



**Coordinating Council of
Private Educational Associations**



COCOPEA Statement, June 1, 2021

STATEMENT ON DAMAGING, DISCRIMINATORY AND ILLEGAL PROVISION IN BUREAU OF INTERNAL REVENUE REVENUE REGULATION 5-2021

The Coordinating Council of Private Educational Associations, in solidarity with all private educational institutions and education stakeholders throughout the country, calls for the immediate rectification of Revenue Regulation 5-2021 (“RR 5-2021”), a tax regulation issued by the Bureau of Internal Revenue.

Whereas the recently enacted Republic Act No. 11534 or the Corporate Recovery and Tax Incentives for Enterprises Act (the “CREATE Act”) sought to shore up proprietary educational institutions during the pandemic with a much appreciated temporary reduction in the tax rate from 10% to 1%, RR 5-2021 will instead cause irreparable damage to the institutions and stakeholders that the Duterte Administration and Congress sought to help, by more than doubling their tax rate from the 10% that has been applied to them since 1968, to 25%.



RR 5-2021's Grave Impact on the Education

The imposition of RR 5-2021, especially during this deep economic recession, will penalize, marginalize and discriminate against proprietary educational institutions with unfeasibly higher taxes that may force financially distressed schools to close down and trigger a radiating wave of economic disruption that will hit not just teachers and school personnel, but also the extensive network of linked small and medium businesses and livelihood activities of the host communities.

Whereas corporations nationwide will see their tax rate reduced as a result of CREATE, it is only proprietary educational institutions that have been singled out by RR 5-2021 for a devastating increase in tax rates, despite the key role that they play in tackling the ongoing learning crisis that will impact our country's ability to generate jobs for decades to come, and despite the severe financial stress they are undergoing as a result of the pandemic - induced plunge in enrollment.

The unintended consequence of RR 5-2021 is to impose a very heavy burden on the private education sector at a time when schools are already struggling to survive as a result of first, the K-to-12 Act, and now the pandemic. The immediate impact will be seen in a sharp reduction of investments in classroom capacity and scholarships. The longer-term impact of RR 5-2021 would be that faculty and personnel are at greater risk of losing their jobs, and even the communities and small businesses built around schools (e.g., dormitories, janitorial and security services, uniform sewers, carinderias, sari - sari stores and school bus services) will be significantly affected.



COCOPEA Statement, June 1, 2021 (cont.)

RR 5-2021 would cause severe damage to the schools, parents, students, employees and numerous other stakeholders in the private education sector, which is a large and vital partner of the government in providing quality education nationwide. Currently, there over 6.1 million students enrolled in 4,125 private educational institutions across the country, as per CHED and DepEd data. The current faculty and staff in the basic education units of the private educational institutions number over 300,000, while in higher education, the total number is approximately 100,000.

RR 5-2021 is ill-conceived and insensitive to the realities of the private education sector

In the aftermath of the economic impact of the pandemic on the families of learners, it would be almost impossible for many in the private education sector to recover without some government assistance.

Since the start of the pandemic, almost 900 private basic education schools have closed, and several private higher education institutions have suspended operations. The Department of Education reported last March 1, 2021 that enrollment in private K-12 schools dropped by over 900,000 learners versus the prior school year.

In higher education, a survey conducted by the Philippine Association of Colleges and Universities (PACU) in April 2021 indicates that over 50% of respondents experienced a decline in enrollment of 10 to 50+ % in SY 2020-21



COCOPEA Statement, June 1, 2021 (cont.)

versus the prior year. Over a million students, faculty and school personnel in private schools have been impacted by the pandemic to date.

The temporary relief intended by the CREATE Act should have encouraged increased participation of the private sector in the delivery of education, easing the government's costs in building more schools and classrooms, and in the hiring and training of more teachers in the public school system.

However, the benefits of the monumental passage of the CREATE Act and its objective of supporting the private education sector are now in grave danger of being entirely reversed by the BIR under RR 5-2021.

