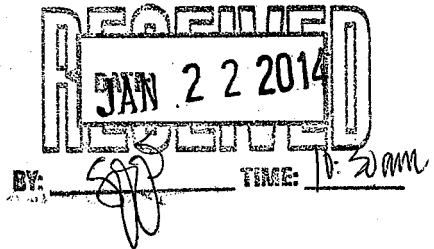


REPUBLIC OF THE PHILIPPINES
NATIONAL CAPITAL JUDICIAL REGION
REGIONAL TRIAL COURT
BRANCH 143
MAKATI CITY

PADILLA LAW OFFICE



ST. PAUL COLLEGE OF MAKATI,
Plaintiff,

-versus-

Civil Case No. 13-1405

HON. KIM JACINTO S.
HENARES, in her official capacity
as COMMISSIONER OF THE
BUREAU OF INTERNAL
REVENUE,
Respondent.

x-----x

RESOLUTION

This resolves the *application for a writ of preliminary injunction* included in the "Civil Action to Declare Unconstitutional BIR Revenue Memorandum No. 20-2013".

In its Petition, Petitioner St. Paul College of Makati alleged it is a non-stock, non-profit educational institution organized and existing under the Philippine laws. Respondent Kim Henares, Commissioner of the Bureau of Internal Revenue (BIR), issued Revenue Memorandum Order (RMO) No. 20-2013 dated 22 July 2013, which imposes as a prerequisite to the enjoyment by non-stock, non-profit educational institutions of the privilege of tax exemption under Section 4 (3) of Article XIV of the Constitution both a registration and approval requirement, particularly, that they submit an application for tax exemption to the BIR subject to approval by Commissioner of Internal Revenue (CIR) in the form of a Tax-Exemption Ruling (TER) which is valid for a period of three (3) years and subject to renewal. This requirement of filing a TER is in addition to the filing of an annual information return that they are currently required to submit to the BIR pursuant to Section 4 of Department of Finance (DOF) Order No. 137-87, which Annual Information Return is subject to BIR examination under Section 5 of the same DOF Order.

On 03 January 2014, this Court issued a Temporary Restraining Order (TRO) enjoining Respondent Kim Jacinto Henares, as Commissioner of BIR, the agents and representatives of BIR, from implementing the BIR Revenue No. 20-2013.

Summary hearing on the issuance of a writ of preliminary injunction ensued on 08 January 2014 wherein Petitioner presented Sister Teresita Bayona, Directress of the St. Paul College of Makati. In her direct examination¹, she reiterated their allegations in the complaint and in addition thereto, she testified that all revenues derived by the St. Paul College of Makati had been used purely, actually, directly and exclusive for

¹ Through Judicial Affidavit.

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educational purposes and the school has no other source of income except that derived from educational activities. She also testified that they have never been issued any assessment by the BIR.

On cross-examination, the witness testified that they file the Annual Information Return because it is one of the requirements of the Securities and Exchange Commission.

In the interim, Respondent filed a "Motion to Reconsider with Urgent Motion to Dissolve Temporary Restraining Order (TRO)" on 08 January 2014. Petitioner's opposition thereto was filed on 10 January 2014.

The Court resolves to **GRANT** the application for issuance of writ of preliminary injunction and **DENY** the *Motion to Reconsider with Urgent Motion to Dissolve Temporary Restraining Order (TRO)*.

The issue at this point is whether or not Petitioner is entitled to the issuance of a writ of preliminary injunction. Section 3, Rule 58 of the Rules of Court states that a preliminary injunction may be granted when the following are established:

- (a) That the applicant is entitled to the relief demanded, and the whole or part of such relief consists in restraining the commission or continuance of the acts complained of, or in the performance of an act or acts, either for a limited period or perpetually;
- (b) That the commission, continuance or non-performance of the act or acts complained of during the litigation would probably work injustice to the applicant; or
- (c) That a party, court, or agency or a person is doing, threatening, or attempting to do, or is procuring or suffering to be done, some act or acts probably in violation of the rights of the applicant respecting the subject of the action or proceeding, and tending to render the judgment ineffectual.

In the case of *Telento vs. Escalada*², the Supreme Court ruled that two (2) requisites must exist to warrant the issuance of a writ of preliminary injunction, namely: (1) the existence of a clear and unmistakable right that must be protected; and (2) an urgent and paramount necessity for the writ to prevent serious damage.

In the instant case, there exists a right *in esse* or a clear and unmistakable right to be protected. Prior to issuance of RMO No. 20-2013, non-stock, non-profit educational institutions like the St. Paul College of Makati do not need to secure certification or ruling of tax exemption from the CIR as a prerequisite to enjoy the tax-exemption under the Constitution. It may not be amiss to state that the Petitioner has been diligent in complying with the requirement of DOF 137-87, that is, the filing of annual information return with the BIR. With the issuance of RMO No. 20-2013, the petitioner and/or other institutions similarly situated who fail to comply with the requirement of the RMO, particularly, the TER, even if they have filed the annual information return, would be deemed non-compliant and will be subjected to penalties under Sec. 250 of NIRC. Thus, in effect, the RMO appears to divest them of their tax exemption privilege granted to them by the Constitution.

² 556 SCRA 491 (2008)

As regards the *Motion to Reconsider with Urgent Motion to Dissolve Temporary Restraining Order (TRO)*, the Court has no other recourse but to deny the same for being moot and academic in view of the issuance of the writ of preliminary injunction.

WHEREFORE, premises considered, pending the conclusion of the trial of the instant case, petitioner's application for a writ of preliminary injunction is hereby **GRANTED**, subject to the posting of an injunction bond in the amount of Four Million Pesos (Php4,000,000.00). Upon posting of the said bond, let a writ of preliminary injunction be issued, enjoining Respondent Kim Jacinto Henares, as Commissioner of the Bureau of Internal Revenue, the agents and representatives of the Bureau of Internal Revenue, from implementing the BIR Revenue Memorandum No. 20-2013.

Meanwhile, the Respondent is given ten (10) days from receipt of this Resolution within which to file its Answer.

SO ORDERED.

22 January 2014, Makati City.

MAXIMO M. DE LEON
Presiding Judge

