REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

PHILIPPINE ASSOCIATION OF COLLEGES AND UNIVERSITIES, COORDINATING COUNCIL OF PRIVATE EDUCATIONAL ASSOCIATIONS, ASIAN INTERNATIONAL SCHOOL OF AERONAUTICS AND TECHNOLOGY, BALIUAG UNIVERSITY, LYCEUM OF THE PHILIPPINE UNIVERSITY – BATANGAS, INC., UNIVERSITY OF NUEVA CACERES, LORMA COLLEGES, INC., CENTRO ESCOLAR UNIVERSITY, EMILIO AGUINALDO EDUCATIONAL CORPORATION, LYCEUM OF THE PHILIPPINES UNIVERSITY – MANILA, MANILA CENTRAL UNIVERSITY, MAPUA UNIVERSITY, NATIONAL TEACHERS COLLEGE, UNIVERSITY OF THE EAST, FEATI UNIVERSITY, INC., CENTRO ESCOLAR LAS PIÑAS , CEBU INSTITUTE OF TECHNOLOGY UNIVERSITY, INC., LAGUNA COLLEGE, STI WEST NEGROS UNIVERSITY, INC., UNIVERSITY OF PERPETUAL HELP SYSTEM DALTA, UNIVERSITY OF BAGUIO, TOMAS CLAUDIO COLLEGES, INC., SAN PABLO COLLEGES, ST. JUDE COLLEGE, ARAULLO UNIVERSITY, CAGAYAN DE ORO COLLEGE, INC., UNIVERSITY OF ILOILO, UNIVERSITY OF PANGASINAN, UNIVERSITY OF BATANGAS,

CTA CASE NO. 10549

Members:

DEL ROSARIO, *P.J., Chairperson,*
MANAHAN, *and*
REYES-FAJARDO, *JJ.*

Promulgated:

MAR 02 2022 11:52am

UNIVERSITY OF MINDANAO, UNIVERSITY OF BOHOL, LYCEUM OF THE PHILIPPINES UNIVERSITY – LAGUNA, AND SOUTHWESTERN UNIVERSITY,
Petitioners,

- *versus* -

DEPARTMENT OF FINANCE Represented in this action by the SECRETARY CARLOS G. DOMINGUEZ, and BUREAU OF INTERNAL REVENUE Represented in this action by the COMMISSIONER CEASAR R. DULAY,
Respondents.

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RESOLUTION

Before this Court are the following:

1. Respondents' **Motion for Extension of Time to File Comment**, filed *via* email on July 9, 2021 and *via* courier on July 14, 2021;

2. respondent Department of Finance's (DOF) **Manifestation and Motion in lieu of Comment (to adopt Respondent BIR's Comment/Opposition as Respondent DOF's Comment/Opposition)** and **Manifestation**, both filed *via* email on July 19, 2021 and *via* courier on July 22, 2021;

3. petitioners' **Formal Offer of Evidence (with Motion for Commissioner's Hearing)**, filed on July 19, 2021;

4. respondent Bureau of Internal Revenue's (BIR) **Manifestation**, filed on July 19, 2021;

5. respondents' **Comment/Opposition (Re: Petitioner's Formal Offer of Evidence with Motion for Commissioner's Hearing)** filed on July 29, 2021;

6. petitioners' **Motion to Admit Reply (To Respondent's Comment/Opposition (Re: Petitioner's Formal Offer of Evidence with Motion for Commissioner's Hearing))** filed *via* email on September 7, 2021; and

7. petitioners' **Manifestation** and **Omnibus Motion** both filed on November 3, 2021.

At the outset, the Court notes that on July 26, 2021, Revenue Regulations (RR) No. 14-2021[1] was issued suspending the implementation of the following provisions of RR No. 5-2021[2] pending passage of such appropriate legislation:

(i) Section 2(C), on the definition of Proprietary Educational Institutions, insofar as it includes therein the phrase, "*which are non-profit*";

(ii) Section 2(E), on the definition of Non-Profit, insofar as it applies to "*Proprietary Educational Institutions*"; and,

(iii) Section 3(B), which provides illustration on the tax treatment of Proprietary Educational Institutions that are non-profit.

On December 10, 2021, Republic Act No. 11635,[3] was signed into law, which provides:

> SECTION 1. Section 27(B) of the National Internal Revenue Code of 1997, as amended, is hereby further amended to read as follows:

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[1] Subject: Suspending the Implementation of Certain Provisions of Revenue Regulations no. 5-2021 dated 8 April 2021.

[2] Subject: Implementing the New Income Tax Rates on the Regular Income of Corporations, on Certain Passive Incomes, Including Additional Allowable Deductions from Gross Income of Persons Engaged in Business or Practice of Profession Pursuant to Republic Act (RA) No. 11534 or the "*Corporate Recovery and Tax Incentives for Enterprises Act*" (CREATE), Which Further Amended the National Internal Revenue Code (NIRC) of 1997.

[3] An Act Amending Section 27(B) of the National Internal Revenue Code of 1997, As Amended, And For Other Purposes.

