

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

REVENUE MEMORANDUM CIRCULAR NO. 27-2011

SUBJECT : Revocation of **BIR Ruling Nos. 002-99, DA-184-04, DA-569-04 and DA-087-06**

TO : All Internal Revenue Officials, Employees and Others Concerned.

This Circular is being issued to revoke **BIR Ruling Nos. 002-99** (dated January 12, 1999), **DA-184-04** (dated April 6, 2004), **DA-569-04** (dated November 10, 2004), and **DA-087-06** (dated March 6, 2006) which excludes from the gross income of the taxpayer and hence, exempt from Income Tax, contributions to Pag-Ibig 2, GSIS, SSS, Life Insurance, Pre-Need Plan *in excess of the mandatory monthly contribution*; GSIS Optional Insurance Premium, GSIS Educational Plan Premium, GSIS Memorial Plan Premium, and GSIS Unlimited Optional Insurance Premium.

The abovementioned BIR Rulings rendered an opinion regarding Section 32(B)(7)(f) of the NIRC of 1997, to wit:

“Since the law and implementing regulations do not categorically state that the exemption covers only the regular GSIS and Pag-Ibig contributions, it is safe to conclude that GSIS optional and Pag-Ibig 2 contributions are likewise excludible from the gross income of the taxpayer and hence, exempt from income tax.”

It has been observed that the grant of Income Tax exemption to SSS, GSIS, PHIC and Pag-ibig contributions *in excess of the mandatory contributions* is being abused. As an example, aside from the mandatory contribution of Php100.00/month to Pag-ibig Fund and 1% (for those with monthly compensation of Php1,500.00 and below) or 2% (for those with monthly compensation of over Php1,500.00) to PHIC, an employee may contribute additional Php1,000.00/month to Pag-ibig 2 and Php1,000.00/month to PHIC as voluntary contributions which can be gleaned as a form of investment. The money being invested by the employees in these programs are not being taxed. Aside from that, employers which are mandated by the Bureau to correctly withhold the tax due of their employees (i.e. tax due is equivalent to tax withheld), find it difficult to comply since voluntary contributions by their employees may not always pass thru them.

The term *contribution* is defined in Republic Act (RA) No. 8291, otherwise known as The Government Service Insurance System Act of 1997, as follows:

“SECTION 2. *Definition of Terms.* —

xxx xxx xxx

(j) *Contribution* — The amount payable to the GSIS by the member and the employer in accordance with Section 5 of this Act;”

Moreover, Section 5 of RA No. 8291 provides:

“SECTION 5. Contributions. — (a) It shall be mandatory for the member and the employer to pay the monthly contributions specified in the following schedule:

xxx

xxx

xxx” (Underscoring provided)

Similarly, Section 8 of RA No. 8282, otherwise known as the Social Security Act of 1997, defined the term contribution, viz:

“SECTION 8. Terms Defined. —

xxx

xxx

xxx

(i) Contribution — The amount paid to the SSS by and on behalf of the member in accordance with Section Eighteen of this Act.”

Subsequently, Section 18 of RA No. 8282 states:

“SECTION 18. Employee's Contribution. — (a) Beginning as of the last day of the calendar month when an employee's compulsory coverage takes effect and every month thereafter during his employment, the employer shall deduct and withhold from such employee's monthly salary, wage, compensation or earnings, the employee's contribution in an amount corresponding to his salary, wage, compensation or earnings during the month in accordance with the following schedule:” (Emphasis provided)

Further, the term Medicare “contribution” is defined in Section 4 of RA No. 7875, otherwise known as the National Health Insurance Act of 1995, as follows:

“SECTION 4. Definitions of Terms. — For the purpose of this Act, the following terms shall be defined as follows:

xxx

xxx

xxx

d) Contribution — The amount paid by or in behalf of a member to the Program for coverage, based on salaries or wages in the case of formal sector employees, and on household earnings and assets, in the case of the self-employed, or on other criteria as may be defined by the Corporation in accordance with the guiding principles set forth in Article I of this Act.”

Furthermore, Sections 4 and 7 of RA 9697, otherwise known as the Home Development Mutual Fund Law of 2009 provided for the definition of Pag-ibig “contribution”, to wit:

“SEC. 4. Definition of Terms. - The following shall mean:

xxx

xxx

xxx

(c) “Contributions” - the amount payable to the Fund by the members and their employers, in accordance with this Act.”

“SEC. 7. Fund Generation and Contributions.- The money of the Fund shall be generated by the provident savings that the covered employees shall contribute for the purpose every month, and the equal amounts that their respective employers shall mandatorily contribute.

Covered employees and employers shall contribute to the Fund based on the monthly compensation of covered employees as follows:

Employees earning not more than One thousand five hundred pesos (P1,500.00) per month – one percent (1%).

Employees earning more than One thousand five hundred pesos (P1,500.00) per month – two percent (2%).

All employers - two percent (2%) of the monthly compensation of all covered employees.

The maximum monthly compensation to be used in computing employee and employer contributions shall not be more than Five thousand pesos (P5,000.00): Provided, That this maximum may be fixed from time to time by the Board of Trustees through rules and regulations adopted by it, taking into consideration actuarial calculations and rates of benefits.”

Therefore, contributions referred to in Section 32(B)(7)(f) of the NIRC of 1997 cover *only the mandatory/compulsory contributions* of the concerned employees to SSS, GSIS, PHIC and HDMF. Thus, this Office holds that *voluntary contributions* in excess to what the law allows to these institutions are **not** excludible from the gross income of the taxpayer and hence, **not** exempt from Income Tax and Withholding Tax. Consequently, the exemption from withholding tax on compensation referred to in Section 2.78.1(B)(12) of Revenue Regulations (RR) No. 2-98 shall apply only to *mandatory/compulsory* GSIS, SSS, Medicare and Pag-ibig contributions.

In this regard, **BIR Ruling Nos. 002-99, DA-184-04, DA-569-04 and DA-087-06** are hereby revoked and invalidated, and all revenue issuance inconsistent with this Circular are deemed repealed.

All revenue officers conducting audit investigations shall take the provisions of this Circular into consideration. Accordingly, any claim for exemption for voluntary contributions shall be disallowed, and, where applicable, the corresponding deficiency assessment shall be made.

All revenue officials and employees are enjoined to give this Circular the widest possible publicity.

(Original Signed)
KIM S. JACINTO-HENARES
Commissioner of Internal Revenue