



Republic of the Philippines  
**DEPARTMENT OF FINANCE**  
Roxas Boulevard Corner Pablo Ocampo, Sr. Street  
Manila 1004

**DOF OPINION NO.** \_\_\_\_\_

**MS. JANET D.G. MORISHITA**  
Chairperson/President  
Japan Philippines Institute of Technology  
City of San Jose Del Monte Campus, Inc.  
JAG Bldg. EVR, Sapang Palay  
San Jose Del Monte, Bulacan

**SUBJECT: Request for Review of Bureau of Internal Revenue Ruling  
No. SH30-0582-2020 dated 6 October 2020**

**Dear Ms. Morishita:**

This refers to the Request for Review that you filed on behalf of Japan Philippines Institute of Technology - City of San Jose Del Monte Campus, Inc. (JPIT-SJDM) of Bureau of Internal Revenue (BIR) Ruling No. SH30-0582-2020 dated 6 October 2020, which denied JPIT-SJDM's request for tax exemption as a non-stock, non-profit educational institution under Section 4(3), Article XIV of the 1987 Constitution and Section 30 (H) of the National Internal Revenue Code (NIRC), as amended.

JPIT-SJDM represents that it is a non-stock, non-profit educational institution duly organized and existing under the laws of the Republic of the Philippines, established primarily to operate as an educational institution that offers junior and senior high school education.

On 11 October 2019, JPIT-SJDM applied for a tax exemption certificate with the BIR to confirm its status as a non-stock, non-profit educational institution. As part of the documentary requirements submitted to the BIR, JPIT-SJDM's Corporate Treasurer certified under oath that:

"Trustees do not receive any compensation, except reasonable per diems, and that any trustee who is also an officer of the corporation in no case his/their yearly compensation exceeds (10%) of the net income before tax of the corporation during the preceding year. Any compensation to such



trustee/officer is granted by the vote of the members representing at least a majority of the membership at a regular o[r] special member's meeting."<sup>1</sup>

On 6 October 2020, the BIR denied JPIT-SJDM's request for tax exemption, ruling that:

"In the submitted documents of [JPIT-SJDM] it was disclosed that the Board of Trustees are entitled to reasonable per diems. The Treasurer's Affidavit/Certification shows that the Trustees are entitled to receive reasonable per diems. The giving of per diems to the members of the Board of Trustees is considered as distribution of equity (including the net income) of [JPIT-SJDM]. **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, [JPIT-SJDM] cannot be qualified as a non-stock, non-profit educational institution under Section 30 (H) of the National Internal Revenue Code of 1997, as amended.

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"In view of the foregoing, the request of [JPIT-SJDM] to be exempted from income tax on its income as a Section 30 (H) institution is hereby denied as it failed to prove that it is a non-profit corporation. Therefore, [JPIT-SJDM] shall be treated as a regular corporation subject to thirty percent (30%) regular rate pursuant to Section 27 (B) of the National Internal Revenue Code of 1997, as amended." (*emphasis supplied*)

Aggrieved, JPIT-SJDM filed the instant Request for Review.

Verily, the issue to be resolved in this case is whether the BIR is correct in denying JPIT-SJDM's request for tax exemption on the ground that JPIT-SJDM violated the requirement that no part of its net income or assets shall inure to the benefit of any individual or specific person and that its net income was not used actually, directly and exclusively for educational purposes.

The 1987 Constitution expressly exempt all revenues and assets of non-stock, non-profit educational institutions from taxes provided that they are actually, directly and exclusively used for educational purposes, to wit:

Section 4. (1) The State recognizes the complementary roles of public and private institutions in the educational system and shall exercise reasonable supervisions and regulation of all educational institutions.

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<sup>1</sup> Treasurer's Certificate dated 3 October 2019, signed by Jean De Guzman.



