REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

Quezon City

Section 30(H) of the Tax Code of 1997
BIR Ruling No. 165-2011 BIR Ruling No. 327-2011 BIR Ruling No. 146-2011 BIR Ruling No. 058-2011
#001-2017
1-5-2017

CANADIAN AMERICAN EDUCATION FOUNDATION, INC.
6/F The City Club Alphaland,
Ayala corner Malugay Street,
Makati City

Attention: CARMELA FAROLAN-FERREIRA
President and School Administrator

Gentlemen:

This refers to your letter dated August 8, 2014 requesting on behalf of **CANADIAN AMERICAN EDUCATION FOUNDATION, INC.** for the issuance of a certificate of tax exemption enjoyed by non-stock and non-profit educational institution under Section 30(H) of the Tax Code of 1997, as amended.

It is represented that **CANADIAN AMERICAN EDUCATION FOUNDATION, INC.** with Taxpayer's Identification No. (TIN) a non-stock, non-profit corporation duly organized and existing under the laws of the Philippines; that it is registered with the Securities and Exchange Commission (SEC) under Company Registration No. dated February 7, 2014; and that the purposes for which the corporation was organized are the following:

1. To establish and operate under its institutional structure, the Canadian American School, a pre-school + K-12 international school, and to promote its programs, projects, and activities that will enhance its ideals and goals;
2. To fund student scholarships and other academic pursuits of the Canadian American School;
3. To establish linkages with other foundations, educational institutions, and other entities in pursuit of the purposes herein set forth;
4. To generate funds and resources to support its activities, programs, and projects;
5. To receive and accept donations, fees, endowments, grants, legacies and instruments/devices conformably with existing applicable statutes;

6. To purchase, receive, take, lease, or otherwise acquire for and in the name of the association, any and all properties, rights, or privileges for the association; and
7. To undertake such other activities and programs as may be in line with, or ancillary to, its purposes.

In reply, please be informed that **this Office cannot as yet issue the requested ruling/certificate of tax exemption** because **CANADIAN AMERICAN EDUCATION FOUNDATION, INC.** has to prove by actual operation for at least three (3) years that it is really a corporation/association exempt from income tax under Section 30 (H) of the Tax Code of 1997, as amended. ***(BIR Ruling No. 165-2012 dated March 9, 2012)***

In the meantime, **CANADIAN AMERICAN EDUCATION FOUNDATION, INC.** can file the necessary annual information return instead of an income tax return on or before the 15th day of the fourth month following the end of its taxable year as required under Section 24 of Revenue Regulations No. 2-40 dated February 10, 1940 ***(Collector vs. Sinco, G.R. L-9276 dated October 23, 1956)***. Based on such information return, we shall conduct the necessary investigation on the activities undertaken during the period. The letter of exemption shall thereafter be issued depending upon the result of our investigation.

Hence, **CANADIAN AMERICAN EDUCATION FOUNDATION, INC.** is subject to the corresponding internal revenue taxes imposed under the National Internal Revenue Code 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 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 7-1/2% final withholding tax pursuant to Section 27 (D) (1), in relation to Section 57 (A), both of the Tax Code of 1997. Moreover, it is required to file on or before the 15th day of the fourth month following the end of the accounting period a Profit and Loss Statement and Balance Sheet with the Annual Information Return under oath, stating its gross income and expenses incurred during the preceding period and a certificate showing that there has not been any change in its By-laws, Articles of Incorporation, manner of operation and activities as well as sources and disposition of income. ***(BIR Ruling No. 327-2011 dated September 1, 2011)***

It should be understood that **CANADIAN AMERICAN EDUCATION 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 Tax Code of 1997, 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 Tax Code of 1997, also as implemented by

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Revenue Regulations No. 2-98, as amended. ***(BIR Ruling No. 146-2011 dated May 12, 2011)***

Under Section 235 of the Tax Code of 1997, 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.

It is subject to the payment of the annual registration fee of PhP500.00 as prescribed in Section 236 (B) of the Tax Code of 1997, as amended. It is also required under Section 6 (C) in relation to Section 237 of the same Code 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 [Revenue Memorandum Circular (RMC) No. 76-2003].

Value-Added Tax

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.

Accordingly, if **CANADIAN AMERICAN EDUCATION 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 VAT. ***(BIR Ruling No. 058-2011 dated February 25, 2011)***

Notwithstanding that it is incorporated as a **non-stock, non-profit organization**, its purchase of goods or properties or services and importation of goods shall nevertheless be subject to the 12% VAT pursuant to Section 107 of the said Code.

It should be noted that VAT is an indirect tax payable by the seller and not by the purchaser of goods. However, being an indirect tax, it can 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.

Finally, for purposes of securing a certificate of exemption after the three (3)-year period, **CANADIAN AMERICAN EDUCATION FOUNDATION, INC.** is required to submit the following documentary requirements pursuant to **Section 2 of Revenue Memorandum Order (RMO) 44-2016:**

1. Original copy of the application letter for issuance of Tax Exemption Ruling.
2. Certified true copy of the Certificate of Good Standing issued by the Securities and Exchange Commission;
3. Original copy of the Certification under Oath by the Treasurer of the corporation or association as to the amount of income, compensation, salaries or any emoluments paid by the corporation or association to its trustees, officers and other executive officers.
4. Certified true copies of the Financial Statements of the corporation or association for the last three (3) years;
5. Certified true copy of government recognition/permit/accreditation to operate as an educational institution issued by the Commission on Higher Education (CHED) and/or the Department of Education (DepEd);
6. For TESDA–Accredited Institutions offering Technical and Vocational Educational Training (TVET) Programs/Courses, certified true copies of the TESDA Registrations of the TVET Programs/Courses offered;
7. 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;
8. Original copy of Certificate 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:
    a. 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 professorial course.
    b. 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.
    c. Any amount in cash or in kind invested in an activity related to the educational purposes for which it was created or organized.

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d. 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 disclosed 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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Canadian American Education Foundation, Inc.