REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

Quezon City

Tax Code of 1997, as amended, Section 32(B)(6)(a)
BIR Ruling No. 297-2012
395-2018

3-9-2018

ISETANN DEPARTMENT STORE, INC.
C.M. Recto Ave., cor. Evangelista St. and Quezon Blvd.,
Quiapo, Manila

Attention: **Mr. Eddie O. Go**
AVP-Control

Gentlemen:

This refers to your letter, dated December 2, 2014, requesting on behalf of **Ms. Blesilda C. Ronquillo ("Ms. Ronquillo")**, a certificate of tax exemption on the latter's retirement benefits upon her retirement on March 18, 2015.

It is represented that **Ms. Ronquillo**, with Tax Identification Number 104-439-896, is presently employed by **Isetann Department Store, Inc. ("Isetann")**, as Receiving Clerk in the Traffic Department of the company since June 27, 1985; that **Ms. Ronquillo** is due for retirement on March 18, 2015, after rendering twenty nine (29) years of service in the company and upon reaching the age of sixty (60); and that the company maintains a Collective Bargaining Agreement (CBA) covering its rank and file employees.

In reply, please be informed that under Section 1 of Republic Act (R.A.) No. 7641, amending the Labor Code of the Philippines by providing for retirement pay to qualified private sector employees in the absence of any retirement plan in the establishment," it is provided, viz.:

> *"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."

The aforesaid provision allows the retirement of an employee upon reaching the retirement age as may be provided under the applicable CBA or other employment contract entered into by and between the employer and the employees of the company, and the parties to the CBA or contract may agree on the retirement benefits that will be received by the employees provided that such benefits shall not be less than those provided under the Labor Code of the Philippines.

It is noted that there is a CBA covering the rank-and-file employees of **Isetann**. Section 13, Article VIII of the said CBA provides, to wit:

"Section 13. Retirement Pay.

The COMPANY agrees to give a retirement pay pursuant to existing law"

Pursuant to the above provision, while **Isetann** maintains a CBA for its rank-and-file employees, the retirement benefits that will be received by the employees shall still be governed by Article 287 of the Labor Code, to wit:

"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, 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."</u>

On the taxability of the above retirement benefits, Section 32 (B) (6) (a) of the Tax Code of 1997, as amended, states, thus:

"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)* *<u>Retirement benefits received under R.A. 7641</u> 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: . . ., <u>shall not be included in gross income and shall be exempt from taxation.</u>"* (underscoring supplied)

Accordingly, since the retirement benefits of **Ms. Ronquillo** will be given in accordance with RA 7641, and since **Ms. Ronquillo** would be reaching the age of sixty (60) and rendering twenty nine (29) years of service in the company at the time of her retirement on March 18, 2015, her retirement benefits shall be exempt from income tax, and consequently from withholding tax imposed under Section 79, Chapter XIII, Title II of the Tax Code of 1997, as amended. (*BIR Ruling No. 154-13* dated April 29, 2013)

However, pursuant to Section 2.78.1 (A)(7) of 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. 154-13* dated April 29, 2013)

It is must be understood that the payment to the retrenched employees of salaries and the 13th month pay and other benefits in excess of the PhP 82,000[1] 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.

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
014185

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[1] [1] Republic Act (R.A.) No. 10653, "An Act Adjusting the 13th Month Pay and other Benefits Ceiling Excluded from the Computation of Gross Income for Purposes of Income Taxation, Amending for the Purpose Section 32(B), Chapter VI of the National Internal Revenue Code of 1997, as Amended." R.A. No. 10653 is being implemented by Revenue Regulations No. 3-2015.