(3) 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.<sup>2</sup>

The income tax exemption of non-stock, non-profit educational institutions is likewise provided in Section 30 of the NIRC, as amended, which enumerates the corporations exempt from income tax. Section 30 (H) of the NIRC, as amended, provides:

**SEC. 30. Exemptions 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 nonstock and nonprofit educational institution;

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In the case of *La Sallian Educational Innovators Foundation, Inc. v. Commissioner of Internal Revenue (CIR)*,<sup>3</sup> an educational institution shall be granted with tax exemption after proving that:

- (1) it falls under the classification of non-stock, non-profit educational institution; and
- (2) the income it seeks to be exempted from taxation is used actually, directly and exclusively for educational purposes.

In this case, however, JPIT-SJDM failed to prove that it is a non-profit educational institution and that the income it seeks to be exempted from taxation is used actually, directly and exclusively for educational purposes.

The Supreme Court, in the case of *CIR v. St. Luke's Medical Center, Inc.*,<sup>4</sup> had the opportunity to define "non-profit", which 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."

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<sup>2</sup> Section 4 (3), Article XIV, 1987 Constitution

<sup>3</sup> G.R. No. 202792, 27 February 2019.

<sup>4</sup> G.R. No. 195909, 195960, [September 26, 2012], 695 PHIL 867-895).



Moreover, in the case of *La Sallian Educational Innovators Foundation, Inc. v. CIR*,<sup>5</sup> the Supreme Court declared:

“[A] simple reading of the Constitution would show that Article XIV, Section 4 (3) does not require that the revenues and income must have also been earned from educational activities or activities related to the purposes of an educational institution. The phrase “*all revenues*” is unqualified by any reference to the source of revenues. Thus, so long as the revenues and income are used actually, directly and exclusively for educational purposes, then said revenues and income shall be exempt from taxes and duties.

In the instant case, petitioner Foundation ***firmly and adequately argued that none of its income inured to the benefit of any officer or entity.*** Instead, its income has been actually, exclusively and directly used for performing its purpose as an educational institution. Undoubtedly, petitioner Foundation has also proven this second requisite. (*emphasis supplied*)

The same could not be said to be true in the case of JPIT-SJDM. JPIT-SJDM’s Treasurer certified under oath that its Board of Trustees receive per diem. JPI-SJDM’s own words, through its Treasurer’s Certificate, contradicted the aforesaid requirements for tax exemption, stating:

“Trustees do not receive any compensation, except reasonable per diems, and that any trustee who is also an officer of the corporation in no case his/their yearly compensation exceeds (10%) of the net income before tax of the corporation during the preceding year. Any compensation to such trustee/officer is granted by the vote of the members representing at least a majority of the membership at a regular o[r] special member’s meeting.”

As held in our previously issued opinions,<sup>6</sup> ***per diem per se is not prohibited***, so long as the same is subjected to proper liquidation or reimbursement procedures, such as the case of transportation allowances doled out to trustees to attend meetings. Compensation to officers and/or employees is neither prohibited. As long as they are commensurate to the functions and services rendered, these are considered as legitimate and reasonable expenses incurred in furtherance of the duties and responsibilities of the trustees or officers, and ultimately, the objectives of the organization.<sup>7</sup>

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<sup>5</sup> G.R. No. 202792, 27 February 2019.

<sup>6</sup> DOF Opinion No. 005-2019 and DOF Opinion No. 005-2020.

<sup>7</sup> *Id.* In these cases, the trustees receive emoluments of Two Thousand Pesos (Php2,000.00) to cover travel expenses to and from the meeting venue. These emoluments are valid and are not considered as an inurement, provided, that they are subject to proper liquidation and reimbursement procedures.



To determine the reasonableness of such per diem or compensation, Revenue Memorandum Order (RMO) No. 44-2016<sup>8</sup> provides for the list of documentary requirements that must accompany the taxpayer's application for tax exemption, as follows:

SECTION 3. Documentary Requirements. – The non-stock non-profit educational institution shall submit the following documents:

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

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In this case, JPIT-SJDM was unable to demonstrate through its submitted documents that the per diem of its trustees and the compensation its officers received were reasonable and commensurate to the performance of the tasks needed of them.

