

Headline	Education and taxes		
MediaTitle	The Philippine Star		
Date	09 Aug 2016	Color	Black/white
Section	Business	Circulation	305,090
Page No	B4	Readership	305,090
Language	English	ArticleSize	441 cm ²



TOP OF MIND

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Education and taxes

The Bureau of Internal Revenue (BIR) has made it clear there are only two requisites for the revenues of an educational institution (institution) to be exempt from taxes and duties: (1) The educational institution must be non-stock and non-profit.

(2) The revenue or income is actually, directly and exclusively used for educational purposes.

Revenue Memorandum Order (RMO) No. 44-2016 now excludes these institutions from the coverage of RMO No. 20-2013, to the extent that:

1. Applications for tax exemptions (application) shall be filed with the Office of the Assistant Commissioner of Internal Revenue (ACIR), Legal Service, at the BIR National Office.

2. The resulting tax exemption ruling or certificate of exemption (certificate) shall remain valid and effective, unless recalled for valid grounds.

Previously, an institution would have to file its application with the Revenue District Office (RDO) having jurisdiction over it, and the RDO would make its evaluation of the application before endorsing the same to the national office. This saves the institution valuable time with regard the processing of its application.

Another change is that the resulting tax exemption ruling or certificate need no longer be revalidated after three years. Of course, if there are any material changes in the character, purpose or method of operation of the institution which are inconsistent with the basis for its income tax exemption, the ruling or certificate can be recalled or revoked. And the primary method by which the BIR may determine if there were any changes will be through an audit investigation.

To prove that an institution is non-stock non-profit, and further, that its revenue is actually, directly and exclusively used for educational purposes, the BIR still requires the following documents to accompany the application:

- a. Original copy of the application letter for issuance of a ruling or certificate.
- b. Certified true copy of the Certificate of Good Standing issued by the Securities and Exchange Commission.
- c. Original copy of the certification under oath of the treasurer as to the amount of the income, compensation, salaries or any emoluments paid to its trustees, officers and other executive officers;
- d. Certified true copy of the financial statements of the corporation for the last three (3) years.

e. Certified true copy of government recognition/permit/accreditation to operate as an educational institution issued by the Commission on Higher Education (CHED), Department of Education (DepEd), or Technical Education and Skills Development Authority (TESDA); Provided, that if the government recognition/permit/accreditation to operate as an educational institution was issued five (5) years prior to the application for tax exemption, an original copy of a current Certificate of Operation/Good Standing, or other equivalent document issued by the appropriate government agency (i.e., CHED, DepEd, or TESDA) shall be submitted as proof that the non-stock and nonprofit educational institution



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is currently operating as such.

f. Original copy of the Certificate of Utilization of annual revenues and assets by the Treasurer or his equivalent of the institution.

If you're wondering what the Certificate of Utilization is, that's actually required under RMO No. 20-2013. It's a breakdown of the use of the annual revenues and assets, which is submitted annually to the BIR as an inclusion to the audited financial statements. Since RMO No. 44-2016 specifically mentions the requirements for filing the application, the institutions should likewise abide by Revenue Memorandum Circular (RMC) No. 08-2014, which specifies the requirements for filing a request for BIR ruling.

Note, however, that RMO No. 44-2016 still refers to June 30, 2012 as a cut-off date for updating the BIR's records on rulings of this nature, and thus institutions with rulings or certificates of exemption issued before June 30, 2012 are required to file applications (again).

Finally, let's take this opportunity to go over the taxes that the institutions (non-stock non-profit, of course) are exempt from:

Income tax. All income actually, directly and exclusively used for educational purposes. Further, all revenues derived from assets used in the operation of cafeterias/canteens and bookstores located within the premises of the institution are exempt from taxation provided they are owned and operated by the institution as ancillary activities (BIR Ruling No. 201-2016, dated May 19).

Value-added tax (VAT). Section 109(H) of the Tax Code states that educational services rendered by private educational institutions duly accredited by DepEd, CHED or TESDA, and government educational institutions are exempt from the VAT. The BIR has qualified this with a restriction, to the effect that the exemption from VAT exists so long as the institution will not engage in the regular conduct or pursuit of a commercial or economic activity, including transactions incidental thereto. Particularly, the sale of goods and services not in connection with the institution's primary purposes will be subject to VAT. Note that as a taxpayer exempt from the VAT, the VAT can still be passed on to the institution by its suppliers.

Final withholding tax (FWT). Interest income from currency bank deposits and yield from deposit substitute instruments used actually, directly and exclusively in pursuance of its purpose as an educational institution, are exempt from the 20 percent final tax and 7 1/2 percent tax on interest income under the expanded foreign currency deposit system. However, the institution must submit the following requirements annually to the concerned RDO (together with the annual information return and duly audited financial statements): (a) Certification from their depository banks as to the amount of interest income earned from passive investment not subject to the abovementioned final withholding taxes; (b) Certification of actual utilization of the said income (c) Board resolution by the school administration on proposed projects to be funded out of the money deposited in banks or placed in money markets, on or before the 14th day of the fourth month following the end of its taxable year.

Please be reminded that donations to these institutions are exempt from donor's tax, as long as not more than 30 percent of the donations are used by the institutions for administration purposes (Section 101[A][3], Tax Code). On the other hand, for the donor to be able to fully deduct the donation, the institution has to be an accredited "donee" institution, which requires, among others, accreditation with the Philippine Council for NGO Certification (PCNC).

The institutions with rulings/certificates issued prior to June 30, 2012, and those without existing rulings/certificates should take note of these requirements and make sure that the BIR addresses/identifies all the exemptions in the resulting ruling/certificate.

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