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

Sec. 32 (B)(6)(a). 1997 NIRC
BIR Ruling No. 297-2012
#286-2016
6-27-2016

Mr. Virgelio S. de Mesa
L18 B14 Banker's Village
Gitnang Bayan, San Mateo, Rizal

Sir:

This refers to your letter dated May 28, 2014 requesting in effect, for exemption from income tax on your retirement benefits to be received from Atlanta Industries, Inc. (Atlanta) on account of your retirement upon reaching the age of sixty (60) years old on May 17, 2013.

Documents submitted disclose that Mr. Virgelio S. de Mesa was born on May 17, 1953; that based on the Certification dated May 26, 2014 submitted by Atlanta, it is shown that Mr. Virgelio S. de Mesa with Tax Identification No. (TIN) has been employed with Atlanta since April 1, 1979, occupying the position of Toolkeeper under Central Toolroom Receiving Section; and that Mr. Virgelio S. de Mesa will be retiring from Atlanta on May 17, 2013 upon reaching 60 years of age and rendering 34.13 years of service in the said company.

In reply, please be informed that pursuant to Section 32(B)(6)(a) of the Tax Code of 1997, as amended, retirement benefits received under Republic Act No. 7641 shall not be included in the gross income of the retiring employee and therefore not forming part of his taxable income. Under the said Act, in the absence of a retirement plan or agreement providing for retirement benefits of employees in the establishment, an employee upon reaching the age of sixty (60) years or more, but not beyond sixty-five (65) years which is declared the compulsory retirement age, who has served at least five (5) years in the service of the same employer, may retire and shall be entitled to retirement pay equivalent to at least one-half (1/2) month salary for every year of service, a fraction of at least six (6) months being considered as one whole year.

Based on the foregoing and since at the time of retirement of the above-named employee, he will be reaching the age of sixty (60) and rendering at least five (5) years of service in the company, the retirement benefits he will receive pursuant to R.A. 7641 are not subject to income tax and consequently to the withholding tax imposed under Section 79, Chapter XIII, Title II of the Tax Code of 1997. (BIR Ruling No. 163-2011 dated May 23, 2011)

Moreover, 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.

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It is understood that this exemption does not include the payment to the employee of his salaries and the payment of the 13th month pay and other benefits in excess of the Php82,000.00[1] threshold under Section 2.78.1 (A)(3)(a) and (A)(7) of RR 2-98, as amended. (BIR Ruling No. 555-12 dated September 6, 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 as null and void.

Very truly yours,

KIM S. JACINTO-HENARES
Commissioner of Internal Revenue

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[1] As amended by Revenue Regulations No. 3-2015 dated March 13, 2015