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
1526-2017
11-17-2017

ABOITIZ FOUNDATION, INC.
Aboitiz Corporate Center. Gov. Manuel A.
Cuenco Ave., Kasambagan, Cebu City

Attention: <u>XAVIER JOSE ABOITIZ</u>
Trustee

Gentlemen:

This refers to your letter dated August 24, 2015, requesting for the issuance of a ruling confirming that the separation pay given to employees of **ABOITIZ FOUNDATION, INC.** who have been separated from service due to the implementation of a redundancy program is exempt from withholding tax pursuant to Sec. 32(B)(6)(b) of the National Internal Revenue Code of 1997, as amended.

It is represented that **ABOITIZ FOUNDATION, INC. (Foundation)** is a domestic non-stock, non-profit entity duly registered and existing under the laws of the Philippines with Securities and Exchange Commission (SEC) Company Registration No. , that on November 14, 2011, the Aboitiz Group, of which the **Foundation** is part of, through the Office of the Vice-President for Human Resources of the Aboitiz Equity Ventures, issued a management memoranda announcing the relocation of the company's head office from Cebu to Manila; that the planned relocation, which involved moving employees out of Cebu, made it necessary for the management to review and rationalize its current workforce structure, with the aim of placing the right number of qualified people in the organization; that the review resulted to a company-wide restructuring wherein certain positions were considered as feasible for merging with other existing positions while others were deemed operationally unnecessary; that as a consequence, certain existing positions were taken out in the **Foundation's** plantilla leading to a workforce reduction; that months after the initial relocation announcement, several redundant positions were identified, thus, requiring to permanently terminate the services of **Rowena Ruiz Astillo**, its Manager-Administration, Enterprise Development and Primary Health Care, effective March 31, 2015; and that on February 26, 2015, the **Foundation** has duly filed with the Department of Labor and Employment (DOLE), Cebu City, the Notice of Termination due to Redundancy of the aforementioned employee and that said Notice of Termination was served informing her 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

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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 **Rowena Ruiz Astillo** as deemed occupying redundant position as a result of her 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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