



Republic of the Philippines
DEPARTMENT OF FINANCE

Roxas Boulevard Corner Pablo Ocampo, Sr. Street
Manila 1004

DOF OPINION NO. 009.2020

ATTY. ANTHONY A. DY

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**SUBJECT: Request for Review of Bureau of Internal Revenue
Ruling No. 0706-2019 dated 29 November 2019**

Dear **Atty. Dy**:

This refers to the Request for Review that you filed on behalf of ASIAN COLLEGE OF SCIENCE AND TECHNOLOGY FOUNDATION (DUMAGUETE), INC. (ACSTFI) of Bureau of Internal Revenue (BIR) Ruling No. 0706-2019 dated 29 November 2019, which denied ACSTFI's request for tax as a non-stock, non-profit educational institution under Section 30 (H) of the National Internal Revenue Code (NIRC), as amended.

Asian College of Science and Technology Foundation (Dumaguete), Inc. (ACSTFI for brevity) represents that it is a non-stock, non-profit educational institution providing higher education program in accordance with up to date and modern educational theories and methods.

ACSTFI applied for tax exemption certificate with BIR to confirm its status as a enjoyed by non-stock, non-profit educational institution under Section 30 (H) of the National Internal Revenue Code of 1997 (NIRC), as amended. As part of the documentary requirements submitted, ACSTFI's Corporate Treasurer certified under oath that *"the trustees, officers and other executives of [ACSTFI] do not [receive] their salaries, compensation, or any emoluments except for a reasonable per diem/honorarium."*¹

On the basis of which, the BIR denied ACSTFI's request for tax exemption, ruling that:

¹ Certification Under Oath of the Treasurer, Claudine Gloria Lucente, dated 28 June 2017.

A handwritten signature in black ink, appearing to be "S", is located at the bottom left of the page.

"The payment of per diem/honorarium to the member of the Board of Trustees is considered a distribution of equity (including the net income) of [ACSTFI]. **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 is not in accordance with the definition of "non-profit" 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." Thus, [ACSTFI] cannot be qualified as a non-profit educational institution under Section 30 (H) of the National Internal Revenue Code of 1997, as amended.

"In view of the foregoing, the request of [ACTSFI] 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 educational institution. **Therefore, [ACSTFI] 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."

(emphasis supplied)

Aggrieved, ACSTFI, through counsel, filed the instant Request for Review.

Verily, the issue to be resolved in this case is whether the BIR is correct in denying ACSTFI's request on the basis that ACSTFI is not non-profit and that its income was not used actually, directly and exclusively for educational purposes.

The payments of honorarium to ACSTFI's Board of Trustees violate the requirements for tax exemption

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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(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.²

² Section 4 (3), Article XIV, 1987 Constitution



This Constitutional exemption is reiterated in Section 30 (H) of the NIRC, as amended, which enumerates non-stock and non-profit educational institutions as one of the entities exempt from income tax.

In the case of *La Sallian Educational Innovators Foundation, Inc. v. Commissioner of Internal Revenue (CIR)*,³ 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, ACSTFI 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.*,⁴ had the opportunity to define “non-profit”, which 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 not for profit.”***

Moreover, in the case of *La Sallian Educational Innovators Foundation, Inc. v. CIR*,⁵ 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*)

³ G.R. No. 202792, 27 February 2019.

⁴ G.R. No. 195909, 195960, [September 26, 2012], 695 PHIL 867-895). *Emphasis supplied.*

⁵ G.R. No. 202792, 27 February 2019.



The same could not be said to be true in the case of ACSTFI. ACSTFI's Treasurer certified under oath that its Board of Trustees receive per diem/honorarium.

As held in our previously issued opinions,⁶ **per diem/honorarium per se is not prohibited**, so long as the same are subjected 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 trustees, and ultimately, the objectives of the organization.⁷

However, in this case, ACSTFI was unable to demonstrate through its submitted documents that the per diem/honorarium its trustees received was 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.

Further, it has been the constant and uniform holding of our courts that exemption from taxation is not favored and is never presumed, so that if granted it must be strictly construed against the taxpayer.⁸ Thus, to determine whether an educational institution is qualified for exemption, certain documents must be submitted, as provided under Revenue Memorandum Order (RMO) No. 44-2016.⁹

The RMO enjoys a strong presumption of validity. In **ABAKADA Guro Party List v. Purisima**,¹⁰ the Court has extended the presumption of validity to legislative issuances as well as to rules and regulations issued by administrative agencies, saying:

⁶ DOF Opinion No. 005-2019 and DOF Opinion No. 005-2020.

⁷ *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.

⁸ The Province of Abra v. Hernando, G.R. No. L-49336. August 31, 1981, citing Catholic Church v. Hastings is reported in 5 Phil. 701 and Esso Standard Eastern, Inc. v. Acting Commissioner of Customs, L-21841, 18 SCRA 488.

⁹ Dated 25 July 2016.

¹⁰ G.R. No. 166715, August 14, 2008, 562 SCRA 251



Administrative regulations enacted by administrative agencies to implement and interpret the law which they are entrusted to enforce have the force of law and are entitled to respect. Such rules and regulations partake of the nature of a statute and are just as binding as if they have been written in the statute itself. As such, they have the force and effect of law and enjoy the presumption of constitutionality and legality until they are set aside with finality in an appropriate case by a competent court.

Finally, ACSTFI 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.

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.

Respectfully yours,


CARLOS G. DOMINGUEZ
Secretary

AUG 27 2020



Copy furnished:

HON. CAESAR R. DULAY

Commissioner

Bureau of Internal Revenue

BIR Road, Diliman, Quezon City

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