May 10, 2018

BIR RULING NO. 806-18

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

Dipolog City Institute of Technology, Inc.
National Highway, Minaog, Dipolog City
Zamboanga del Norte

Attention: *AAA*

Gentlemen :

This refers to your letter dated April 17, 2017 applying on behalf of **DIPOLOG CITY INSTITUTE OF TECHNOLOGY, INC.** for tax exemption certificate being enjoyed by non-stock, non-profit corporation or association under Section 30 (H) of the National Internal Revenue Code (NIRC) of 1997, as amended.

It is represented that **DIPOLOG CITY INSTITUTE OF TECHNOLOGY, INC.** with BIR Taxpayer's Identification No. (TIN) 000-000-000-000 and Certificate of Registration No. OCN 2RC0000556805 dated January 02, 1990, 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. DS-00929; and that the purposes [1] for which the association was incorporated are:

> *1. To establish and operate a private educational institution offering technological, technical, terminal and vocational courses such as, but not limited to, Electronics, General Radio Communication Operator, Radio and Television Technician, Office and Tourism Management, Hotel and Restaurant Management, Marine Electrical Technician, Marine Electronics Technician, Industrial Technology, as well as any other allied courses as the conditions may demand from time to time that may be and hereinafter be approved and authorized by the government; likewise to open and operate the elementary level, the secondary level and the different courses and programs in the tertiary level of education as may be authorized and approved by the Department of Education, Culture and Sports; likewise further, to offer and operate a school canteen and other school related*

Copyright 2020 CD Technologies Asia, Inc.

Support Services, Post graduate studies program, Programs, Review, Training and Assessment Centers Under Technical Education and Skills Authority, Department of Education, Commission on Higher Education, Professional Regulatory Commission, Maritime Industry Authority and Civil Aviation Authority of the Philippines;

2. *To own engineering shops, fabricators and water transportation facilities that can provide actual training to deserving students and assist students ensure their employment after graduation;*

3. *To acquire or hold by purchase, exchange or lease or otherwise own real estates, buildings, equipment, school vehicles and other facilities necessary for the conduct of the business of the corporation;*

4. *To construct buildings on land acquired, held or owned by purchase, exchange, lease or by donation to serve as offices and classrooms of the corporation;*

5. *To receive gifts, donations and contributions in the form of financial aids and assistance from various sources subject to existing laws and to utilize these resources for the corporation;*

6. *To invest any portion of its funds and other resources in the purchase and acquisition of shares of stock or bonds of other corporations provided that the income derived therefrom shall be solely for the benefit of the corporation and not for the members or officers thereof;*

7. *To loan or borrow money and otherwise contract of indebtedness, secure credit accommodations as may be necessary with any persons or entity, and to acquire loans from the government through any of its lending institution, for the purpose of the corporation;*

8. *To do and perform any act and deed not contrary to law, and exercise such other powers which may be necessary, convenient and appropriate to accomplish and achieve the purpose of the corporation.*

In reply, please be informed that Section 30 of the National Internal Revenue Code of 1997, as amended, enumerates the non-stock and/or non-profit corporations/associations/organizations that are exempt from income tax in respect to income received by them as such. 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 nonstock and nonprofit educational institution."

Copyright 2020 CD Technologies Asia, Inc.

xxx xxx xxx"

"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]

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. The following are considered "inurements" of such nature:

1. *The payment of compensation, salaries, or honorarium to its trustees or organizers; x x x.*

In the submitted documents of **DIPOLOG CITY INSTITUTE OF TECHNOLOGY, INC.**, it was disclosed that Board of Directors are entitled to Honoraria. Sec. 11, Article IV of the amended By-Laws, of **DIPOLOG CITY INSTITUTE OF TECHNOLOGY, INC.**, states that:

> *"SECTION 11. Compensation. — No compensation shall be paid any trustees as such, but he may be allowed reasonable honorarium for actual attendance of meeting, regular or special which shall include transportation and other actual expenses incurred in connection thereto, the amount of which shall be recommended by the Board which shall take effect upon approval by the majority of the members."*

The giving of honoraria to the members of the Board of Directors is considered a distribution of the equity (including the net income) of **DIPOLOG CITY INSTITUTE OF TECHNOLOGY, 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 violates the requirement that no part of the net income or assets of the corporation shall inure to the benefit of any individual or specific person. Thus, **DIPOLOG CITY INSTITUTE OF TECHNOLOGY, INC.** cannot be qualified as a non-stock, non-profit corporation 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*

Copyright 2020 CD Technologies Asia, Inc.

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] ***(BIR Ruling No. 466-2014 dated November 19, 2014)***

In view of the foregoing, the request of **DIPOLOG CITY INSTITUTE OF TECHNOLOGY, INC.** to be exempted from income tax on its income as a Section 30 (H) corporation is hereby denied as it failed to prove that it is a non-profit corporation. Therefore, **DIPOLOG CITY INSTITUTE OF TECHNOLOGY, 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. Amended Articles of Incorporation adopted on October 10, 2016.
2. Section 87, Corporation Code.
3. Note from the Publisher: Copied verbatim from the official copy. Missing Footnote Text.
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].

Copyright 2020 CD Technologies Asia, Inc.