

OBTAINING/REVALIDATING THE BIR TAX EXEMPTION RULING OR CERTIFICATE
A Primer on RMO No. 20-2013, as amended by RMO No. 28-2013

Q1. Are nonstock and nonprofit (“NSNP”) educational institutions exempt from income tax?

- A1. Section 4(3), Article XIV, 1987 Constitution provides that all revenues and assets of NSNP educational institutions used actually, directly, and exclusively for educational purposes shall be exempt from taxes and duties. This was adopted in Section 30(H), National Internal Revenue Code of 1997 (“Tax Code”), which provides that the income of a NSNP educational institution shall not be taxed. However, the income of whatever kind and character of the NSNP educational institution from any of its properties, real or personal, or from any of their activities conducted for profit regardless of the disposition made of such income shall be subject to tax.

Q2. Are NSNP educational institutions required to secure a tax exemption ruling or certificate from the Bureau of Internal Revenue (“BIR”)?

- A2. In the past, the requirement to secure a tax exemption ruling or certificate was not a mandatory requirement for NSNP educational institutions. However, on July 22, 2013, the BIR issued Revenue Memorandum Order (“RMO”) No. 20-2013 requiring NSNP institutions, including NSNP educational institutions, to file an application for tax exemption/revalidation and, consequently, secure tax exemption rulings to maintain their tax-exempt status.

The BIR issued RMO No. 20-2013 to safeguard the privilege of tax exemption given to NSNP institutions. Thus, the BIR saw it fit to re-evaluate the existing NSNP institutions in our country in order to determine the following:

- a. Ensure compliance with the conditions attached to the tax exemption;
- b. Ascertain the existence of other income derived from non-exempt activities and provide proper tax treatment thereon;
- c. Enforce the payment of other taxes for which no exemption was granted under Philippine tax laws (e.g., withholding taxes, fringe benefits tax, and documentary stamp tax); and
- d. Minimize tax leakages arising from inaccurate interpretation of relevant tax laws and administrative issuances.

Accordingly, corporations and other entities who have been organized as NSNP institutions under Section 30, Tax Code, including NSNP educational institutions, and who claim tax-exempt status are now required to file an Application for Tax

Exemption/Revalidation with their corresponding Revenue District Office (“RDO”).

Please note that RMO No. 20-2013 does not distinguish between those NSNP institutions which already have confirmatory BIR Rulings or tax exemption rulings/certificate on their tax-exempt status and those which do not. Therefore, NSNP institutions with no existing tax exemption rulings are required to secure such ruling on their tax-exempt status as NSNP institutions. On the other hand, those with existing tax exemption rulings issued prior to June 30, 2012 are required to file an application for the revalidation of their existing BIR rulings.

Q3. What will be the effect if an NSNP educational institution does not obtain a tax exemption ruling or if it fails to revalidate its existing tax exemption ruling?

A.3 Without a tax exemption ruling, there is a risk that the NSNP educational institution will not be able to claim its tax-exempt status in computing its corporate income tax beginning January 1, 2014. Moreover, the BIR may conduct an examination/audit on the NSNP educational institution to determine its compliance with RMO No. 2013. Hence, without a tax exemption ruling, the NSNP educational institution may be held liable for income tax and, accordingly, assessed for deficiency taxes, inclusive of penalties and interest.

Q4. What is the validity period of a tax exemption ruling?

A4. The tax exemption rulings shall be valid for a period of three (3) years, unless sooner revoked or cancelled. As such, tax exemption rulings shall be renewed every three (3) years. The tax exemption ruling shall be deemed revoked if there are material changes in the character, purpose, or method of operation of the corporation or association which are inconsistent with the basis for its income tax exemption. The revocation takes effect as of the date of the material change.

In this regard, tax exemption rulings or certificates issued to NSNP institutions prior to June 30, 2012 shall be valid until December 31, 2013. However, tax exemption rulings or certificates issued after June 30, 2012 shall continue to be valid for a period of three (3) years from date of issuance, unless sooner revoked or cancelled.

Failure to renew the tax exemption ruling shall be deemed revocation thereof upon the expiration of the three (3) year period. *[Added by RMO No. 28-2013]*

Q5. What are documents needed to file an application for tax exemption/revalidation of a NSNP educational institution?

A5. Under RMO No. 20-2013, the following are the documentary requirements for an application for tax exemption/revalidation of a NSNP educational institution:

1. Original copy of application letter for issuance of tax exemption ruling, citing Section 30(H), Tax Code as basis of the application for exemption/revalidation;
2. Certified true copy of the latest Articles of Incorporation ("AOI") and By-Laws issued by the Securities and Exchange Commission;
3. Original copy of Certification under Oath by an executive officer as to:
 - a. all previous amendments/changes in the AOI and By-Laws;
 - b. manner of activities, and
 - c. the sources and disposition of income, if any(Note: If there are no amendments/changes, the Certification shall state this fact.);
4. Certified true copy of the Certificate of Registration with the BIR;
5. Original copy of the Certification under Oath by the Treasurer 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 (Note: A corporation sole, which, by its nature, does not have trustees, corporate officers or executive officers need not submit the certification required.);
6. Original copy of the Certification issued by the RDO where the NSNP educational institution is registered stating that the NSNP educational institution is not the subject of any pending investigation, on-going audit, pending tax assessment, administrative protest, claim for refund or issuance of tax credit certificate, collection proceedings, or a judicial appeal (Note: If thereby be any of the foregoing, the Original copy of the Certification issued by the RDO on the status thereof.);
7. Certified true copies of the Income Tax Returns or Annual Information Returns and Financial Statements of the NSNP educational institution for the last three (3) years;
8. Original copy of a statement under Oath by an executive officer as to the *modus operandi* which shall include:
 - a. A full description of the past, present, and proposed activities of the NSNP educational institution;
 - b. A narrative description of anticipated receipts and contemplated expenditures; and
 - c. A detailed description of all revenues which it seeks to be exempted from income tax (Note: All other revenues which are not included in the statement/ application shall be subject to income tax.);
9. 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");

10. 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; and
11. Original copy of Certificate of utilization of **annual** revenues and assets by the Treasurer or his equivalent with 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 professional 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; and
 - 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. (*Note:* The foregoing information are in accordance with Section 1, Department of Finance Order No. 137-87)

As a prudent measure, all of the abovementioned requirements should be submitted to the pertinent RDO to avoid any delays in the issuance of the tax exemption ruling.