It is our sincere belief that this is not the spirit or the intention of the CREATE Act. The BIR's arbitrary move to enforce a 15% increase in the tax rate during this deep recession is ill-conceived and insensitive to the realities of the education sector.

RR 5-2021 is Grossly Inconsistent with the CREATE Act

RR 5-2021 directly contradicts the recently enacted Republic Act No. 11534 or the Corporate Recovery and Tax Incentives for Enterprises Act (CREATE) which grants a temporary reduction of the concessionary income tax rate of proprietary educational institutions from 10% to 1% for the next three years. We highly commend this responsive act of legislators and the President to help alleviate struggling private schools from the health and economic crisis under the pandemic.



COCOPEA Statement, June 1, 2021 (cont.)

However, we strongly protest the BIR's unilateral insertion of a condition that proprietary educational institutions must be "non-profit" to enjoy the reduced rate. Otherwise, they are subject to the regular corporate rate of 25%. If implemented, this effectively cancels out the 1% rate under the CREATE Act, as proprietary educational institutions by direct implication would now be subject to the regular corporate rate of 25%.

Specifically, RR 5-2021 unilaterally inserted the word "non-profit schools" in the definition of "proprietary schools". This modifier "non-profit schools" is NOT found in the definition of proprietary schools in Section 27 (B) of the Tax Code. The condition for proprietary educational institutions to be "non-profit", aside from being a legal impossibility, was also not provided for by the CREATE Act.

The 9-point tax reduction in the income tax due from proprietary educational institutions under the CREATE Act was expected to be the lifeline extended by the government to economically affected schools, which extends to their students in the form of scholarships, loans, reduced fees, and to their personnel through salaries, benefits, and other forms of assistance, at this time of severe crisis.

The spirit of the CREATE Act as envisioned by Congress and the Duterte Administration should not be allowed to be set aside by the BIR RR 5-2021. What the BIR cannot do directly, it cannot do indirectly. RR 5-2021, as an administrative issuance, cannot amend a law passed by Congress.



COCOPEA Statement, June 1, 2021 (cont.)

Constitutional Infirmities of RR 5-2021

Our Constitution is unequivocal: “the State recognizes the complementary roles of public and private institutions in the educational system and shall exercise reasonable supervision and regulation of all educational institutions.”

The unprecedented move under RR 5-2021 clearly suffers from serious Constitutional infirmities. Under Art. XIV, Sec. 4(3), of the Constitution:

(a) “All revenues and assets of non-stock, non-profit educational institutions ... shall be exempt from taxes and duties.”

(b) “Proprietary educational institutions ... may likewise be entitled to such exemptions, subject to the limitations provided by law, including restrictions on dividends and provisions for reinvestment.”

As can be clearly deduced from the language above, the reference to proprietary educational institutions is a reference to for-profit educational institutions which are organized as stock corporations as the Constitution allows “restrictions on dividends and provisions for reinvestment” as part of the limitations for the grant to them of preferential tax treatment.

Contrary to the clear mandates of both the Constitution and the CREATE Law, RR 5-2021 limits the application of the preferential tax treatment to proprietary educational institutions that are “non-profit.” Instead of implementing the preferential tax treatment of proprietary or stock educational institutions under the Constitution and the Tax Code, RR 5-2021 is denying them preferential tax treatment.



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COCOPEA Statement, June 1, 2021 (cont.)

Uphold the Pro Education Spirit of the CREATE ACT and the Constitution

We have exhausted all official means to bring this matter to the attention of the Department of Finance and the Bureau of Internal Revenue, yet our appeals to correct this matter of urgent public concern remain unresolved.

We therefore make this public appeal on behalf of the whole private education sector, in the hopes of a favorable intervention from our policymakers in the Executive Branch, to spare the education sector and its many stakeholders from the devastating effects of RR 5-2021.

We therefore call on our tax authorities to exercise their taxing power with fairness and equity, and in accordance with both the CREATE Act and the Constitution, by immediately rectifying the erroneous insertion in RR 5-2021.



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June 1, 2021