REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

National Office Building
Quezon City

Sec. 32(B)(6)(a), NIRC	000-00	
OT-	001-2	024

Person to Contact: Chief, Legal & Legislative Division
Tel Nos. 8926-5536 / 8927-0963

Date: JAN 09 2024

SOUTHERN MOTORS OF DAVAO, INC.
122 Mac Arthur Highway, SMDI Building
Matina 8000 Davao City

Attention: **Mr. Jackson T. Liu**
President & General Manager

Gentlemen:

This refers to your request for a legal opinion on the tax treatment of the retirement benefits of your employee who has reached the age of sixty (60) years old and rendered six (6) years of service under the qualified retirement plan of the establishment.

Background

Southern Motors of Davao, Inc. (the "Company") Retirement Plan is duly registered with the Bureau of Internal Revenue (BIR). It provides retirement pay to its qualified employees. Under Section 1 of Article V of its retirement plan, an employee who reaches a normal retirement age of sixty (60) years old and has rendered at least five (5) years in service is entitled to a lump sum benefit payment equivalent to the latest monthly basic salary multiplied by the number of years of credited service. Likewise, said employee may be continued in the service beyond his normal retirement date but not beyond his 65th birthday unless specifically waived by the Company.

Under the BIR Certificate of Qualification as a reasonable employees' retirement benefit plan issued to the Company on August 10, 2020, the retirement benefits received by a qualified employee shall be exempt from income tax provided that the two (2) conditions set forth are met: (i) the employee had been in the service of the same company for at least ten (10) years; and he is at least fifty (50) years old at the time of retirement.

On the other hand, Republic Act (RA) No. 7641 provides that "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) or more, but not beyond sixty-five (65) years who has served at least five (5) years in the said establishment, may retire and shall be entitled to retirement pay equivalent to at least one-half (1/2) month salary for every year of service.

OT- 001-2024
JAN 09 2024

Thus, it appears that the retirement benefits of an employee who reached sixty (60) years old and had rendered six (6) years of service from an establishment with a duly registered retirement plan shall be subject to income tax while if the establishment has no registered retirement plan, his retirement benefits wiill be exempt from income tax.

You now request for a ruling on the following issues:

1) Is it the intention of Section 32 (B)(6)(a) of the National Internal Revenue Code (Tax Code) of 1997, as amended, to subject to income tax the retirement benefits of an employee who reached sixty (60) years old and had rendered six (6) years of service from an establishment with a duly registered retirement plan even if the qualified retirement plan provides for a Normal Retirement Age of sixty (60) years old and at least five (5) years in service to be entitled to a lump sum benefit payment equivalent to the latest monthly basic salary multiplied by the number of years of credited service?

2) Is it correct to interpret that only the excess retirement pay between the one-month salary as stated under Section 1, Article V of the Company's retirement plan and the half-month salary as provided under RA No. 7641 shall be subject to income tax?

Discussion/Ruling

Pursuant to Section 32 (B)(6)(a) of the Tax Code of 1997, as amended, retirement benefits received under RA No. 7641 and those received by officials and employees of private firms, whether individual or corporate, in accordance with a reasonable private benefit plan maintained by the employer shall not be included in gross income and shall be exempt from taxation provided that the retiring official or employee has been in the service of the same employer for at least ten (10) years and is not less than fifty (50) years of age at the time of his retirement.

It is undisputed that the above-cited provision provides merely for the minimum requirements of 50 years of age and 10 years of service. However, the Retirement Plan can provide for more than 50 years old and 10 years of service.[1] Thus, if the company maintains a private retirement plan which have been determined by the Bureau of Internal Revenue as a "reasonable retirement benefit plan," the retirement benefits that will be received by the employees shall be exempt from income tax, provided that the two (2) conditions are met, viz.: (1) the employee had been in the service of the same private firm for at least 10 years; and (2) he is at least 50 years old at the time of retirement. Hence, companies which have reasonable retirement benefit plans, shall grant their displaced employees retirement benefits without subjecting the same to withholding income tax provided that the age and length of service requirements under Section 32 (B)(6)(a) of the Tax Code of 1997, as amended, are satisfied.

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[1] BIR Ruling No. DA-625-07 dated December 7, 2007

Under the RA No. 11494 or the Bayanihan to Recover as One Act, although the employee did not meet one of the conditions, particularly on the length of service under the approved employees' retirement benefits plan, the retirement benefits may be considered exempt from income tax if the employee retired and received the retirement benefits during the covered period of June 5 to December 31, 2020.[2]

On the other hand, RA 7641[3] provides for the retirement pay to qualified private sector employees in the absence of any retirement plan, collective bargaining agreement, or other applicable employment contract in the establishment. Under RA No. 7641, the retirement benefits that will be received by the retiring employee shall be exempt from income tax, provided that the two (2) conditions are met, viz.: (1) the employee had been in the service for at least five (5) years; and (2) he is at least sixty (60) years old but not beyond sixty-five (65) years old at the time of retirement. The retiring employee 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.

IN VIEW OF ALL THE FOREGOING, this Office hereby rules that the retirement benefits of an employee who reached sixty (60) years old and had rendered six (6) years of service in the same Company with a duly registered retirement plan are subject to income tax and consequently, to the withholding tax because he/she failed to meet the length of service (10 years) requirement in order for the retirement benefits to be tax exempt under Section 32 (B)(6)(a) of the Tax Code of 1997, as amended.

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 null and void.

Very truly yours,

ROMEO D. LUMAGUI, JR.
Commissioner of Internal Revenue

K-1

[2] Revenue Memorandum Circular No. 120-2020
[3] An Act Amending Article 287 of Presidential Decree No. 442, As Amended, Otherwise Known as The Labor Code of the Philippines by Providing for Retirement to Qualified Private Sector Employees in the Absence of Any Retirement Plan in the Establishment