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

Section 32 (B)(6)(b), 1997 NIRC
BIR Ruling No. 479 - 2014 BIR Ruling No. 416 - 2012
A565-2017
12-7-2017

Omya Chemical Merchants Inc.
17/F BDO Plaza
8737 Paseo de Roxas, Makati City

Attention : Ms. Purificacion S. Samson
Head of Finance and Controlling

Gentlemen:

This is to acknowledge receipt of your letters dated April 3, 2014, February 27, 2015 and June 18, 2015 requesting in effect, for the issuance of a ruling confirming that the separation pay given to employees of Omya Chemical Merchants, Inc. (OCMI) who have been separated from service due to the implementation of a redundancy program is exempt from withholding tax pursuant to Sec. 32(B)(6)(b) of the 1997 Tax Code, as amended.

Documents submitted show that OCMI (TIN) is a domestic corporation duly organized under Philippine laws under Securities and Exchange Commission (SEC) Company Reg. No. and with office address at 17/F BDO Plaza, 8737 Paseo de Roxas, Makati City. OCMI is engaged in the business of import, export and wholesale distribution of all kinds of goods, articles, commodities and wares such as, but not limited to, chemicals. To effectively pursue its business purpose, OCMI decided to reduce its workforce due to reasons of redundancy. The positions occupied by the terminated employees has been found excessive and unnecessary to the operations of the company and since OCMI is unable to offer any alternative position to these employees, OCMI management has reached the decision to terminate the following employees:

Name	Position
Alicpala, Alvin Riano	Driver's Helper
Costelo, Jason Cataje	Driver's Helper
Dela Rea, Abigael Blanco	Receptionist
DeMesa, Mervin Rebato	Driver's Helper
Dizon, Ruel Bepinoza	Driver's Helper
Quillo, Alan Trinidad	Mechanic
Rebato, Reynaldo Parsan	Driver's Helper
Reyes, Predelito Cuaresma	Messenger
Umali, Donald Cataje	Driver
Guevarra, Ediser Timbol	Driver's Helper
Polondaya, Rey Priolo	Driver
Erni, Celia C.	Marketing Manager

In reply, please be informed that pursuant to Section 32(B)(6)(b) of the Tax Code of 1997, as amended, any amount received by an official or employee or by his heirs from the employer as a consequence of separation of such official or employee from the service of the employer due to death, sickness or other physical disability or for any cause beyond the control of the said official or employee shall not be included in the gross income and shall be exempt from taxation under Title II of the same Tax Code. (BIR Ruling No. 416-2012 dated June 25, 2012)

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The above-mentioned law requires the presence of two (2) conditions in order that the employee benefits may be granted tax exemption, namely: (1) the employee is separated from the service of the employer due to death, sickness or other physical disability or for any cause beyond the control of the said official or employee, and (2) the employer pays benefits to the official or employee or his heirs as a consequence of such separation.

Submitted documents show that OCMI has already informed the Department of Labor and Employment (DOLE-NCR Makati/Pasay Field Office) thru Establishment Employment Reports stating that the above-enumerated employees have been separated from employment due to reduction of workforce and that they have been duly notified of their termination.

Accordingly, the separation pay to be received by the retrenched employees as a result of their separation from the service is exempt from income tax and consequently from the withholding tax prescribed by Section 79 of the 1997 Tax Code, as implemented by Revenue Regulations (RR) No. 2-98, as amended by RR Nos. 6-2001 and 12-2001.

Moreover, 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.

It is, however, understood that this exemption does not include the payment of the separated employees' salaries and the payment of the 13th month pay and other benefits in excess of the Php82,000.00[1] threshold under Section 2.78.1 (A)(3)(a) and (A)(7) of RR 2-98, as amended. (BIR Ruling Nos. 479-2014 dated December 3, 2014 and 416-2012 dated June 25, 2012)

This ruling is being issued on the basis of the foregoing facts as represented. However, if upon investigation, it will be ascertained that the facts are different, then this ruling shall be considered as null and void.

Very truly yours,

CAESAR R. DULAY
Commissioner of Internal Revenue
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[1] As amended by Revenue Regulations No. 3-2015 dated March 13, 2015