April 16, 2018

BIR RULING NO. 731-18

Section 30 of the National Internal Revenue Code of 1997, as amended; BIR Ruling No. 001-2017; BIR Ruling No. 444-2014

UCCP Magill Memorial School, Inc.
150 Quezon Avenue, Lucena City

Attention: *AAA*

Gentlemen :

This refers to your letter dated June 16, 2015, requesting on behalf **UCCP MAGILL MEMORIAL SCHOOL, INC.** for the issuance of a certificate of tax exemption enjoyed by non-stock, non-profit corporation or association pursuant to Section 30 (H) of the National Internal Revenue Code (NIRC) of 1997, as amended.

It is represented that **UCCP MAGILL MEMORIAL SCHOOL, INC.**, with BIR Taxpayer's Identification No. (TIN) 000-000-000, 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. CN201415151 and with SEC Certificate of Incorporation dated August 6, 2014; and that the purpose, among others, for which the association was incorporated is to establish and operate an educational institution or learning center which shall provide courses of study in Pre-Elementary, Elementary and Secondary Education, subject to the laws of the Republic of the Philippines.

In reply, please be informed that **this Office cannot as yet issue the requested Certificate of Tax Exemption** because **UCCP MAGILL MEMORIAL SCHOOL, INC.** has to prove by actual operation for at least three (3) years that it is really an association exempt from income tax under Section 30 of the National Internal Revenue Code of 1997, as amended. ***(BIR Ruling No. 001-2017 dated January 05, 2017)***

In the meantime, **UCCP MAGILL MEMORIAL SCHOOL, INC.** is subject to the corresponding internal revenue taxes imposed under the National Internal Revenue Code of 1997, as amended, on its income derived from any of its properties, real or

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personal, or any activity conducted for profit regardless of the disposition thereof, which income should be returned for taxation.

Likewise, interest income from currency bank deposits and yield or any other monetary benefits from deposit substitute instruments and from trust funds and similar arrangements, and royalties derived from sources within the Philippines are subject to the twenty percent (20%) final withholding tax: provided, however, that interest income derived by it from a depository bank under the expanded foreign currency deposit system shall be subject to 15% [1] final withholding tax pursuant to Section 27 (D) (1), in relation to Section 57 (A), both of the National Internal Revenue Code of 1997, as amended. ***(BIR Ruling No. 444-2014 dated October 30, 2014)***

Also, it should be understood that **UCCP MAGILL MEMORIAL SCHOOL, INC.** shall be constituted as withholding agent of the government if it acts as an employer and its employees receive compensation income subject to the withholding tax under Section 79 (A), Chapter XIII, Title II of the National Internal Revenue Code of 1997, as amended, as implemented by Revenue Regulations No. 2-98, as amended, or if it makes income payments to individuals or corporations subject to the expanded withholding tax provided for in Section 57 (B) of the National Internal Revenue Code of 1997, as amended, also as implemented by Revenue Regulations No. 2-98, as amended.

Moreover, under Section 235 of the National Internal Revenue Code of 1997, as amended, any provision of existing general and special law to the contrary notwithstanding, the books of accounts and other pertinent records of tax-exempt organization or grantees of tax incentives shall be subject to examination by the BIR for purposes of ascertaining compliance with the conditions under which it has been granted tax exemptions or tax incentives, and its tax liabilities, if any.

Furthermore, it is subject to the payment of the annual registration fee of Five Hundred Pesos (PhP500.00) as prescribed in Section 236 (B) of the National Internal Revenue Code of 1997, as amended. It is also required to issue duly registered receipts or sales or commercial invoices for each sale or transfer of merchandise or for services rendered which are not directly related to the activities for which the Association is registered under Section 6 (C) in relation to Section 237 of the same Code ***[Revenue Memorandum Circular (RMC) No. 76-2003]***.

Value-Added Tax/Percentage Tax

Section 105 of the National Internal Revenue Code of 1997, as amended, provides that:

> *"**SEC. 105. Persons Liable**. — Any person who, in the course of trade or business, sells, barters, exchanges, leases goods or properties, renders services, and any person who imports goods shall be subject to the value-added tax (VAT) imposed in Sections 106 to 108 of the same Code.*

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*The phrase **"in the course of trade or business"** means the regular conduct or pursuit of a commercial or an economic activity, including transactions incidental thereto, by any person regardless of whether or not the person engaged therein is a non-stock non-profit private organization (irrespective of the disposition of its net income and whether or not it sells exclusively to members or their guests), or government entity.*

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Accordingly, if **UCCP MAGILL MEMORIAL SCHOOL, INC.** is engaged in the sale of goods or services in the course of a business pursuit, including transactions incidental thereto, in general, it shall be liable for 12% VAT, in case the gross receipts from such sales exceeds Three Million Pesos (P3,000,000.00), [2] or to the 3% percentage tax, if gross receipts do not exceed P3,000,000.00.

Notwithstanding that it is a non-stock, non-profit corporation, its purchase of goods or properties or services and importation of goods shall nevertheless be subject to the 12% VAT pursuant to Sections 106 to 108 of the said Code.

It must be noted that VAT is an indirect tax payable by the seller and not by the purchaser of goods. Being an indirect tax, the amount of tax may be shifted or passed on to the buyer/purchaser, transferee or lessee of the goods, properties or services. Once shifted to the buyer/customer as an addition to the cost of goods or services sold, it is no longer a tax but an additional cost which the buyer/customer has to pay in order to obtain the goods or services.

However, revenue from contributions and donations, not being derived from sale of services or sale of goods made in the course of business but rather in connection with its non-stock, non-profit activities, is exempt from the 12% VAT.

Finally, for purposes of securing a Certificate of Tax Exemption after the three (3)-year period, **UCCP MAGILL MEMORIAL SCHOOL, INC.** is required to submit the following documents pursuant to **Revenue Memorandum Order (RMO) No. 44-2016 dated July 25, 2016**.

a. Original copy of application letter for issuance of Tax Exemption Ruling;

b. Certified true copy of the Certificate of Good Standing issued by the Securities and Exchange Commission;

c. Original copy of a Certification under Oath of the Treasurer as to the amount of income, compensation, salaries or any emoluments paid to its trustees, officers and other executive officers;

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d. Certified true copy of the Financial Statements of the corporation for the last three (3) years;

e. Certified true copy of government recognition/permit/accreditation to operate as an educational institution issued by the Commission on Higher Education (CHED), Department of Education (DepEd), or Technical Education and Skills Development Authority (TESDA); Provided, that if the government recognition/permit/accreditation to operate as an education institution was issued more than five (5) years prior to the application for tax exemption, an original copy of a current Certificate of Operation/Good Standing, or other equivalent document, issued by the appropriate government agency (*i.e.*, CHED, DepEd, or TESDA) shall be submitted as proof that the non-stock and non-profit educational institution is currently operating as such; and

f. Original copy of Certificate of utilization of annual revenues and assets by the Treasurer or his equivalent of the non-stock and non-profit educational institution.

Please be guided accordingly.

Very truly yours,

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

Footnotes

1. Republic Act No. 10963 increased the tax rate from 7.5% to 15% effective Jan. 1, 2018.
2. Republic Act No. 10963 increased the VAT threshold from P1,919,500.00 to P3,000,000.00 effective Jan. 1, 2018.

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