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TOP OF MIND

By **CHRISTINE GAEL C. DY**

Tax exemption rulings

Déjà vu. Perhaps this is the feeling one will get from reading Revenue Memorandum Order (RMO) No. 44-2016 dated July 25 issued by the Bureau of Internal Revenue (BIR).

As a backgrounder, one may recall that on July 22, 2013, the BIR issued RMO No. 20-2013 requiring all non-stock, non-profit corporations and associations enumerated in Section 30 of the 1997 Tax Code, as amended, including those which have been issued tax exemption rulings (TER) or certificates of tax exemption prior to June 30, 2012 to file an application for a TER with the Revenue District Office (RDO) where they are registered.

The TER issued shall be valid for a period of three years. After the lapse of the three-year period, the non-stock, non-profit corporation or association must apply for a renewal by filing another application for TER. The new TER shall be valid for another period of three years, unless sooner revoked or cancelled.

A little over a year after its issuance, RMO No. 20-2013 was declared unconstitutional by the Makati Regional Trial Court (RTC). According to the Makati RTC, RMO No. 20-2013 imposed a pre-requisite to the enjoyment by non-stock, non-profit educational institutions of their constitutional privilege of tax exemption because in the event the pre-requisites are not complied with, the constitutional privilege of tax exemption granted to non-stock, non-profit educational institutions is diminished or defeated.

Last July, the BIR issued RMO No. 44-2016. RMO No. 44-2016 is being issued to exclude non-stock, non-profit educational institutions from the coverage of RMO No. 20-2013.

The RMO explains the nature of the tax exemption, stating it is clear and unmistakable from the Constitution that non-stock, non-profit educational institutions are constitutionally exempt from tax on all revenues derived in pursuance of its purpose as an educational institution and used actually, directly and exclusively for educational purposes.



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Ironically, however, the RMO states that all non-stock, non-profit educational institutions with TERs or certificates of tax exemption issued prior to June 30, 2012 shall apply for new TERs with the Office of the Assistant Commissioner, Legal Service, Attention: Law Division. Albeit it did away with the requirement of having the TER renewed or revalidated every three years, RMO No. 44-2016 brought back to life the burden of having to secure a TER under RMO 20-2013.

RMO No. 44-2016 does not state what the penalty is, or if there will be any, in case a non-stock, non-profit educational institution fails to apply for a TER. However, one can assume that in the event of a tax audit, the non-stock, non-profit school without the TER will not find it easy to prove it is entitled to tax exemption. Moreover, the income payers of non-stock and non-profit educational institutions (e.g. the depository banks) most likely will withhold taxes on their income payments if the TER is not presented.

Thus, applying for a TER appears to be the conservative approach. Considering the number of non-stock, non-profit educational institutions in the country, let this serve as a plea to the tax authorities to be prudent and efficient in processing TER applications. Indeed, it is common and usual to hear stories about tax exemption ruling applications pending with the tax office for years.

For non-stock and non-profit educational institutions applying for a TER for the first time, or those with TERs or Certificates of Tax Exemption issued prior to June 30, 2012, please be reminded the following documents must accompany the TER application: (1) a certified true copy of the Certificate of Good Standing issued by the Securities and Exchange Commission, (2) original copy of the certification under oath of the treasurer of the school as to the amount of the income, compensation, salaries or any emoluments paid to the school's trustees, officers and other executive officers, (3) certified true copy of the financial statement of the school for the last three years, (4) certified true copy of government recognition/ permit/ accreditation to operate as an educational institution, and (5) original copy of the certification under oath of the treasurer as to how the school's annual revenues and assets were utilized. We also reiterate that the application for TER must be filed with the Law Division of the BIR National Office.

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