December 9, 2019

BIR RULING NO. 761-19

Section 30 (E) of the National Internal Revenue Code of 1997, as amended; BIR Ruling No. 143-2016

Steps Dance Studio Scholarship Foundation, Inc.
3rd Floor, Makati Stock Exchange,
Ayala Avenue, Makati City

Attention: *AAA*

Gentlemen :

This refers to your request on behalf of the **STEPS DANCE STUDIO SCHOLARSHIP FOUNDATION, INC.** for tax exemption on taxes and all revenues enjoyed by non-stock, non-profit corporation, association, or organization under Section 30 of the National Internal Revenue Code (NIRC) of 1997, as amended.

Documents submitted disclosed that **STEPS DANCE STUDIO SCHOLARSHIP FOUNDATION, INC.** with BIR Taxpayer's Identification No. (TIN) 000-000-000-000 and Certificate of Registration No. OCN 9RC0000432399 dated November 26, 2008, 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. CN200808441; and that the purposes [1] for which it was incorporated are:

1. *To function and operate as a private non-stock, non-profit foundation;*

2. *To initiate, sponsor, assist of finance programs designed to enhance dancing skills and techniques of exceptionally talented individuals; to provide scholarships to such individuals to pursue "performer training programmes," i.e., dance studies, or non performing studies, e.g., choreography;*

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3. *To undertake, promote, support programs or projects for social, cultural and community development;*

4. *To receive and/or give grants, legacies, donations, contribution, endowment, and financial aids or loans from any source whatsoever, and to make use of them in various activities as may be necessary to carry out the objectives of this Foundation;*

5. *To invest or exchange any portion of its donations, revenues, earnings, or capital in the purchase or acquisition of shares of stock or bonds of other corporations, of its holdings, properties, investments and shares of stocks as the Foundation may devise or need from time to time to carry out the purposes and objectives of this Foundation; and*

6. *Generally, to do all such things, transact such business, exercise such powers and authority as may directly or indirectly necessary, suitable or proper for the accomplishment of any of the purposes or the attainment of any or more of the objects herein enumerated or which shall appear at any conductive * to, or expedient for the foundation; it being expressly understood however, that whatever assets that may remain at the expiration of the term of existence or dissolution of the Foundation for any cause provided by the law, shall be conveyed and disposed of in trust of a successor foundation to be organized by members of this Foundation on the date of its dissolution, or to person, institutions, corporations, associations or entities which are then existing and are engaged in the same purposes and activities as this Foundation; and that since the purpose and essence of this Foundation, being purely humanitarian, benevolent, charitable, educational and philanthropic, it is expressly declared that this is a Foundation not for gain or individual profit and that no dividend shall ever be declared or paid to any of its members, and that none of its property real or personal, shall be used or expended except in carrying into effect the legitimate ends and aims of its being.*

In reply, please be informed that 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

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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;"

Under the above provision, the tax exemption can only be availed of, among others, by a corporation or association organized for cultural purposes if it meets the following conditions:

1. It is a non-stock corporation or association;

2. It is organized exclusively for cultural purposes;

3. It is operated exclusively for cultural purposes; and

4. 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.

Section 87 of the Corporation Code of the Philippines defines a non-stock corporation as "one where no part of its income is distributable as dividends to its members, trustees, or officers" and that any profit "obtain[ed] 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]

As regards the second and third conditions, Section 30 (E) of the National Internal Revenue Code of 1997, as amended, requires that both the organization and operations of the institution must be devoted "exclusively" for cultural purposes. The *organization* of the institution refers to its corporate form, as shown by its Articles of Incorporation, By-Laws and other constitutive documents. [3] The *operations* of the institution, on the other hand, generally refer to its regular activities which must be exclusive to cultural purposes. [4]

Moreover, Section 30 (E) of the National Internal Revenue Code of 1997, as amended, necessitates that no part of the association's net income or asset shall belong to or inure to the benefit of any member, organizer, officer or any specific person.

In this case, the Articles of Incorporation of **STEPS DANCE STUDIO SCHOLARSHIP FOUNDATION, INC.** disclosed that it is authorized to invest or exchange any portion of its donations, revenues, earnings, or capital in the purchase or acquisition of shares of stock or bonds of other corporations, of its holdings, properties, investments and shares of stocks as it may devise or need from time to time. It must be emphasized that to be tax-exempt, a corporation or association claiming to be such must not only be organized as such but must also undertake activities exclusive to cultural purposes, and that any profits it may have obtained as an incident to its operations must be devoted or

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used altogether to the object which it is intended to achieve.

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.*" [5] 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.*" [6]

In view of the foregoing, your request on behalf of **STEPS DANCE STUDIO SCHOLARSHIP FOUNDATION, INC.**, for tax exemption as a non-stock, non-profit corporation under Section 30 (E) of the National Internal Revenue Code of 1997, as amended, is hereby denied for lack of legal and factual basis.

Hence, **STEPS DANCE STUDIO SCHOLARSHIP FOUNDATION, INC.** shall be treated as an ordinary corporation subject to regular corporate income tax and the applicable internal revenue taxes imposed by the National Internal Revenue Code of 1997, as amended. ***(BIR Ruling No. 143-2016 dated April 21, 2016)***

Moreover, Section 105 of the National Internal Revenue Code of 1997 provides that 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.

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.

Accordingly, if **STEPS DANCE STUDIO SCHOLARSHIP FOUNDATION, INC.** is engaged in the sale of goods or services in the course of a business pursuit, including transactions incidental thereto, its revenues derived therefrom shall be subject to the twelve percent (12%) VAT, in case the gross receipts from such sales exceed Three Million Pesos (P3,000,000.00), [7] or to the three percent (3%) percentage tax, if gross receipts do not exceed Three Million Pesos (3,000,000.00).

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

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but an additional cost which the buyer/customer has to pay in order to obtain the goods or services.

Please be guided accordingly.

Very truly yours,

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

Footnotes

1. Second Provision, Articles of Incorporation.
2. Section 87, Corporation Code of the Philippines.
3. *Ibid.*
4. *Ibid.*
5. *Ibid.*
6. *Quezon City and The City Treasurer of Quezon City vs. ABS-CBN Broadcasting Corporation* [G.R. No. 166408, 6 October 2008].
7. Republic Act (RA) No. 10963 increased the VAT threshold from P1,919,500.00 to P3,000,000.00 effective January 01, 2018.

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