



Republic of the Philippines
DEPARTMENT OF FINANCE

Roxas Boulevard Corner Pablo Ocampo, Sr. Street
Manila 1004

DOF OPINION NO. _____

MS. JANET D.G. MORISHITA

JPI Technologies Training and
Services Inc.
JM Square Building., M. De Leon
Street., Poblacion, Sta. Maria
Bulacan

**SUBJECT: Request for Review of Bureau of Internal Revenue Ruling
No. SH30-0583-2020 dated 06 October 2020**

Dear **Ms. Morishita**:

This refers to the subject letter dated 10 December 2020 ("Request for Review"), which you filed with this Department requesting the review of Bureau of Internal Revenue ("BIR") Ruling No. SH30-0583-2020 dated 06 October 2020, denying JPI Technologies Training and Services, Inc. ("JPI TTSI") request for exemption from income tax on its income as a non-stock, non-profit educational institution under Section 30(H) of the National Internal Revenue Code ("NIRC") of 1997, as amended.

JPI Technologies Training and Services, Inc. ("JPI TTSI") represents that it is a non-stock, non-profit educational institution engaged in providing training and education programs for the development of [the] Filipino people, to become [a] world class manpower, technicians and entrepreneurs.

On 11 October 2019, JPI TTSI filed with the Bureau of Internal ("BIR") an application for issuance of a certificate of tax exemption in favor of a non-stock and non-profit educational institution within the purview of Section 30(H) of the National Internal Revenue Code ("NIRC") of 1997, as amended.

As part of the documentary requirements submitted, JPI TTSI's Corporate Treasurer certified under oath that the organization's *"trustees do not receive any compensation, except reasonable per diems, and that any trustee who is also*

A handwritten signature in black ink, appearing to be a stylized 'J' or 'G' followed by a flourish.

an officer of the Corporation in no case his/her total yearly compensation exceeds ten (10%) percent of the net income before income 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 [or] special member's meeting."

On 10 November 2020, JPI TTSI received BIR Ruling No. SH30-0583-2020 dated 06 October 2020 denying its application for tax exemption under Section 30(H) of the NIRC. The pertinent portion of BIR Ruling No. SH30-0583-2020 provides:

In the submitted documents of **JPI TECHNOLOGIES TRAINING AND SERVICES, INC.** it was disclosed that the Board of Trustees are entitled to reasonable per diems. The Treasurer's Affidavit/Certification shows that the Trustees may 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 **JPI TECHNOLOGIES TRAINING AND SERVICES, 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, **JPI TECHNOLOGIES TRAINING AND SERVICES, INC.** cannot be qualified as a non-stock, non-profit educational institution under Section 30(H) of the NIRC.

Aggrieved, JPI TTSI filed the instant Request for Review.

In its Request for Review, JPI TTSI argues the following in support of its position that it is a non-stock, non-profit educational institution which is exempt from income taxes under Section 30(H) of the NIRC, as amended, to wit:

- a. JPI TTSI is a non-stock and non-profit educational institution because it does not have a capital stock divided into shares nor is it authorized to distribute to its members dividends or allotments of the surplus profits on the basis of shares held by its members;
- b. JPI TTSI's income is actually, directly and exclusively used for education purposes. Any income incidentally derived from its



activities and from the accumulation of its funds is entirely devoted in furtherance of its purpose.

We disagree with JPI TTSI.

The 1987 Constitution 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, as follows:

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

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(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. Upon the dissolution or cessation of the corporate existence of such institutions, their assets shall be disposed of in the manner provided by law.

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The Constitutional exemption is reiterated in Section 30 (H) of the National Internal Revenue Code (NIRC) of 1997, as amended, which states that non-stock and non-profit educational institutions are one of the entities exempt from income tax.

Further, BIR Revenue Memorandum Order (RMO) No. 44-2016¹ explained that there are two requisites that must be followed for the constitutional exemption to be enjoyed, to wit:

- (1) The school must be non-stock and non-profit; and
- (2) The income is actually, directly and exclusively used for educational purposes. There are no other conditions and limitations.

¹ 25 July 2016.



In the case at bar, JPI TTSI failed to prove that it is a non-profit educational institution and that its income is used actually, directly and exclusively used for educational purposes.

In *CIR v. St. Luke's Medical Center, Inc.*², the word "non-profit" means that "no 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 are not for profit".

Moreover, the Supreme Court in the case of *La Sallian Educational Innovators Foundation (De La Salle University-College of St. Benilde) Inc. v. Commissioner of Internal Revenue*³ declared that the educational institution must present adequate proof to be eligible for tax exemption under Section 30 (H) of the NIRC, to wit:

Furthermore, 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. (*emphasis supplied*)

JPI TTSI's Treasurer certified, under oath, that its Board of Trustees receives a reasonable amount of per diem, to wit:

"Trustees do not receive any compensation, except reasonable per diems, and that any trustee who is also an

² G.R. No. 195909, 195960, [September 26, 2012], 695 PHIL 867-895).

³ G.R. No. 202792, 27 February 2019.



officer of the Corporation in no case his/their total yearly compensation exceeds ten (10%) percent of the net income before income 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 [or] special member's meeting."

As held in our previously issued opinions⁴, per diem/honorarium *per se* is not prohibited, so long as the same is subject to proper liquidation or reimbursement procedures, such as the case of transportation allowances doled out to trustees to attend meetings. These are considered as legitimate and reasonable expenses incurred in furtherance of the duties and responsibilities of the organization, and ultimately, the objectives of the organization.⁵

Under RMO 44-2016, one of the requirements for an educational institution applying for a tax exemption is the submission of an original copy of a Certification under oath of the Treasurer as to the **amount** of the income, compensation, salaries or any emoluments paid to its trustees, officers and executive officers.⁶

However, in the case at bar, JPI TTSI was unable to demonstrate through its submitted documents that the per diem its trustees received was reasonable and commensurate to the performance of the tasks needed of them. It bears emphasis that in determining the reasonableness/unreasonableness of the per diem given by JPI TTSI, it is not sufficient to consider the amount of the per diem but also the relevant and surrounding circumstances that necessarily influence the appropriateness thereof.

As such, if any income or assets of the organizations are unfairly or unreasonably benefiting, either directly or indirectly, individuals who have a close relationship with the organization, the same will be considered as private inurement which will disqualify the entity from tax exemption. Any form of private inurement would disprove claims that the educational institution is non-profit and that its

⁴ DOF Opinion Nos. 005-2019, 005-2020, and 009-2020.

⁵ *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 inurement, provided that they are subject to proper liquidation and reimbursement procedures.

⁶ Section 2(c) of RMO 44-2016, 25 July 2016.



income or assets 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.

It is worth reiterating that laws allowing tax exemptions are construed *strictissimi juris* because tax exemptions restrict the collection of taxes necessary for the existence of the government.⁷

Lastly, JPI TTSI 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, to wit:

(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.

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 an audit by the BIR to determine whether the requisites under Section 27 (B) of the NIRC, as amended, are present.

⁷ Commissioner of Internal Revenue v. Court of Tax Appeals and Young Men’s Christian Association of the Philippines, Inc.



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

Thank you.

Very Truly Yours,


CARLOS G. DOMINGUEZ
Secretary of Finance



JAN 27 2021

CC **Hon. Caesar R. Dulay**
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