



Republic of the Philippines  
**DEPARTMENT OF FINANCE**

Roxas Boulevard Corner Pablo Ocampo, Sr. Street  
Manila 1004

**DOF OPINION NO. 003-2021-A**

**ATTY. MICHELLE V. BASMAYOR**  
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**SUBJECT: Request for Reconsideration of DOF Opinion No. 003-2021 Denying the Request for Review of Bureau of Internal Revenue Ruling No. 466-2014 (SH30-0207-2020) dated 10 March 2020**

**Dear Atty. Basmayor:**

This refers to the request for reconsideration filed by your Law Office on behalf of your client, CALAYAN EDUCATIONAL FOUNDATION, INC. (CEFI), of DOF Opinion No. 003-2021 dated 16 June 2021 (Opinion) upholding Bureau of Internal Revenue (BIR) Ruling No. 466-2014 (SH30-0207-2020) dated 10 March 2020 which denied CEFI'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.

On 22 June 2021, CEFI received this Department's Opinion affirming the BIR's denial of CEFI's request for tax exemption on the basis that the school's Securities and Exchange Commission (SEC)-approved by-laws mandates the grant of per diems (Article III) and incentives in the form of monthly endowment for life after retirement (Article V) to officers and members of the Board of Trustees. We explained therein that:

"A perusal of the documents in the BIR docket of this case show that CEFI was unable to demonstrate through its submitted documents that the per diem of its trustees and monthly endowment for life after retirement of its qualified officers and trustees were unreasonable and commensurate to the services they render or 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.

xxx 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.”

On 7 July 2021, CEFI requested for the reconsideration of the DOF Opinion submitting a copy of its 2021 SEC-approved by-laws to reflect its abandonment and deletion of the pertinent provisions in Article III and Article V of its by-laws pertaining to the grant of per diems and incentives in the form of monthly endowment for life after retirement to CEFI’s officers and trustees. According to CEFI, the amendment is for purposes of dispelling doubts and confusion caused by the provisions and for consistency and in harmony with CEFI’s Amended Articles of Incorporation which expressly prohibits CEFI’s trustees from receiving compensation as such trustees.<sup>1</sup>

This Office notes that while a request for reconsideration is not provided under the rules, the Secretary of Finance may, on his own discretion and only upon meritorious circumstance and/or patently erroneous ruling, give due course to the request for reconsideration. Moreover, jurisprudence states that a motion for reconsideration should not put forward a new issue and/or change the theory of the case, but should only seek a reconsideration of the judgment or final order based on the same issues and contentions.<sup>2</sup>

To be exempt from income tax under Section 4(3), Article XIV of the 1987 Constitution, CEFI’s incorporation documents, as well as its internal rules, in the form of by-laws, must be consistent with the two-pronged requirement under the Constitution – that the educational institution’s 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>1</sup> Section 8 of the Articles of Incorporation dated 25 January 2019

<sup>2</sup> Spouses Mendiola v. Court of Appeals, G.R. No. 159746 (18 July 2012), 691 PHIL 244-271 *citing* Heirs of Reterta v. Spouses Mores, G.R. No. 159941 (17 August 2011), 671 PHIL 346-365.

CEFI, in its request for review of the BIR Ruling maintained that its trustees did not receive compensation or any other emolument from the corporation. CEFI also alleged that the contended provisions in its by-laws were not self-executory.<sup>3</sup> It bears emphasis, however, that a corporation can only exercise its powers and transact its business through its board of directors and through its officers and agents when authorized by a board resolution or its by-laws.<sup>4</sup>

Stated otherwise, if a board resolution or its by-laws authorized the grant of per diem or incentives/emoluments, there is nothing therefore, that prevents CEFI from granting said emoluments to a member or specific person thereby violating the Constitutional requirement for income tax exemption. As the one claiming exemption, CEFI has the burden of proving that it is in fact covered by the exemption so claimed<sup>5</sup> and did not disburse any of the emoluments expressly allowed in its by-laws. It is a cardinal rule that in case of doubt, non-exemption is favored.<sup>6</sup>

Considering that it was only in this request for reconsideration that CEFI submitted a copy of its 2021 amended by-laws which removed the contended provisions, this Office believes that CEFI'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, may be granted by the BIR reckoned from the time when CEFI abandoned and deleted from its by-laws the contended provisions, for the purpose of dispelling doubts and confusion.

We are therefore remanding this case to the BIR so that the latter can consider and evaluate CEFI's request for issuance of tax exemption certificate.

The BIR is also tasked to verify CEFI's representation that the school's trustees did not receive compensation or any other emoluments prior to the time when CEFI amended its by-laws, and consider the same on whether CEFI may be properly granted the exemption certificate for said years or assessed deficiency income taxes pursuant to applicable rules and regulations on the matter.

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<sup>3</sup> Paragraph 3 of the Supplemental Request for Review dated 28 January 2021

<sup>4</sup> *Salenga v. Court of Appeals*, G.R. No. 174941, [February 1, 2012], 680 PHIL 648-681

<sup>5</sup> *Republic v. Caguioa*, G.R. No. 168584. October 15, 2007. 562 PHIL 187-217.

<sup>6</sup> *Id.*

Kindly note that this Opinion 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 Opinion shall be considered as null and void.

Thank you.

Very truly yours,



Digitally signed by  
Carlos G. Dominguez  
Date: 2021.12.28  
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**CARLOS G. DOMINGUEZ**  
Secretary



CC: **HON. CAESAR R. DULAY**  
Commissioner, Bureau of Internal Revenue

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