December 5, 2019

BIR RULING NO. 727-19

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

E. L. Punsalan and Associates
G-104 Medical Plaza Makati,
Amorsolo corner Dela Rosa, Sts.,
Legaspi Village, Makati City

Attention: *AAA*

Gentlemen :

This refers to your letter dated December 06, 2013, requesting on behalf of your client, **DIVINE LIGHT ACADEMY, INC.**, for the issuance of a 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 **DIVINE LIGHT ACADEMY, INC.** with Taxpayer's Identification No. (TIN) 000-000-000-000 and Certificate of Registration No. OCN 9RC0000344929 dated January 01, 1997, 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. 126714; that the purpose [1] for which the corporation was incorporated is to establish, operate and maintain a complete nursery, kindergarten, elementary and secondary school, and to give a sound and complete education to children and youth in the Philippines and to promote their intellectual and moral development; and that it was permitted and granted the following Government Recognitions by the Department of Education (DepEd):

Government Recognition No.	Date issued	Degree/Program	Effective School Year
S-009 s. 2001	Dec. 07, 2001	Complete Secondary Course (Day)	2001-2002
008 s. 1997	Feb. 27, 1997	Complete Secondary Course (NSEC)	1997-1998
E-012 s. 1997	Dec. 5, 1996	Grades I-VI of the Elementary Course	1997-1998
K-022 s. 1996	Feb. 2, 1996	N-K-P of the Pre-Elementary Course	1996-1997

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E-0007 s. 1987	Sept. 23, 1987	Complete Elementary Course	1987-1988
008 s. 1984	Feb. 13, 1984	Nursery and Kindergarten	-

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

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 Memorandum for the Regional Director, Revenue Region No. 08, Makati, it states that there was misrepresentation in the sworn certification issued by the treasurer of **DIVINE LIGHT ACADEMY, INC.** that its trustees do not receive any amount of income, compensation, salaries, per diem or any emoluments from the school. The Alpha List for the year 2013 showed that the following trustees received compensation income:

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Trustees Name	Gross Compensation Income	13th Month Pay
Aurelio, Rodel Dizon	_____	_____
Sese, Antonio Dizon	_____	_____
Sese, Leonila Dizon	_____	_____

The payment of salaries and other incentives to members of the Board of Trustees is considered a distribution of the equity (including the net income) of **DIVINE LIGHT ACADEMY, 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, **DIVINE LIGHT ACADEMY, 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.*" [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 **DIVINE LIGHT ACADEMY, 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, **DIVINE LIGHT ACADEMY, 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 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. Second Article, Amended 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.

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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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