REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE
Quezon City

Section 32(B)(6)(b) of the National Internal Revenue Code of 1997, as amended
BIR Ruling No. 197-2015
566-2017
12-7-2017

TULAY SA PAG-UNLAD, INC.
2363 Antipolo St., Guadalupe Nuevo,
Makati City 1212

Attention: <u>LEODEGARIO B. SALUBO</u>
Comptroller

Gentlemen:

This refers to your letter dated August 19, 2015, requesting for the issuance of a ruling exempting from income tax the separation benefits given to **Mr. Rafael Dindo T. Cortez** who has been separated from service due to redundancy pursuant to Section 32(B)(6)(b) of the National Internal Revenue Code of 1997, as amended.

It is represented that **TULAY SA PAG-UNLAD, INC. (TSPI)** is a domestic non-stock, non-profit, charitable, educational, cultural, social and civic service corporation duly registered and existing under the laws of the Republic of the Philippines with Securities and Exchange Commission (SEC) Company Registration No. that to streamline the social enterprise operations and improve the services of the corporation to its clients, it has adopted new technologies (OMNI Enterprise Software and Microsoft Great Plains, among others) in which the staff of the Management Information Technology Services (MITS) shall be directly reporting to its Comptroller, the main owner of said systems technologies; that with this development, the Comptroller now assumes all the functions and responsibilities of the MITS Director, thus, requiring to permanently terminate the services of **Mr. Rafael Dindo T. Cortez**, its MITS Director; that on August 18, 2015, **TSPI** has duly filed with the Department of Labor and Employment (DOLE), Makati-Pasay Field Office, the Notice of Termination due to Redundancy of the aforementioned employee and that said Notice of Termination was served informing him of its effective date.

In reply, please be informed that pursuant to Section 32(B)(6)(b) of the National Internal Revenue Code of 1997, as amended, any amount received by an official or employee or by his heirs from the employer as a consequence of separation of such official or employee 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 shall not be included in the gross income and shall be exempt from taxation under Title II of the same Tax Code. ***(BIR Ruling No. 197-2015 dated June 10, 2015)***

The above-mentioned law 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. ***(BIR Ruling No. 197-2015 dated June 10, 2015)***

Accordingly, the separation pay to be received by **Mr. Rafael Dindo T. Cortez** as deemed occupying redundant position as a result of his separation from the service is exempt from income tax and consequently from the withholding tax prescribed by Section 79 of the National Internal Revenue Code of 1997, as amended, as implemented by Revenue Regulations (RR) No. 2-98, as amended by RR Nos. 6-2001 and 12-2001.

Moreover, pursuant to Section 2.78.1 (A)(7) of RR No. 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. 197-2015 dated June 10, 2015)***

It is, however, understood that this exemption does not include the payment of the separated employees' salaries and the payment of the 13th month pay and other benefits in excess of the eighty two thousand pesos (Php82,000.00) threshold under Section 2.78.1 (A)(3)(a) and (A)(7) of RR No. 2-98, as amended by RR No. 3-2015.

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

Very truly yours,

CAESAR R. DULAY
Commissioner of Internal Revenue

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