> "(B) Hospitals which are nonprofit and proprietary educational institutions shall pay a tax of ten percent (10%) on their taxable income except those covered by Subsection (D) hereof: *Provided*, That beginning July 1, 2020 until June 30, 2023, the tax rate herein imposed shall be one percent (1%): *Provided, further*, That if the gross income from unrelated trade, business or other activity exceeds fifty percent (50%) of the total gross income derived by such educational institutions or hospitals from all sources, the tax prescribed in Subsection (A) hereof shall be imposed on the entire taxable income. For purposes of this Subsection, the term 'unrelated trade, business or other activity' means any trade, business or other activity, the conduct of which is not substantially related to the exercise or performance by such educational institution or hospital of its primary purpose or function. 'Proprietary educational institution' means any private school maintained and administered by private individuals or groups with an issued permit to operate from the Department of Education (DepEd), or the Commission on Higher Education (CHED), or the Technical Education and Skills Development Authority (TESDA), as the case may be, in accordance with existing laws and regulations."
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> SEC. 4. *Repealing Clause*. – All laws, decrees, executive orders, rules and regulations or parts thereof which are inconsistent with this Act are hereby repealed, amended or modified accordingly.

An actual case or controversy involves a conflict of legal right, an opposite legal claim susceptible of judicial resolution. It is "definite and concrete, touching the legal relations of parties having adverse legal interest;" a real and substantial controversy admitting of specific relief.[4]

There is no longer any actual case or controversy in the instant case. With the passage of RA No. 11635, the questioned provisions of RR No. 5-2021, RMC Nos. 67-2012 and 62-2021 have been repealed, considering that the definition of a "Proprietary education institution" has been clarified in RA No. 11635. Further, any relief in the form of a TRO or WPI, or determination of the constitutionality of the questioned provisions will be of no practical use or value considering

[4] *David v. Macapagal-Arroyo*, G.R. No. 171396, May 3, 2006.

the suspension of the implementation of the questioned provisions, and the subsequent enactment of RA No. 11635.

A moot and academic case is one that ceases to present a justiciable controversy by virtue of supervening events, so that a declaration thereon would be of no practical use or value. Generally, courts decline jurisdiction over such case or dismiss it on ground of mootness.[5]

Thus, the Court finds that the Petition for Certiorari and Prohibition with Application for Temporary Restraining Order (TRO) and Writ of Preliminary Injunction (WPI), and Prayer to Declare Unconstitutional and Invalid: (i) sections 2(C), 2(E), and 3(B) of Revenue Regulation No. 5-2021, (ii) Sections 1 and 4 of Revenue Memorandum Circular No. 67-2012, and (iii) Q6 and Q7 of Revenue Memorandum Circular No. 62-2021 dated June 5, 2021, are rendered moot.

The following pending incidents are likewise declared moot:

1. Respondents' **Motion for Extension of Time to File Comment**, filed *via* email on July 9, 2021 and *via* courier on July 14, 2021;

2. respondent Department of Finance's (DOF) **Manifestation and Motion in lieu of Comment (to adopt Respondent BIR's Comment/Opposition as Respondent DOF's Comment/Opposition)** and **Manifestation**, both filed *via* email on July 19, 2021 and *via* courier on July 22, 2021;

3. petitioners' **Formal Offer of Evidence (with Motion for Commissioner's Hearing)**, filed on July 19, 2021;

4. respondent Bureau of Internal Revenue's (BIR) **Manifestation**, filed on July 19, 2021;

5. respondents' **Comment/Opposition (Re: Petitioner's Formal Offer of Evidence with Motion for Commissioner's Hearing)**, filed on July 29, 2021;

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[5] *David v. Macapagal-Arroyo*, G.R. No. 171396, May 3, 2006.

6. petitioners' **Motion to Admit Reply (To Respondent's Comment/Opposition (Re: Petitioner's Formal Offer of Evidence with Motion for Commissioner's Hearing))**, filed *via* email on September 7, 2021; and

7. petitioners' **Omnibus Motion** filed on November 3, 2021.

With respect to petitioners' **Manifestation** filed on November 3, 2021, stating the purposes of offering the testimony of Atty. Joseph Noel M. Estrada as contained in his Supplemental Judicial Affidavit, which, among others, is to prove that there is still a need for the issuance of the TRO/injunction considering that some agents of the BIR continue to take actions against educational institutions, and assessing said educational institutions using the regular income tax rate, the same is noted without action. There exists speedy and adequate remedy available to taxpayers in the assessment process thereby rendering judicial intervention premature.

WHEREFORE, the Petition for Certiorari and Prohibition with Application for Temporary Restraining Order (TRO) and Writ of Preliminary Injunction (WPI), and Prayer to Declare Unconstitutional and Invalid: (i) sections 2(C), 2(E), and 3(B) of Revenue Regulation No. 5-2021, (ii) Sections 1 and 4 of Revenue Memorandum Circular No. 67-2012, and (iii) Q6 and Q7 of Revenue Memorandum Circular No. 62-2021 dated June 5, 2021 is **DISMISSED** for being moot, in light of the enactment of Republic Act No. 11635.

All other pending incidents are likewise declared moot.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

CATHERINE T. MANAHAN
Associate Justice

Marian Ivy F. Reyes-Fajardo

MARIAN IVY F. REYES-FAJARDO
Associate Justice