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

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| RA No. 11494;<br>RR No. 29-2020;<br>RMC No. 120-2020 | | OT- [illegible] |

Person to Contact: Chief, Law Division
Tel Nos. 926-55-36 / 927-09-63

JUN 30 2022

**Eliza E. Guevarra**

Gentlemen:

This refers to your request for confirmation of your opinion that the retirement benefits received by frontliners, whether in the private or public sector, is exempt from tax pursuant to Republic Act No. 11494, otherwise known as the "Bayanihan to Recover as One Act."

In reply, ***Section 5 of RA No. 11494*** states that retirement benefits received by officials and employees of private firms shall be exempt from income tax, to wit:

> *"SECTION 5. Exemption from Tax of Retirement Benefits. — Retirement benefits received by officials and employees of private firms, whether individual or corporate, from June 5, 2020 until December 31, 2020 shall be excluded from gross income and shall be exempt from taxation: Provided, That any re-employment of such official or employee in the same firm, within the succeeding twelve (12)-month period, shall be considered as proof of non-retirement and shall subject the benefits received to appropriate taxes. In addition to the payment of appropriate taxes, any person who willfully evades or defeats any imposable tax under this section shall be criminally liable and penalized under Section 255 of Republic Act No. 8424, as amended."*

In connection therewith, the aforequoted provision was implemented by ***Revenue Regulations (RR) No. 29 – 2020*** which reads:

> *"SECTION 3. Tax Exemption. — The following* ***income payments shall be excluded from gross income and shall not be subject to income tax:***
>
> *A.* ***Retirement benefits received by officials and employees of private firms, whether individual or corporate, from June 5, 2020 to December 31, 2020, provided that the amount received is in accordance with a retirement plan duly-registered with the Bureau of Internal Revenue (BIR). Provided further, that any re-employment of such official or employee in the same firm and its related parties as discussed under Section 4 of Revenue Regulations 19-2020, within the succeeding twelve (12)-month period shall***

***be considered as proof of non-retirement.*** *Note, however, that the abovementioned conditions do not cover the retirement benefits of employees under Section 2.78.1 (B) (1) of Revenue Regulations 02-98, as amended.*

*If the re-employment happens within calendar year 2020, the employer shall include the said retirement benefits in the gross income of the concerned official or employee for 2020. However, if the re-employment will occur in 2021 and within the twelve-month period, the concerned employee shall pay the taxes due on the retirement benefits received within thirty (30) days from date of re-employment, or on the due date for the payment of the second installment payment of 2020 income tax, whichever comes later, without penalties."* (Underscoring and emphasis ours)

The exemption of the retirement benefits from income tax under RA No. 11494 was further clarified in ***Revenue Memorandum Circular (RMC) No. 120-2020***, *viz:*

*"Q1. Employee A, fifty (50) years of age and with eight (8) years of service in Company B retired on June 15, 2020 and received the retirement benefits on August 31, 2020. Company B has a registered retirement plan with the BIR and the retirement benefits received by said employee is based on that plan. Are the retirement benefits received exempt from income tax?*

*A1. Yes, although the employee did not meet one of the conditions, particularly on the length of service under the approved employees' retirement benefits plan,* ***the received retirement benefits is considered exempt from income tax since the same is based on the registered retirement plan with the BIR, and the employee retired and received the retirement benefits during the covered period of June 5 to December 31, 2020 under the Republic Act No. 11494 or the Bayanihan to Recover as One Act."*** (Underscoring and emphasis ours)

Based on the above-mentioned provisions, retirement benefits received shall be excluded from the computation of gross income and exempted from income tax if the following requisites concur:

1. He or she must be an employee or official of a private firm, whether individual or corporate;
2. The date of retirement and receipt of benefits thereof must be from June 5, 2020 to December 31, 2020;
3. The amount received must be in accordance with a retirement plan duly registered with the Bureau of Internal Revenue (BIR); and
4. The employee must not be re-employed by the same firm or its related parties within the next twelve (12) months. Otherwise, the retirement benefits shall be subject to income tax.

The retirement plan is duly registered with the BIR when it has been issued a Certificate of Qualification as a Reasonable Employees' Retirement Benefit Plan. Also, RMC No. 120-2020 further elucidates that only the amount covered by the registered retirement plan will be exempt from income tax. Thus, any amount in excess of what is within the retirement plan shall be taxable.

RA No. 11494 and RR No. 29-2020 is clear on who shall enjoy the tax exemption of the retirement benefits received. The law expressly provides that the employee or official must be employed in a private firm, whether individual or corporate. Hence, government officials or employees will not enjoy the tax exemption of retirement benefits granted under RA No. 11494. It is a cardinal rule in statutory construction that when the law is clear and free from any doubt or ambiguity, there is no room for construction or interpretation. There is only room for application.

However, please note that the following income payments received by frontliners classified as public/private health workers and human resources for health under Section 2 of RR No. 29-2020, regardless of private or public employment, shall be excluded from gross income and shall not be subject to income tax pursuant to RA No. 11494[1]:

1. COVID-19 special risk allowance given to public and private health workers[2];
2. Actual hazard duty pay received by human resources for health[3]; and
3. Compensation paid to private and public health workers who have contracted COVID-19 in line of duty or who dies while fighting COVID-19.

In view of the foregoing, the exemption from income tax of retirement benefits under RA No. 11494 shall only apply to employees and officials who are employed in private firms, whether individual or corporate.

Please be guided accordingly.

Very truly yours,

**CAESAR R. DULAY**
*Commissioner of Internal Revenue*

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[1] Section 5 (B) to (D)
[2] Public/Private Health Workers — all persons who are engaged in health and health-related work, and all persons employed in all hospitals, sanitaria, health infirmaries, health centers, rural health units, barangay health stations, clinics and other health-related establishments, owned and operated by the Government or its political subdivisions with original charters and shall include medical, allied health professional, administrative and support personnel employed regardless of their employment status.
[3] Human Resources for Health (HRH) — Any person temporarily hired or employed to complement or supplement the current health workforce.