April 16, 2018

BIR RULING NO. 732-18

Section 30 (H) of the NIRC of 1997, as amended; RMO No. 20-2013; RMC No. 051-14; BIR Ruling No. 128-14; BIR Ruling No. 151-2014; BIR Ruling No. 310-2011; BIR Ruling No. 466-2014

Emmanuel Computer Learning Institute, Inc.
Manansala Bldg., Mc Arthur Highway
Brgy. Sulipan, Apalit, Pampanga

Attention: *AAA*

Gentlemen:

This refers to your application for the issuance of a Certificate of Tax Exemption pursuant to Section 30 (H) of the National Internal Revenue Code (NIRC) of 1997, as amended, which was received by this office on December 02, 2016.

It is represented that **EMMANUEL COMPUTER LEARNING INSTITUTE, INC.** with BIR Taxpayer's Identification No. (TIN) 000-000-000-0000, 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. CN200404501.

In reply, please be informed that paragraph 3, Section 4, Article XIV of the 1987 Constitution provides, *viz.*:

> *"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."*

Likewise, Section 30 (H) of the 1997 Tax Code, 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:*

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(H) A non-stock and non-profit educational institution; x x x."

"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*." [1] "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*." [2]

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.

As such, to qualify for exemption under Section 30 (H) the organization must have no net earnings or assets inuring to the benefit of any member, organizer, officer or any specific person. The records show that Emmanuel Computer Learning Institute, Inc. entered into a 10-year franchise agreement with another computer school — AMA Computer Learning Center, Inc. whereby the latter allows the former to use the AMA Computer Learning System and that various fees were paid by Emmanuel Computer Learning Institute, Inc. to AMA Computer Learning Center, Inc. (BIR Ruling No. 128-14 dated May 15, 2014)

Along with police power and eminent domain, taxation is one of the three basic and necessary attributes of sovereignty. Thus, the State cannot be deprived of this most essential power and attribute of sovereignty by vague implications of law. Rather, being derogatory of sovereignty, the governing principle is that tax exemptions are to be construed in strictissimi juris against the taxpayer and liberally in favor of the taxing authority; and he who claims an exemption must be able to justify his claim by the clearest grant of statute. The burden of proof rests upon the party claiming exemption to prove that it is in fact covered by the exemption so claimed. In case of doubt, non-exemption must be favored. Taxes being the lifeblood of the government that should be collected without unnecessary hindrance, every precaution must be taken not to unduly suppress it. (BIR Ruling No. 310-2011 dated August 22, 2011)

The payment by Emmanuel Computer Learning Institute, Inc. of franchise fees to AMA Computer Learning Center, Inc. constitutes prohibited inurement because the transaction allows a private person to benefit from the earnings of the educational institution.

Please bear in mind that, *"being a non-stock and/or non-profit corporation does*

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not, by this reason alone, completely exempt an institution from tax." [3] 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."* [4] ***(BIR Ruling No. 466-2014 dated November 19, 2014)***

IN VIEW OF THE FOREGOING, this Office is of the opinion that Emmanuel Computer Learning Institute, Inc. does not qualify for exemption under Section 30 (H) of the National Internal Revenue Code (NIRC) of 1997, as amended. *(BIR Ruling No. 128-14 dated May 15, 2014)* Therefore, **Emmanuel Computer Learning Institute, 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 NIRC of 1997, as amended.

Please be guided accordingly.

Very truly yours,

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

Footnotes

1. Section 87, Corporation Code.
2. *CIR vs. St. Luke's Medical Center, Inc.*, G.R. Nos. 195909 and 195960 dated 26 September 2012.
3. *CIR vs. St. Luke's Medical Center, Inc.* [G.R. No. 195909 & G.R. No. 195960, 26 September 2012].
4. *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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