REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

Quezon City

Sec. 32(B)(6)(b) NIRC	
BIR Ruling No. 442-2012	
#355-2017	
8-8-2017	

MR. PAQUITO S. JAMERO
Purok 7, Poblacion Monkayo
Compostela Valley Province

Gentlemen:

This refers to your letter dated June 16, 2014 requesting exemption from income tax, and consequently from withholding tax, on your retirement benefits received pursuant to the Retirement Policy of Davao Del Norte Electric Cooperative, Inc. ("DANECO").

Based on the documents submitted, it is shown that Mr. Paquito S. Jamero ("Mr. Jamero") was a regular employee of DANECO since April 2, 1984 and was compulsorily retired from the service on April 2, 2014 after rendering thirty (30) years of service in the Company in accordance with Section 8 of the new Retirement Policy of DANECO which compulsorily retires an employee upon rendition of thirty (30) years of service in the company. Moreover, based on the Birth Certificate of Mr. Jamero, it is shown that he was only forty-nine (49) years old on the date of his retirement on April 2, 2014, his birth date being on September 24, 1964.

In reply thereto, please be informed that pursuant to Section 32(B)(6)(b) of the Tax Code of 1997, any amount received by an official or employee as a consequence of separation of such official or employee from the service of the employer because of death, or sickness or other physical disability or for any cause beyond the control of the said official employee shall not be included in the computation of his gross income and shall be exempt from taxation.

In order to apply the above-cited provision, there is a need to resolve the issue of whether or not the retirement from employment of Mr. Jamero by reason of the implementation of the new Retirement Policy of DANECO, which compulsorily retires an employee upon rendition of thirty (30) years of service, is embraced within the meaning of the phrase "for any cause beyond the control of the said official or employee" to entitle Mr. Jamero to tax exemption on his retirement benefits.

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The phrase "for any cause beyond the control of said official or employee" connotes involuntariness on the part of the official or employee. The separation from the service of the official or employee must not be asked for or initiated by him. The above-mentioned provision requires the presence of two (2) conditions in order that the employee benefits may be granted tax exemption, namely: (1) the employee is separated from the service of the employer due to death, sickness or other physical disability or for any cause beyond the control of the said official or employee; and (2) the employer pays benefits to the official or employee or his heirs as a consequence of such separation.

Foregoing considered, we rule that a retirement from employment of an employee by reason of reaching the compulsory retirement age set forth under the retirement policy of the company does not fall within the meaning of the phrase "for any cause beyond the control of the said official or employee" considering that a retirement policy is being set by the company usually with consultation with its employees or labor union representing the employees. By agreeing to the provisions of the retirement policy, including the provision thereof on compulsory retirement age, the employees are presumed to know that upon reaching their compulsory retirement age, they will be retired from the service of the employer. If the employees did not agree to the provisions of the retirement policy, they could have expressed their dissent to the retirement policy and negotiated for better terms/provisions. It is noted, however, that DANECO's new Retirement Policy was approved by its Board of Directors on February 25, 2006 and confirmed/approved by the National Electrification Administration (NEA) on May 3, 2006 for implementation. The records do not show that Mr. Jamero ever questioned or objected to the implementation of DANECO's new Retirement Policy, particularly to its provision on compulsory retirement age from the time it was implemented in 2006. Mr. Jamero's silence shows, in the absence of any proof to the contrary, that he acquiesced to the policy retirement of DANECO. Thus, it could not be said that Mr. Jamero's separation from the Company is due to a cause beyond his control.

Therefore, this Office is of the opinion as it hereby rules that the retirement benefits received by Mr. Jamero, by reason of his compulsory retirement pursuant to the provisions of the DANECO's new Retirement Policy, shall be subject to income tax, and consequently to the withholding tax, pursuant to Section 32(B)(6)(b) of the Tax Code of 1997, as amended.

However, pursuant to Section 2.78.1 (A)(7) of RR 2-98, as amended, the terminal pay, *i.e.*, commutation and payment of monetized unused vacation leave credits not exceeding ten (10) days during the year are not subject to income tax and consequently to the withholding tax. Conversely, the cash equivalent of vacation leave exceeding ten (10) days is subject to tax. However, this same principle cannot apply to sick leave credits since an employee must actually go on sick leave to be able to avail of said leave credits. (*BIR Ruling No. 442-2012* dated July 3, 2012)

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It is must be understood that the payment to Mr. Jamero of his salaries and the payment of the 13th month pay and other benefits in excess of the Php 30,000 threshold shall likewise be subject to income tax, and consequently to withholding tax, under Section 2.78.1 (A)(3)(a) and (A)(7) of RR 2-98, as amended. (*BIR Ruling No. 442-2012* dated July 3, 2012)

This ruling is being issued on the basis of the foregoing facts as represented. However, if upon investigation it will be disclosed that the facts are different, then this ruling shall be considered null and void.

Very truly yours,

CAESAR R. DULAY
Commissioner of Internal Revenue
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