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TAX LAW FOR BUSINESS

*BDB Law's "Tax Law for Business" appears in the opinion section of **Business Mirror** every Thursday.*

Certificate of tax exemption is not mandatory

MUCH has been said about nonstock, nonprofit entities, but because of the apparent instability of the rules governing their taxability, the time has come for us to revisit the subject. This time, however, we do so with the optimism that the long-standing issue of these entities' taxability will now be put to rest, thanks to the promulgation of Court of Tax Appeals (CTA) Case 8377 on November 4.

In this case, the CTA ruled that the certificate of tax exemption is not a condition precedent for the nonstock, nonprofit educational institutions' entitlement to income-tax exemption. The tax

court ruled that these institutions do not need to secure a ruling from the Bureau of Internal Revenue (BIR) to enjoy a tax exemption on their tax-exempt activities.

In retrospect, Revenue Memorandum Order (RMO) 34-2014, dated September 18, has clarified that tax-exemption rulings neither confer nor abrogate exemptions granted by law. However, reading through the order's provisions, it appears that the BIR still requires the filing of an application for a tax-exemption ruling.

While RMO 34-2014 declares the BIR's position that the absence of a valid, current and subsisting tax-exemption ruling does not divest qualified entities of the tax exemption provided under the 1987 Philippine Constitution or Section 30 of the Tax Code of 1997, the same order, however, reiterates the provisions of RMO 08-2014, which states that the failure of the nonstock, nonprofit entity to present its valid, current and subsisting tax-exemption ruling to the appropriate withholding agents shall subject it to the payment of the withholding taxes due on their transactions, and that the withholding agents' failure to withhold, notwithstanding the lack of a tax-exemption ruling, shall cause the imposition of penalties under Section 251 and other pertinent sections of the Tax Code. Hence, following the provisions of RMO 34-2014, there still appears a need to secure a ruling so that income payments to nonstock, nonprofit educational institutions will not be imposed with withholding tax.

But with the promulgation of the court's decision in CTA Case 8377, nonstock, nonprofit schools can now feel confident in entering into a transaction without having to worry about presenting their tax-exemption ruling from the BIR. Similarly, the school's suppliers can now freely transact with these schools without requiring the latter to present their tax-exemption ruling.

In the CTA case, the tribunal ruled that the BIR cannot impose additional requirements that are not provided by law. The CTA cited the Supreme Court's (SC) decision in GR 158085, in which the latter held that, when the Tax Code does not provide a requirement to avail a tax exemption granted under the law, the BIR cannot add an additional requirement to implement the law. The CTA said the requirement for certificate of exemption prescribed in RMO 20-2013 is not a

requirement stated by the law. Therefore, this certificate is not a condition precedent for the petitioner to be entitled to income-tax exemption.

The only requirement is that the school must show that it is a nonstock, nonprofit educational institution, and that no part of its income is derived from activities conducted for profit pursuant to Section 4(3), Article XIV of the Constitution and Section 30(H) of the Tax Code, as amended. Section 4(3), Article XIV of the Constitution provides that all revenues and assets of nonstock, nonprofit educational institutions that are used actually, directly and exclusively for educational purposes shall be exempt from taxes and duties. Upon the dissolution or cessation of the corporate existence of such institutions, their assets shall be disposed of in the manner provided by law.

While CTA Case 8377 limited the discussion to nonstock, nonprofit educational institutions, it is my humble view that the same rule should also apply to all taxpayers whose tax exemptions are clearly defined under our laws, invoking the well-enshrined doctrine of *stare decisis*, which means that when a court has laid down a principle of law as applicable to a certain state of facts, it will adhere to that principle and apply it to all future cases in which the facts are substantially the same, even though the parties may be different. This case, though, may yet find its way up to the SC.

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