Q6. What will the BIR look for in evaluating the application for tax exemption ruling/certificate?

A6. The BIR, through the pertinent RDO, will examine the application letter, together with all the documentary requirements, to ascertain whether or not the NSNP educational institution is among the tax-exempt institutions stated in Section 30, Tax Code. As such, the AOI must clearly state that:

1. The NSNP educational institution is a non-stock, non-profit institution;
2. The purpose for which it was created is one of those enumerated under Section 30, Tax Code;
3. No part of the institution's net income shall inure to the benefit of any private individual; and

4. The trustees do not receive any compensation or remuneration.

Moreover, the AOI and By-Laws shall:

1. Limit the purpose of the NSNP educational institution to those described in Section 30, Tax Code;
2. Not expressly permit activities that do not further its tax-exempt purposes; and
3. Permanently dedicate its assets to its tax-exempt purposes.

Furthermore, the BIR shall determine whether or not the NSNP educational institution is operating as an organization under Section 30, Tax Code by examining its *modus operandi*, financial statements and other relevant documents. Thus, the examination must show that:

1. The NSNP educational institution’s earnings do not inure to the benefit of any private individual;
2. It does not operate for the benefit of private interest such as those of its founder or the founder’s family; and
3. It does not operate for the purpose of conducting a trade or business that is not related to its tax-exempt purpose.

Lastly, the BIR shall verify the NSNP educational institution’s sources of revenues and other transactions to determine which are taxable and non-taxable since it is still subject to the corresponding taxes on income derived from any of its properties, real or personal, or any activity conducted for profit regardless of the disposition thereof (*i.e.*, rental payment from their building/premises).

Q7. What are the procedures for the application for or revalidation of tax exemption ruling for an NSNP educational institution?

A7. The procedure for the application for tax exemption or re-validation of an NSNP educational institution’s tax-exempt status is composed of three (3) stages as follows:

Stage	Description	Party Responsible and Remedy Available
1. Submission	<p>The applicant NSNP educational institution will be required to submit the abovementioned documentary requirements to the pertinent RDO.</p> <p>Nevertheless, the BIR may, in the course of its evaluation of the application, request additional</p>	NSNP educational institution

Stage	Description	Party Responsible and Remedy Available
	<p>information and/or documents as it may deem necessary to determine the nature of the NSNP educational institution's activities.</p>	
<p>2. Pre-Evaluation</p>	<p>Upon receipt of the complete documentary requirements, the RDO will pre-evaluate the documents submitted and determine whether or not the applicant qualifies as a tax-exempt institution under the Tax Code.</p> <p>If the RDO believes the NSNP educational institution is qualified, the RDO shall prepare a written recommendation and endorse the docket to the Office of the Regional Director for review.</p> <p>If the Regional Director concurs with the RDO's recommendation, he shall forward the docket to the BIR-Law Division under the Office of the Assistant Commissioner, Legal Service.</p>	<p>RDO, Regional Director</p> <p>If denied due to <u>incomplete submission of documents</u>, the RDO documents shall return the application to the applicant for completion and submission of <u>all</u> documents.</p> <p>If based on pre-evaluation, the RDO is of the position that the NSNP institution <u>does not qualify</u>, the RDO shall notify in writing the applicant of such findings, stating the factual and legal bases for the denial.</p> <p>The applicant may appeal the denial to the Regional Director <u>within thirty (30) days from the date of receipt of the written notice of denial</u>.</p>
<p>3. Evaluation</p>	<p>The Law Division shall further review and evaluate the documents submitted by the applicant and the RDO's recommendation.</p> <p>If it agrees with the findings, it shall draft the Tax Exemption Ruling for approval and signature of the Commissioner or her duly authorized representative.</p>	<p>Law Division, Assistant Commissioner for Legal Service, Deputy Commissioner for Legal and Inspection, Commissioner of Internal Revenue</p> <p>If the application is denied, the applicant may appeal with the Secretary of Department of Finance.</p>

Q8. What will be the effect of a denial of the application for tax exemption/revalidation?

A8. A final denial of the application for tax exemption/re-validation would subject the NSNP educational institution to income tax. In addition, it may be assessed for deficiency income taxes, inclusive of penalties and interest. However, under Section 203, Tax Code, the assessment for deficiency income tax should, as a general rule, be made within three (3) years after the last day prescribed by law for filing the income tax return. In other words, the coverage of any possible income tax assessment may be limited to the last three (3) years from the final denial of the application for tax exemption/re-validation.

Q9. What will be the effect of the failure to file an Annual Information Return?

A9. If a corporation or association which has been issued a tax exemption ruling fails to file its annual information return, it shall automatically lose its income tax-exempt status beginning the taxable year for which it failed to file such return. This will be in addition to the pertinent sanctions that may be imposed under Section 250, Tax Code.