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

Section 32 (B) (6) (a) of the NIRC of 1997, as amended	
BIR Ruling No. 1151-2018	
CT-031-2020	
JAN 2 4 2020	

ROMEO M. BUE
Brgy. Tumaga, Zamboanga City

Sir:

This refers to your request for exemption from tax of your retirement benefits to be received from Zamboanga City Electric Cooperative, Inc. ("ZAMCELCO").

Documents submitted disclosed that you are a retired employee of ZAMCELCO; that you were born on March 2, 1959 and has completed thirty-nine (39) years, three (3) months, and eleven (11) days of service with ZAMCELCO (from December 20, 1979 to March 31, 2019)[1]; and that pursuant to the provision of the "Employees Retirement Policy" of ZAMCELCO effective June 30, 2011, you retired under Policy No. 3-12 as amended, which reads as follows:

> *"the graduated multiplier scheme of computing the employees' retirement benefit shall be used whether voluntary or compulsory retirement or resignation."*

In reply, please be informed that Section 32 (B) (6) (a) of the National Internal Revenue Code of 1997, as amended, states that:

> *"Section 32. Gross Income. -*
>
> *(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 R.A. 7641 and those received by officials and employees of private firms, whether individual or corporate, <u>in accordance with a reasonable private benefit plan maintained by the employer:</u> 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."* (Underscoring supplied)

Based on the above-quoted provision, if the company maintains a private retirement plan which have been determined by the Bureau of Internal Revenue (BIR) as a "reasonable retirement benefit plan", the retirement benefits that will be received by the employees shall be

[1] Per Certification issued by Sylvia T. Pinero, the OIC – Institutional Service Department of ZAMCELCO

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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 ten (10) years; and (2) he is at least fifty (50) years old at the time of retirement. 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. — <u>Any employee may be retired upon reaching the retirement age established in the collective bargaining agreement or other applicable employment contract.</u>*
>
> *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, <u>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,</u> 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, considering that Policy No. 3-12, the Employees Retirement Policy of ZAMCELCO for its employees and officials which provides retirement and gratuity benefits, was not determined or approved by the BIR as a "reasonable retirement benefit plan", the requirements under Section 1 of RA No. 7641, in order that the employee benefits received may be granted tax exemption must be present, to wit: (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 your case, you retired upon reaching the age of sixty (60) and after rendition of thirty-nine (39) years, three (3) months, and eleven (11) days of service. Thus, your retirement benefits shall be excluded from your gross income and shall be exempt from taxation.

Please take note also that pursuant to Section 2.78.1 (A)(7) of Revenue Regulations (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. ***(BIR Ruling No. 1151-2018 dated August 31, 2018)***

It is must be also understood that the payment to the retiring employees of their salaries, except if minimum wage earners, and the payment of the 13th month pay and other benefits in

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excess of the Php90,000.00[2] threshold shall be subject to income tax, and consequently to withholding tax, under Section 2.78.1 (A)(3)(a) and (A)(7) of RR 2-98, as amended. ***(BIR Ruling No. 1151-2018 dated August 31, 2018)***

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 null and void.

Very truly yours,

CAESAR R. DULAY
Commissioner of Internal Revenue

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[2] Republic Act (RA) No. 10963 (TRAIN Law) increased the threshold from Php82,000.00 to Php90,000.00 effective January 01, 2018.