REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

Quezon City

Sec. 60(B) NIRC; Section 109(P) NIRC
CIR vs. GCL Retirement Plan, G.R. No. 95022
BIR Ruling No. ERP-040-2014 *BIR Ruling No. ERP-111-2009*
OT- 0573 - 2020

OCT 0 6 2020

EEI Retirement Fund, Inc.
Executive Administration & Services Offices
No. 12 Manggahan St., Bagumbayan, Quezon City

Attention: **Oscar D. Mercado**
Chairman & President

Gentlemen:

This refers to your request for a confirmatory ruling that the sale by **EEI Retirement Fund, Inc.** (**"ERFI"**), as trustee, of a parcel of land registered under the name of **ERFI** in trust for the **EEI Corporation Retirement Fund**, is exempt from income tax under Section 60(B) of the 1997 Tax Code, as amended, and consequently, from the creditable withholding tax.

It is represented that the EEI Corporation Retirement Fund was created to implement the provisions of the EEI Retirement Plan for the exclusive benefit of the employees of the EEI Corporation; that in BIR Ruling No. ERP-73-2003 dated April 24, 2003, the Bureau of Internal Revenue (BIR) declared EEI Retirement Plan as a reasonable retirement plan within the contemplation of law; that the subsequent amendments made in the Retirement Plan Rules in 2009 were also approved by the BIR in BIR Ruling No. ERP No. 281-2009; and that since 2009 to date, no amendments were made in the Retirement Plan, hence, it remained to be a reasonable private benefit plan within the contemplation of Section 32(B)(6)(a) of the 1997 Tax Code, as amended.

It is further represented that EEI Corporation Retirement Fund acquired a parcel of land which was registered under the name of ERFI in trust for the EEI Corporation Retirement Fund as evidenced by Transfer Certificate of Title (TCT) No. issued by the Registry of Deeds for Quezon City.

Based on the foregoing representations, you now request confirmation that the sale of the subject parcel of land by EEI Corporation Retirement Fund is not subject to income tax, and consequently, to the creditable withholding tax, in accordance with Section 60(B) of the 1997 Tax Code, as amended.

gr

OT- 0573-2020
OCT 0 6 2020

In reply, please be informed that the governing provision relative to the tax exemption of income derived by a retirement benefit fund is Section 60(B) of the 1997 Tax Code, as amended, to wit:

"Section 60(B). Imposition of Tax.-

(B) Exception. - The tax imposed by this Title shall not apply to employee's trust which forms part of a pension, stock bonus or profit-sharing plan of an employer for the benefit of some or all of his employees (1) if contributions are made to the trust by such employer, or employees, or both for the purpose of distributing to such employees the earnings and principal of the fund accumulated by the trust in accordance with such plan, and (2) if under the trust instrument it is impossible, at any time prior to the satisfaction of all liabilities with respect to employees under the trust, for any part of the corpus or income to be (within the taxable year or thereafter) used for, or diverted to, purposes other than for the exclusive benefit of his employees: Provided, That any amount actually distributed to any employee or distributee shall be taxable to him in the year in which so distributed to the extent that it exceeds the amount contributed by such employee or distributee.

The above-cited provision sets forth two (2) conditions in order that the earnings of a retirement fund may be exempt from income tax, *viz*: 1) the contributions are made to the trust by the employer, or employees, or both for the purpose of distributing to such employees the earnings and principal of the fund accumulated by the trust in accordance with such plan; and (2) under the trust instrument it is impossible, at any time prior to the satisfaction of all liabilities with respect to employees under the trust, for any part of the corpus or income to be used for, or diverted to, purposes other than for the exclusive benefit of the employees. (*BIR Ruling No. ERP-040-2014* dated March 25, 2014). These two (2) conditions are sufficiently met by the EEI Corporation Retirement Plan as in fact, this Office had already approved the same as a reasonable retirement benefit plan in *BIR Ruling No. ERP -73-2003* and *BIR Ruling No. ERP-281-2009*.

It bears mentioning that the tax exemption of the income derived by a retirement fund from its investments had already been settled in the case of *Commissioner of Internal Revenue vs. Court of Appeals, G.R. No. 95022,* promulgated on March 23, 1992, where the Supreme Court upheld the judgment of the respondent Court of Appeals which affirmed the decision of the Court of Tax Appeals, the pertinent portion of which is quoted below:

". . . it is significant to note that the GCL Plan was qualified as exempt from income tax by the Commissioner of Internal Revenue in accordance with Republic Act (R.A.) No. 4917 approved on June 17, 1967. This law specifically provided:

gr

OT-0573-2020
OCT 06 2020.

"Sec. 1. Any provision of law to the contrary notwithstanding, the retirement benefits received by officials and employees of private firms, whether individual or corporate, in accordance with a reasonable private benefit plans maintained by the employer shall be exempt from all taxes and shall not be liable to attachment, levy or seizure by or under any legal or equitable process whatsoever except to pay a debt of the official or employee concerned to the private benefit plan or that arising from liability imposed in a criminal action;"

xxx xxx xxx

"And rightly so, by virtue of the raison de'etre behind the creation of employees' trusts. Employees' trusts or benefit plans normally provide economic assistance to employees upon occurrence of certain contingencies, particularly, old age retirement, death, sickness, or disability. It provides security against certain hazards to which members of the Plan may be exposed. It is an independent and additional source of protection for the working group. What is more, it is established for their exclusive benefit and for no other purpose.

"The tax advantage in R.A. No. 1983, Section 56(b), was conceived in order to encourage the formation and establishment of such private plans for the benefit of laborers and employees outside of the Social Security Act. Engineering is a portion of the explanatory note to H.B. No. 6503, now R.A. 1983, reading:

"Considering that under Section 17 of the Social Security Act, all contributions collected and payments of sickness, unemployment, retirement, disability and death benefits made thereunder together with the income of the pension trust are exempt from any tax, assessment, fee, or charge, it is proposed that a similar system providing for retirement, etc. benefits for employees outside the Social Security Act be exempted from income taxes." (Congressional Record, House of Representatives, Vol. IV, Part 2, No. 57, p. 1859, May 3, 1957; cited in Commissioner of Internal Revenue vs. Visayan Electric Co., et al., G.R. No. L-22611, May 27, 1968, 23 SCRA 715).

"It is evident that tax-exemption is likewise to be enjoyed by the income of the pension trust. Otherwise, taxation of those earnings would result in a diminution of accumulated income and reduce whatever the trust beneficiaries would receive out of the trust fund. This would run afoul of the very intent of the law.

xxx xxx xxx"

OT- 0573-2020
OCT 0 6 2020

The above pronouncement of the Supreme Court was reiterated in the subsequent case of *Miguel J. Ossorio Pension Foundation, Incorporated vs. Court of Appeals and Commissioner of Internal Revenue*, G.R. No. 162175, June 28, 2010.

Accordingly, the EEI Corporation Retirement Plan, being a reasonable retirement benefit plan established for the benefits of the employees of EEI Corporation, is exempt from income tax, and consequently, from creditable withholding tax, on its sale of a parcel of land covered by TCT No. issued by the Registry of Deeds for Quezon City.

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

036846

K-1