

P&A's **Let's Talk Tax** column appears at **The Economy** section of BusinessWorld every Tuesday.

Please find below the August 9, 2005 article on **Nonstock, nonprofit: Non tax?** by tax manager Atty. Kristine Casa-Siervo. For comments and inquiries, please e-mail the author at [Kristine.s.Casa-Siervo@pna.ph](mailto:Kristine.s.Casa-Siervo@pna.ph) or call (632)886-5511.

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## **LET'S TALK TAX**

### **KRISTINE S. CASA-SIERVO**



## **Non stock, non profit: non-tax?**

More often than not, trustees and officers of non-stock non-profit (NSNP) institutions are appalled when they receive a letter from the Bureau of Internal Revenue (BIR) assessing them of deficiency taxes. Unfortunately, these trustees and officers are under the impression that as NSNP organizations, they are immune from all duties and taxes.

But are non-stock non-profit organizations really exempt from the payment of all taxes?

A non-stock non profit organization is a type of corporation which may be formed or organized for charitable, religious, educational, professional, cultural, fraternal, literary, scientific, social, civic services, or other similar purposes such as trade, industry, agricultural and like chambers. No part of its income is distributable to its members, trustees or officers and any profits earned by such corporation as an incident to its operations shall be used for the furtherance of the purposes for which it was organized.

Under our Constitution, charitable institutions, churches and parsonages or convents appurtenant thereto, mosques, non-profit cemeteries, and all lands, buildings, and improvements, actually, directly and exclusively used for religious, charitable, or educational purposes shall be exempt from taxation. A similar grant of tax exemption is provided specifically for NSNP educational institutions stating that all income and assets of these educational organizations used actually, directly and exclusively for educational purposes shall be exempt from taxes and duties. (Section 4(3), Article XIV of the Constitution)

In support of this particular provision of the Constitution, the Tax Code, has likewise declared NSNP educational institutions, as well as a non-stock corporation or association organized and operated exclusively for religious, charitable, scientific, athletic, or cultural purposes, or for the rehabilitation of veterans exempt from tax on income received by them as such.

This grant of tax exemption provided under the Constitution and the Tax Code may well be among the reasons why a many trustees and officers of these NSNP organizations are under the mistaken notion that their tax exemption is absolute.

It is not.

In a case decided by the Supreme Court, it was held that the tax exemption of charitable and religious institutions under the Constitution refers only to real property exemption and not to other types of taxes. (Lladoc vs. Commissioner of Internal Revenue, 14 SCRA 292)

The exemption privileges do not cover all types of income and activities. Income from properties, as well as from activities conducted for profit by NSNP corporations is subject to income tax. Section 30 of the Tax Code explicitly provides that *“the income of whatever kind and character of the foregoing organizations from any of their 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 the tax imposed under this Code”*. Thus, income earned by a non-stock non-profit institution from the sale or lease of its real property is subject to tax. Interest income from bank deposits and yield from deposit substitutes are likewise subject to the final withholding taxes.

In the same manner, income earned by the educational institutions from investments in shares of stock which is not deemed related to its purposes as an educational institution and is subject to income tax. Income earned from the sale or lease of real property or from fund raising activities although to be used exclusively in furtherance of the objectives and purposes of the organization are likewise, in general, taxable.

Both NSNP organizations and educational institutions are neither exempt from the liability to withhold taxes on their employees and other income payments that are subject to withholding tax under the regulations.

It is therefore necessary for trustees and officers of these NSNP organizations to determine the source of the organization’s income because it does not necessarily mean that if an organization is non-stock, non-profit, it is likewise exempt from tax under all circumstances. When in doubt, a ruling may be secured from the BIR on whether certain income or receipts can be exempt or should be taxable. Exemptions from the general rules on taxability may also be obtained, in certain cases.

*(The author is a tax manager at Punongbayan & Araullo, a member firm of Grant Thornton International. For comments and inquiries, e-mail [Kristine.S.Casa-Siervo@pna.ph](mailto:Kristine.S.Casa-Siervo@pna.ph) or call 886-5511.)*