-stock, non-profit association 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. CN201104534; and that the purposes [1] for which the association was incorporated are:

1. *Primarily to continue, uphold, maintain and carry on the purpose, objectives, goals and principles of the Development Bank of the Philippines Endowment for Education Program (DEEP) which is to reduce poverty by helping, assisting and providing financial support to indigent high school graduates and financially challenge high level college and technical/vocational student who wish to secure degree/non-degree courses, and for the socio-economic upliftment through education of the best and brightest but disadvantage Filipino*

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youth and their families;

2. *To promote scholarship and fellowship among its members, to provide educational opportunities for deserving high school graduates and higher level college students by giving out scholarship grants, to accumulate funds for civic charitable, benevolent and cultural purposes;*

3. *To create funds and grant financial assistance to members for productive and providential purposes;*

4. *To promote the upliftment of the quality of life of its members through mutual and cooperative assistance;*

5. *To continually expand and improve services to members through the use of modern technology and availment of external resources;*

6. *To promote better understanding and goodwill and to foster harmonious relationship and cooperation among its members.*

In reply, please be informed that Section 30 of the National Internal Revenue Code of 1997, as amended, enumerates the non-stock and/or non-profit corporations/associations/organizations that are exempt from income tax in respect to income received by them as such. Section 30 (E) 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
>
> *(E) Nonstock corporation or association organized and operated exclusively for religious, charitable, scientific, athletic, or cultural purposes, or for the rehabilitation of veterans, no part of its net income or asset shall belong to or inure to the benefit of any member, organizer, officer or any specific person;"*
>
> xxx xxx xxx"

"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]

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Revenue Memorandum Circular (RMC) No. 51-2014 has clarified that in order for an entity to qualify as a non-stock and/or non-profit corporation/association/organization exempt from income tax under Section 30 of the National Internal Revenue Code, as amended, its earnings or assets shall not inure to the benefit of any of its trustees, organizers, officers, members or any specific person. The following are considered "inurements" of such nature:

1. *The payment of compensation, salaries, or honorarium to its trustees or organizers; x x x.*

In the submitted documents of **DEEP SCHOLARS ASSOCIATION, INC.**, it was disclosed that Board of Trustees are entitled to per diem. Article VIII of the Amended Articles of Incorporation of **DEEP SCHOLARS ASSOCIATION, INC.**, states that:

> *". . . and that the trustees shall receive no remuneration except the grant of per diem for every meeting attended for reasonable amount as determined by the Board of Trustees"*

The giving of compensation per diem to the members of the Board of Trustees is considered a distribution of the equity (including the net income) of **DEEP SCHOLARS ASSOCIATION, 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 violates the requirement that no part of the net income or assets of the corporation shall inure to the benefit of any individual or specific person. Thus, **DEEP SCHOLARS ASSOCIATION, INC.** cannot be qualified as a non-stock, non-profit corporation under Section 30 (E) 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] ***(BIR Ruling No. 466-2014 dated November 19, 2014)***

In view of the foregoing, the request of **DEEP SCHOLARS ASSOCIATION, INC.** to be exempted from income tax on its income as a Section 30 (E) corporation is hereby denied as it failed to prove that it is a non-profit corporation. Therefore, **DEEP SCHOLARS ASSOCIATION, INC.** shall be treated as an ordinary corporation subject to thirty percent (30%) income tax rate pursuant to Section 27 (A) and other internal revenue taxes imposed

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by 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. Amended Articles of Incorporation adopted on December 16, 2014.
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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