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

Section 30 (H) of the NIRC of 1997, as amended; RMO No. 20-2013; RMC No. 64-2016
BIR Ruling No. 466-2014
SH30-0504-2020
SEP 08 2020

NETHERLANDS SHIPPING TRAINING CENTER FOUNDATION, INC.
Pit Evangelista, Guiwan II, Palompon, Leyte 6538

Attention : <u>ATTY. KARLA GRACE J. DELES-GELI</u>
Treasurer

Madam:

This refers to your letter, dated January 10, 2018, applying on behalf of **NETHERLANDS SHIPPING TRAINING CENTER FOUNDATION, INC.** for tax exemption certificate being enjoyed by non-stock, non-profit corporation or association under Section 30 (H) of the National Internal Revenue Code (NIRC) of 1997, as amended.

It is represented that **NETHERLANDS SHIPPING TRAINING CENTER FOUNDATION, INC.** with BIR Taxpayer's Identification No. (TIN) [redacted] and Certificate of Registration No. [redacted] dated July 09, 2008, is a non-stock, non-profit organization duly organized and existing under the laws of the Republic of the Philippines; that it is registered with the Securities and Exchange Commission (SEC) under Company Registration No. [redacted] and that the purposes for which the association was incorporated are:

1. *To update/upgrade the technical qualification of seafarers through advance and specialized maritime training courses;*

2. *To receive fees, donations, contributions or endowments, in cash or in kind from members, students and/or other persons or entities in the maritime sector of the Philippines or abroad, and to receive such property or money as may from time to time be acquired by deed, grant, devise, bequest, gift, and the like;*

3. *To conduct course and other activities as well as research in the maritime business and technology and to form and organize training courses in order to upgrade the qualifications of seafarers in accordance with international and Filipino standards;*

4. *To purchase, acquire, hold, sell, lease, exchange, mortgage or otherwise deal in real estate and/or personal property and to build, lease, mortgage land, buildings and offices;*

5. *To employ personnel on regular and/or temporary basis as the case may be, as may be necessary or useful to carry out the objects and purposes of the Foundation;*

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6. *To organize, operate and maintain dormitories, classrooms, laboratories, printing and publishing facilities and maritime projects; and*
7. *Other activities related to the career path of seafarers.*

In reply, please be informed that Section 30 of the National Internal Revenue Code of 1997, as amended, enumerates the non-stock and/or non-profit corporations/associations/ organizations that are exempt from income tax in respect to income received by them as such. Section 30 (H) of the National Internal Revenue Code of 1997, as amended, provides, viz:

> *"Sec. 30. Exempt from Tax on Corporations. - The following organizations shall not be taxed under this Title in respect to income received by them as such:*
>
> *xxx xxx xxx*
>
> *(H) A nonstock and nonprofit educational institution;"*
>
> *xxx xxx xxx"*

"Non-stock" means "*no part of its income is distributable as dividends to its members, trustees, or officers*" and that any profit "*obtained as an incident to its operations shall, whenever necessary or proper, be used for the furtherance of the purpose or purposes for which the corporation was organized*".[1] "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*".[2]

Revenue Memorandum Circular (RMC) No. 64-2016, has clarified that in order for an entity to qualify as a non-stock and/or non-profit educational institution exempt from income tax under Section 30 (H) of the NIRC of 1997, as amended, it must have the following characteristics:

1. *It is organized as a non-stock, non-profit corporation;*
2. *It is purposely organized as an educational institution;*
3. *It is registered or recognized by the Department of Education (DepEd), Commission on Higher Education (CHED), or Technical Education and Skills Development Authority; and*
4. *It has no net earnings or assets inuring to the benefit of any member, organizer, officer or any specific person.*

The corporation must be purposely established as an educational institution to offer educational courses or programs. The corporation must operate as a primary or secondary school, a college, or a professional or trade school that has scheduled curriculum, a regular faculty, and enrolled student body in attendance in a place where the educational activities are regularly carried on.

Under the above quoted provisions, one of the requirements for an educational institution to be exempt from income tax pursuant to the provisions of paragraph 3, Section 4, Article XIV of the 1987 Constitution, in relation to Section 30 (H) of the National Internal Revenue Code of 1997, as amended, and RMC No. 64-2016, is to be registered/accredited or recognized by the Department of Education (DepEd), Commission on Higher Education (CHED), or Technical Education and Skills Development Authority (TESDA). However, in the instant case, the submitted documents of **NETHERLANDS SHIPPING TRAINING**

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[1] Section 87, Corporation Code
[2] CIR vs. St. Luke's Medical Center, Inc., G.R. Nos. 195909 and 195960 dated 26 September 2012

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CENTER FOUNDATION, INC. failed to show that it is an educational institution registered/accredited /recognized by the Department of Education (DepEd), Commission on Higher Education (CHED), or Technical Education and Skills Development Authority.

Moreover, the Audited Financial Statements of **NETHERLANDS SHIPPING TRAINING CENTER FOUNDATION, INC.**, show that the primary source of its revenues come from training fees, lease and meal & laundry service fees. Such proceeds are being used exclusively for its perpetuation. It appears that this activity is being carried on by **NETHERLANDS SHIPPING TRAINING CENTER FOUNDATION, INC.** in a manner similar to organizations operated for profit. Thus, it is organized and operated principally for profit.

Please bear in mind that, "*being a non-stock and/or non-profit corporation does not, by this reason alone, completely exempt an institution from tax.*"[3] Thus, "*statutes granting tax exemptions are construed* ***strictissimi juris*** *against the taxpayer and liberally in favor of the taxing authority. A claim of tax exemption must be clearly shown and based on language in law too plain to be mistaken. Otherwise stated, taxation is the rule, exemption is the exception. The burden of proof rests upon the party claiming the exemption to prove that it is in fact covered by the exemption so claimed.*"[4] ***(BIR Ruling No. 466-2014 dated November 19, 2014)***

IN VIEW OF THE FOREGOING, this Office is of the opinion that **NETHERLANDS SHIPPING TRAINING CENTER FOUNDATION, INC.** does not qualify for exemption under Section 30 (H) of the National Internal Revenue Code of 1997, as amended. Therefore, **NETHERLANDS SHIPPING TRAINING CENTER FOUNDATION, INC.** 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.

Very truly yours,

CAESAR R. DULAY
Commissioner of Internal Revenue

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[3] CIR vs. St. Luke's Medical Center, Inc. [G.R. No. 195909 & G.R. No. 195960, 26 September 2012].
[4] Quezon City and The City Treasurer of Quezon City vs. ABS-CBN Broadcasting Corporation [G.R. No. 166408, 6 October 2008].