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

Section 1 of Republic Act No. 7641; Section 32 (B) (6) (a) of the National Internal Revenue Code of 1997, as amended;
BIR Ruling No. 1151-18; BIR Ruling No. 1336-18
OT- 330 - 2021
AUG

AILEEN M. ZENAROSA

Dear Ms. Zenarosa,

This refers to your letter dated November 15, 2017 requesting for the tax exemption on your retirement benefit granted under the collective bargaining agreement (CBA) with the Centro Escolar University (CEU).

It is represented that you are a former college professor for twenty-seven (27) years at CEU and because of the K to 12 program, at the age of forty-nine (49) year old, you were separated from employment by way of retrenchment. As a consequence, you have filed before the National Labor Relation Commission (NLRC) a case for illegal termination. That in the CEU's position paper the CEU stated that aside from the separation pay, they are also going to give you your retirement pay in accordance with the university retirement plan where an employee who has served the institution for 20 years, regardless of age, is qualified to avail. However, they also stated that the retirement pay would be taxable.

The CEU has offered you two sets of payments: (1) the separation pay, which was issued with a certificate by Revenue District Office No. 32 - Quiapo-Sampaloc-San Miguel-Sta. Mesa exempting the same from tax pursuant to Section 32 (B) (6) (b) of the National Internal Revenue Code (Tax Code) of 1997, as amended; and (2) the retirement pay arising from the CBA with CEU, which you are now requesting for another tax exemption.

In reply, please be informed that with regard to the retirement benefits, Section 32 (B) (6) (a) of the Tax Code of 1997, as amended, states that:

"Section 32. Gross Income. -

xxx *xxx* *xxx*

(B) Exclusions from Gross Income. — The following items shall not be included in gross income and shall be exempt from taxation under this Title:

xxx xxx xxx

(6) Retirement Benefits, Pensions, Gratuities, etc. —

(a) Retirement benefits received under Republic Act 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: 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: ...shall not be included in gross income and shall be exempt from taxation."

Thus, if the company maintains a reasonable private retirement plan, the retirement benefits that will be received by the employees shall be exempt from income tax, provided that the two (2) conditions set forth under Section 32 (B) (6) (a) of the Tax Code of 1997, as amended, are met, viz.: (1) the employee had been in the service of the same private firm for at least ten (10) years; and (2) he is at least fifty (50) years old at the time of retirement. Hence, companies which have reasonable retirement benefit plans, may 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 are satisfied.

However, even if the company maintains a retirement plan but was not approved by the BIR as a reasonable retirement benefit plan, the provisions of Republic Act (RA) No. 7641 shall apply. Section 1 of RA No. 7641, amending the Labor Code of the Philippines, provides:

"Section 1. Article 287 of Presidential Decree No. 442, as amended, otherwise known as the Labor Code of the Philippines, is hereby amended to read as follows:

Art. 287. Retirement. — Any employee may be retired upon reaching the retirement age established in the collective bargaining agreement or other applicable employment contract.

In case of retirement, the employee shall be entitled to receive such retirement benefits as he may have earned under existing laws and any collective bargaining agreement and other agreements: Provided, however, that an employee's retirement under any collective bargaining and other agreements shall not be less than those provided herein.

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 hereby declared the compulsory retirement age, 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, a fraction of at least six (6) months being considered as one whole year."* (Underscoring supplied)

Under Section 1 of RA No. 7641, in the absence of an approved reasonable retirement plan providing for retirement benefits of employees in the establishment, 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 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.

In the instant case, while there is an existing CBA between the employees of CEU and CEU, such was not duly approved by the BIR as a reasonable private retirement plan. Therefore, it is Section 1 of RA No. 7641 which shall apply and not Section 32 (B) (6) (a) of the Tax Code of 1997, as amended. Thus, in order for the retirement benefits that you received be exempted from income tax, the requirements under Section 1 of RA No. 7641 must be present.

While you were employed by the CEU for twenty (20) years, which enabled you to claim the retirement pay under the CBA, you were unfortunately retrenched at the age of forty-nine (49) years old. Considering the given facts, we regret to inform you that you do not qualify to claim the tax exemption under Section 1 of RA No. 7641, as amended, as the law imposes an age requirement of at least sixty (60) years old at the time of your retirement.

Please be guided accordingly.

Very truly yours,

CAESAR R. DULAY
Commissioner of Internal Revenue

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