Thus, if any of the income or assets of the organization are unfairly or unreasonably benefiting, either directly or indirectly, individuals who have close relationship with the organization, the same will be considered as private inurement which will disqualify the entity from exemption. Any form of private inurement would negate claims that the entity is non-profit and that the income or assets of the organization are used actually, directly and exclusively for educational purposes.

As discussed, Section 4(3), Article XIV of the 1987 Constitution imposes certain conditions to avail of the exemption. An educational institution, by reason alone of its registration as a non-stock corporation, is not *ipso facto* exempt from income tax. It must still prove that its assets and revenues do not accrue to or benefit any member or specific person, and are actually, directly, and exclusively used for educational purposes.

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<sup>8</sup> Subject: Amending Revenue Memorandum Order No. 20-2013, as amended (Prescribing the Policies and Guidelines in the Issuance of Tax Exemption Rulings to Qualified Non-Stock Non-Profit Corporations and Associations under Section 30 of the National Internal Revenue Code of 1997, as Amended)



After all, it is a cardinal rule in taxation that tax exemptions are construed *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority.<sup>9</sup> The burden of proof rests upon the party claiming exemption to prove that it is in fact covered by the exemption so claimed.<sup>10</sup> Thus, in case of doubt, non-exemption is favored.<sup>11</sup>

Taxes are the lifeblood of the government, for without taxes, the government can neither exist nor endure. A principal attribute of sovereignty, the exercise of taxing power derives its source from the very existence of the state whose social contract with its citizens obliges it to promote public interest and common good. The theory behind the exercise of the power to tax emanates from necessity; without taxes, government cannot fulfill its mandate of promoting the general welfare and well-being of the people.<sup>12</sup>

Finally, JPIT-SJDM alleges that granting it does not qualify as a non-stock, non-profit educational institution under Section 30 (H), it should not be treated as an ordinary corporation subject to 30% income tax rate, but as a proprietary educational institution subject to 10% rate under Section 27 (B) of the NIRC, as amended, which provides:

"(B) *Proprietary Educational Institutions and Hospitals.* -- Proprietary educational institutions and hospitals which are nonprofit shall pay a tax of ten percent (10%) on their taxable income except those covered by Subsection (D) hereof: Provided, That if the gross income from unrelated trade, business or other activity exceeds fifty percent (50%) of the total gross income derived by such educational institutions or hospitals from all sources, the tax prescribed in Subsection (A) hereof shall be imposed on the entire taxable income.

However, as regards the applicability of the reduced rate of 10% for proprietary educational institutions, this Office is of the view that the same is a proper subject of audit by the BIR to determine whether the requisites under Section 27 (B) of the NIRC, as amended, are present.

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<sup>9</sup> CIR v. Seagate Technology (Philippines), G.R. No. 153866, February 11, 2005, 451 SCRA 132, 152.

<sup>10</sup> Republic v. Caguioa, G.R. No. 168584. October 15, 2007. 562 PHIL 187-217.

<sup>11</sup> *Id.*

<sup>12</sup> CIR v. Bank of the Philippine Islands, G.R. No. 134062. April 17, 2007. 549 PHIL 886-903.



In view of the foregoing, this Office denies the Request for Review. Please note that this ruling is being issued on the basis of the foregoing facts as represented. However, if upon investigation, it shall be disclosed that the facts are different, then this ruling shall be considered as null and void.

Thank you.

Respectfully yours,

  
**CARLOS G. DOMINGUEZ**  
Secretary



JAN 27 2021

CC: **CAESAR R. DULAY**  
Commissioner  
Bureau of Internal Revenue  
BIR Road, Diliman, Quezon City