

**RECENT TAX
DEVELOPMENTS
FOR
EDUCATIONAL
INSTITUTIONS**

Basis for Tax Exemption:

Section 4(3), Art. XIV, 1987 Constitution

- “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. xxx”

Section 30(H), National Internal Revenue Code of 1997:

- “The following organizations shall not be taxed under this Title in respect to income received by them as such:

(H) A nonstock and nonprofit educational institution;”

BIR Regulations Affecting NSNPs

1. RMO No. 20-2013, in relation to RMC No. 8-2014
2. RMC No. 51-2014
3. RMO No. 34-2014

RMO No. 20-2013

Section 2: Corporations and associations enumerated under **Section 30 of the NIRC**, as amended, **including those which have been issued tax exemption rulings/certificates prior to June 30, 2012** shall file their respective Applications for Tax Exemption/Revalidation with the Revenue District Office (RDO) where they are registered. Only corporations and associations that are duly qualified under Section 30 of the NIRC, as amended, shall be issued Tax Exemption Rulings.

Section 3 - General Documentary Requirements:

1. Application Letter
2. Articles of Incorporation and By-laws
3. Certification by executive officer as to: (i) previous amendments to AOl or By-Laws; (ii) manner of activities; and (iii) sources and disposition of income
4. BIR Registration

5. Certification by Treasurer as to: (i) amount of income; and (ii) compensation of trustees, officers, and other executive officers
6. RDO Certification that the NSNP is not subject to pending investigation, tax assessment, protest, claim for refund, collection proceedings, or judicial appeal.
7. Income Tax Returns or annual Information Returns and Financial Statement for the last 3 years.

8. Oath by executive officer giving: (i) full description of past, present, and proposed activities; (ii) description of anticipated receipts and contemplated expenditures; and (iii) description of all revenues sought to be exempted.

Section 4 - Additional Requirements for Educational Institutions:

1. CHED or TESDA Certification
2. If CHED or TESDA Certification is more than 5 years old, current Certificate of Operation / Good Standing
3. Certificate of Utilization of annual revenues and assets

Section 12. Transitory Provisions.

Tax exemption rulings or certifications issued to corporations or associations listed under Section 30 of the NIRC, as amended, prior to June 30, 2012 shall be valid until December 31, 2013. Tax exemption rulings or certificates issued after June 30, 2012 shall continue to be valid for a period of three (3) years from date of issuance, unless sooner revoked or cancelled.

RMC No. 8-2014

- Withholding agents shall require all entities claiming tax exemption to provide a copy of a valid, current and subsisting tax exemption certificate or ruling. Failure on the part of the taxpayer to present the said tax exemption ruling shall subject him to the payment of appropriate withholding taxes due on the transaction.

- The withholding agent's failure to withhold notwithstanding the lack of tax exemption ruling shall cause the imposition of penalties under the tax code.

St. Paul College of Makati vs. Henares

Decision dated July 25, 2014 by Br. 143, RTC - Makati

“WHEREFORE, in view of all the foregoing, the Court hereby declares BIR RMO No. 20-2013 as UNCONSTITUTIONAL for being violative of Article XIV, Section 4, paragraph 3. Consequently all Revenue Memorandum Orders subsequently issued to implement BIR RMO No. 20-2013 are declared null and void.

The writ of preliminary injunction issued on 03 February 2014 is hereby made permanent.”

CEAP Advisory

August 2014

- St. Paul's case provides basis that a TER is no longer necessary to avail of tax exemption.
- It also provides basis that RMC No. 8-2014, regarding withholding taxes, cannot be enforced.
- All existing TERs should still be considered effective.
- St. Paul's case is not yet final.

RMC No. 51-2014

“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.”

Prohibited Acts

- Payment of compensation, salaries or honorarium to trustees or organizers
- Payment of exorbitant or unreasonable compensation to employees
- Welfare aid and financial assistance to members

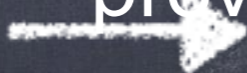
- Donations to any person or entity (except donations to entities formed for similar purposes)
- Purchase of goods or services for amounts in excess of the fair market value from an entity in which one or more trustees or officers has an interest
- Upon dissolution and satisfaction of all liabilities, the remaining assets are distributed to trustees, organizers, officers or members

RMC No. 34-2014

Issued on Sept. 18, 2014

Clarifying Certain Provisions of RMO
No. 20-2013

Salient Features of RMO 34-2014

- Admission that the absence of a TER will not divest qualified entities of tax exemption under the Constitution or Sec. 30
- No TER  prove qualifications during audit
- Applications for TER may be filed anytime

- NSNPs must still present current TER to their withholding agents. Otherwise, the withholding agent shall subject income of NSNPs to withholding tax.
- Applications for TERs may be filed by umbrella organizations on behalf of their members