REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE
Quezon City

Section 30 of the Tax Code of 1997, as amended
BIR Ruling No. 126-14 BIR Ruling No. 357-13
#270-2016 6-22-2016

SAND AND WATER LEARNING CENTER, INC.
No. 17 Amethyst Street, Union Village
Bagumbong, Caloocan City

Attention: **MARISSA EJERCITO-BORINES**
President/School Directress

Gentlemen:

This refers to your letter dated March 27, 2014 requesting for tax exemption pursuant to Section 30 (H) of the Tax Code of the Philippines, as amended.

It is represented that Sand and Water Learning Center, Inc. with Taxpayer's Identification No. [redacted] is a non-stock, non-profit corporation duly organized under the laws of the Philippines; that it is registered with the Securities and Exchange Commission (SEC) under Registration No. [redacted] and with SEC Certificate of Incorporation dated July 24, 2013; that it is recognized by the government and permitted by the Department of Education (DEPED) in accordance with DEPED-NCR PERMIT No. P-111, R-1 s. 2014 to operate a Nursery/Kindergarten Course for school year 2014-2015 only; and purposes for which it was incorporated are the following:

1) To establish a Private Pre-School Educational Services that will stimulate the child's critical thinking, discovering and decision making;
2) To master the head-muscular coordination so the child can face the Physical challenges of the society;
3) To instill Filipino values for self-identity to venture out in the society;
4) To know his interpersonal connection between himself and the people around him; and
5) To imbibe godly works and unconditional love.

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In reply, please be informed that your request for tax exemption as a non-stock non-profit corporation under Section of the Tax Code of 1997, as amended, is hereby denied for lack of factual basis.

Notwithstanding that the Articles of Incorporation states that the Sand and Water Learning Center, Inc. is a non-stock, non-profit corporation, it has to prove that it is really a corporation organized and <u>operated</u> as contemplated under Section 30 of the Tax Code of 1997, as amended.

Being registered as a non-stock and non-profit corporation does not, by this reason alone, completely exempt an institution from tax. *(Commissioner of Internal Revenue vs. St. Luke's Medical Center, Inc., G.R. No. 195909 & G.R. No. 195960, 26 September 2012)*

Note that tax exemptions are never presumed and thus, as ruled by the Supreme Court in the case of *Quezon City and The City Treasurer of Quezon City vs. ABS-CBN Broadcasting Corporation (G.R. No. 166408 dated October 6, 2008)*:

> *"He who claims an exemption from his share of common burden must justify his claim that the legislature intended to exempt him by unmistakable terms. For exemptions from taxation are not favored in law, nor are they presumed. They must be expressed in the clearest and most unambiguous language and not left to mere implications. It has been held that "exemptions are never presumed, the burden is on the claimant to establish clearly his right to exemption and cannot be made out of inference or implications but must be laid beyond reasonable doubt". In other words, since taxation is the rule and exemption the exception, the intention to make an exemption ought to be expressed in clear and unambiguous terms."*

Hence, Sand and Water Learning Center, Inc. shall be treated as an ordinary corporation subject to regular corporate income tax and the applicable internal revenue taxes imposed by the Tax Code of 1997, as amended.

Moreover, Section 105 of the Tax Code of 1997 provides that any person who, in the course of trade or business, sells, barters, exchanges, leases goods or properties, renders services, and any person who imports goods shall be subject to the value-added tax (VAT) imposed in Sections 106 to 108 of the same Code.

The phrase "in the course of trade or business" means the regular conduct or pursuit of a commercial or an economic activity, including transactions incidental thereto, by any person regardless of whether or not the person engaged therein is a non-stock, non-profit private organization (irrespective of the disposition of its net income and whether or not it sells exclusively to members or their guests), or government entity.

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Accordingly, if Sand and Water Learning Center, Inc. is engaged in the sale of goods or services in the course of a business pursuit, including transactions incidental thereto, in general, it shall be liable for VAT.

Please be guided accordingly.

Very truly yours,

KIM S. JACINTO-HENARES
Commissioner of Internal Revenue

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cc: Regional Director
Revenue Region 5-Caloocan City