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

Section 30(H) of the National Internal Revenue Code of 1997, as amended
BIR Ruling No. 001-2017; BIR Ruling No. 444-2014
SH30 - 0354 - 2020
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LRV PREPPI SCHOOL FOUNDATION, INC.
Km. 386 National Hi-way Bolo Norte Sipocot
Camarines Sur 4408

Attention : Kathryn Anne H. Ore
Treasurer

Gentlemen:

This refers to your letter dated February 15, 2019, requesting on behalf of **LRV PREPPI SCHOOL FOUNDATION, INC.** for the issuance of a certificate of tax exemption enjoyed by non-stock, non-profit corporation or association pursuant to Section 30(H) of the National Internal Revenue Code (NIRC) of 1997, as amended.

It is represented that **LRV PREPPI SCHOOL FOUNDATION, INC.** with BIR Taxpayer's Identification No. (TIN) [redacted] and Certificate of Registration No. OCN [redacted] dated July 21, 2018, is a non-stock, non-profit association 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 with SEC Certificate of Incorporation dated July 20, 2018; and that the purpose for which the corporation/association was incorporated is *to operate a school that offers pre-school education.*

In reply, please be informed that **this Office cannot as yet issue the requested Certificate of Tax Exemption** because **LRV PREPPI SCHOOL FOUNDATION, INC.** has to prove by actual operation for at least three (3) years that it is really an association exempt from income tax under Section 30 of the National Internal Revenue Code of 1997, as amended. ***(BIR Ruling No. 001-2017 dated January 05, 2017)***

In the meantime, **LRV PREPPI SCHOOL FOUNDATION, INC.** is subject to the corresponding internal revenue taxes imposed under the National Internal Revenue Code of 1997, as amended, on its income derived from any of its properties, real or personal, or any activity conducted for profit regardless of the disposition thereof, which income should be returned for taxation.

Likewise, interest income from currency bank deposits and yield or any other monetary benefits from deposit substitute instruments and from trust funds and similar arrangements, and royalties derived from sources within the Philippines are subject to the twenty percent (20%) final withholding tax: provided, however, that interest income derived by it from a depository bank under the expanded foreign currency deposit system shall be subject to fifteen percent (15%)[1] final withholding tax pursuant to Section 27 (D) (1), in relation to Section 57 (A), both

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[1] Republic Act No. 10963 increased the tax rate from 7.5% to 15% effective January 1, 2018.

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of the National Internal Revenue Code of 1997, as amended. ***(BIR Ruling No. 444-2014 dated October 30, 2014)***

Also, it should be understood that **LRV PREPPI SCHOOL FOUNDATION, INC.** shall be constituted as withholding agent of the government if it acts as an employer and its employee receives compensation income subject to the withholding tax under Section 79 (A), Chapter XIII, Title II of the National Internal Revenue Code of 1997, as amended, as implemented by Revenue Regulations No. 2-98, as amended, or if it makes income payments to individuals or corporations subject to the expanded withholding tax provided for in Section 57 (B) of the National Internal Revenue Code of 1997, as amended, also as implemented by Revenue Regulations No. 2-98, as amended.

Moreover, under Section 235 of the National Internal Revenue Code of 1997, as amended, any provision of existing general and special law to the contrary notwithstanding, the books of accounts and other pertinent records of tax-exempt organization or grantees of tax incentives shall be subject to examination by the BIR for purposes of ascertaining compliance with the conditions under which it has been granted tax exemptions or tax incentives, and its tax liabilities, if any.

