April 30, 2018

BIR RULING NO. 754-18

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

Siargao Island Institute of Technology
National Road Barangay 12 Dapa,
Surigao Del Norte

Attention: *AAA*

Gentlemen :

This refers to the letter dated May 16, 2014 of BBB, then _____, applying on behalf of **SIARGAO ISLAND INSTITUTE OF TECHNOLOGY, INC.** for 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 **SIARGAO ISLAND INSTITUTE OF TECHNOLOGY, INC.**, with Taxpayer's Identification No. (TIN) 000-000-000-000, is a non-stock, non-profit educational institution duly organized and existing under the laws of the Republic of the Philippines; and that it is registered as a non-stock educational institution with the Securities and Exchange Commission (SEC) under Company Registration No. HN095-00042.

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:*

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*(H) A **non-stock and non-profit** educational institution; x x x"* (Emphasis supplied)

Based on the foregoing, there are two requisites in order for an educational institution to be exempt from tax, 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. (Emphasis supplied)

It is clear, therefore, that an educational institution, to be exempt from income tax pursuant to the provisions of paragraph 3, Section 4, Article XIV of the 1987 Constitution, in relation to Section 30 (H) of the National Internal Revenue Code of 1997, as amended, must be organized as a non-stock and non-profit educational institution. The organization of the institution refers to its corporate form, as shown by its articles of incorporation, by-laws and other constitutive document. In the instant case, the submitted Articles of Incorporation of **SIARGAO ISLAND INSTITUTE OF TECHNOLOGY, INC.** disclosed that its registration with the SEC is only as a non-stock corporation. Consequently, it cannot be qualified as a non-profit educational institution under paragraph 3, Section 4, Article XIV of the 1987 Constitution, in relation to Section 30 (H) of the National Internal Revenue Code of 1997, as amended. Therefore, it shall be treated as a proprietary educational institution subject to ten percent (10%) preferential rate pursuant to Section 27 (B) of the National Internal Revenue Code of 1997, as amended.

Please bear in mind that, *"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."* [1]

Please be guided accordingly.

Very truly yours,

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

Footnotes

1. *Quezon City and The City Treasurer of Quezon City vs. ABS-CBN Broadcasting*

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Corporation [G.R. No. 166408, 6 October 2008].