REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

Quezon City

Sec. 60 (B), 1997 Tax Code
BIR Ruling No. 399-2011
OT-0376-2020
JUL 03 2020

MHI TECHNICAL SERVICES CORPORATION
25th Floor Robinsons Cybergate Center Tower 3
Pioneer Street, Mandaluyong City

Attention: **Koji Ikeda**
President

Gentlemen:

This refers to your letter dated 14 March 2012 requesting on behalf of **MHI Technical Services Corporation** (the "**Company**") certificate of tax exemption of its Retirement Fund's interest income derived from the Multi-Purpose Loan Assistance Program (MLAP) for the benefit of its employee-members.

It is represented that the Company's Retirement Fund was previously approved by this Office in BIR Ruling No. ERP-091-94 dated November 22, 1994 as a "reasonable retirement benefit plan" under Section 32(B)(6)(a) of the 1997 Tax Code, and consequently revalidated in an undated letter addressed to the Bank of the Philippine Islands; that the Company has planned to set aside a part of the Fund for the MLAP to lend money to the member-employees for their family financial needs; that the loans shall bear an interest rate of three percent (3%) per annum and payable together with the principal amount from two (2) to six (6) year period depending on the amount of individual loans approved by the Company; that the 3% interest rate was approved by the Board of Trustees of the Fund on October 21, 2011; and that the fund to be set aside for the MLAP is thirty percent (30%) of the total Retirement Fund.

In reply thereto, please be informed that Section 60 (B) of the Tax Code of 1997, as amended, provides:

> *"Sec. 60 (B) Exception. — The tax imposed by Title II shall not apply to employees' 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*

OT-0376-2020
JUL 03 2020

> *(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."*

Thus, the following elements/conditions should be present to warrant the income tax exemption of employees' trust under Section 60 (B) of the Tax Code of 1997, as amended, to wit:

1. the contributions are made to the trust by the employer, or employees, or both;

2. such contributions are made 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

3. 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 the employees.

It is noted that the above conditions are present in the Retirement Fund. Thus, it is exempt from income tax on its interest income derived from the MLAP for the benefit of its employee-members. Since the final tax and the withholding thereof are embraced within the title on "Income Tax", it follows that said trust is also exempt from the coverage of the withholding tax regulations.

In the case of *Commissioner of Internal Revenue vs. Court of Appeals, G.R. No. 95022*, promulgated on March 23, 1992, the Supreme Court upheld the judgment of the respondent Court of Appeals in affirming the decision of the Court of Tax Appeals, which ruled:

> *". . . 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:*
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> *"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*

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OT-0376-2020
JUL 03 2020

to the private benefit plan or that arising from liability imposed in a criminal action;"

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"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

"There can be no denying either that the final withholding tax is collected from income in respect of which employees' trusts are declared exempt (Sec. 56(b), now Sec. 53(b), Tax Code). The application of the withholding system to interest on bank deposits or yield from deposit substitutes is essentially to maximize and expedite the collection of income taxes by requiring its payment at the source. If an employees' trust like the GCL enjoys a tax-exempt status from income, we see no logic in withholding a certain percentage of that income which it is not supposed to pay in the first place.

"xxx xxx xxx"

In view of the foregoing, interest income derived by the Company's Retirement Fund from the MLAP for the benefit of its employee-members is exempt from income tax, and consequently, from final withholding tax. Provided, however, that in its

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OT- 0376-2020
JUL 03 2020

investment activities, no part of the corpus or income of the Fund shall be used for or diverted to purposes other than for the exclusive benefit of the member- employees or their beneficiaries. (*BIR Ruling No. 076-2012* dated February 15, 2012)

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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