Furthermore, it is subject to the payment of the annual registration fee of Pesos (PhP) as prescribed in Section 236 (B) of the National Internal Revenue Code of 1997, as amended. It is also required to issue duly registered receipts or sales or commercial invoices for each sale or transfer of merchandise or for services rendered which are not directly related to the activities for which the Association is registered under Section 6 (C) in relation to Section 237 of the same Code ***[Revenue Memorandum Circular (RMC) No. 76-2003].***

<u>Value-Added Tax/Percentage Tax</u>

Section 105 of the National Internal Revenue Code of 1997, as amended, provides that:

> "***SEC. 105. Persons Liable.*** *- 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.*
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> *xxx xxx xxx*
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> *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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> *xxx xxx xxx"*

Accordingly, if **LRV PREPPI SCHOOL FOUNDATION, 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 12% VAT, in case the gross receipts from such sales exceed Three Million Pesos (₱3,000,000.00)[2], or to the 3% percentage tax, if gross receipts do not exceed ₱3,000,000.00.

Notwithstanding that it is a non-stock, non-profit corporation, its purchase of goods or properties or services and importation of goods shall nevertheless be subject to the 12% VAT pursuant to Sections 106 to 108 of the said Code.

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[2] Republic Act No. 10963 increased the VAT threshold from P1,919,500.00 to P3,000,000.00 effective January 1, 2018.

It must be noted that VAT is an indirect tax payable by the seller and not by the purchaser of goods. Being an indirect tax, the amount of tax may be shifted or passed on to the buyer/purchaser, transferee or lessee of the goods, properties or services. Once shifted to the buyer/customer as an addition to the cost of goods or services sold, it is no longer a tax but an additional cost which the buyer/customer has to pay in order to obtain the goods or services.

However, revenue from tuition fees and other school fees, not being derived from sale of services or sale of goods made in the course of business but rather in connection with its educational activities, is exempt from the 12% VAT.

Finally, for purposes of securing a Certificate of Tax Exemption after the three (3)-year period, **LRV PREPPI SCHOOL FOUNDATION, INC.** is required to submit the following documents pursuant to **Revenue Memorandum Order (RMO) No. 44-2016 dated July 21, 2016:**

A. *Original copy* of application letter for issuance of Tax Exemption Ruling. The letter shall cite the particular paragraph of Section 30 of the National Internal Revenue Code of 1997, as amended, under which the application for exemption / revalidation is being based;

B. *Original copy* of Certificate of Operation/Good Standing with the Securities and Exchange Commission (SEC);

C. *Original copy* of a Certification under Oath by the treasurer of the association as to the amount of income, compensation, salaries or any emoluments paid by the association to its trustees, officers and other executive officers;

D. *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);

E. If the government recognition/permit/accreditation to operate as an education institution was issued more than five (5) years prior to the application for tax exemption/revalidation, *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 non-profit educational institution is currently operating as such;

F. *Certified true copies* of its Financial Statements for the last three (3) years of operation; and

G. *Original copy* of Certificate of utilization of annual revenues and assets by the Treasurer or his equivalent of the non-stock and non-profit educational institution. In accordance with the guidelines set forth in Section 1.3 of Department of Finance (DOF) Order No. 137-87, the Certificate shall provide a breakdown of the following:

   i. *Any amount in cash or in kind (including administrative expenses) paid or utilized to accomplish one or more purposes for which the educational institution was created or organized, including grant of scholarship to deserving students and professorial chairs for the enhancement of professional course.*

ii. *Any amount paid to acquire an asset used (or held for use) directly in carrying out one or more purposes for which it was created or organized, including the upgrading of existing facilities to support the conduct of the above activities.*

iii. *Any amount in cash or in kind invested in an activity related to the educational purposes for which it was created or organized.*

iv. *Any amount set aside for a specific project, which must be supported by a Board Resolution issued by the school administration on proposed projects (i.e., construction and/or improvement of school buildings and facilities, acquisition of equipment, books and the like) to be funded out of the money deposited in banks or placed in money markets, on or before the 15th day of the fourth month following the end of its taxable year.*

This ruling is being issued on the basis of the foregoing facts as represented. However, if upon investigation, it will be ascertained that the facts are different, then this ruling shall be considered null and void.

Very truly yours,

CAESAR R. DULAY
Commissioner of Internal Revenue

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