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

July 19, 2004

REVENUE MEMORANDUM CIRCULAR NO. <u>48 - 2004</u>

SUBJECT : REVOCATION/CANCELLATION OF BIR RULING NOS. 076-88 (3/4/88), 004-89 (1/19/89) AND 191-89 (9/4/89) PURSUANT TO CTA CASE NO. 5233

T O : All Internal Revenue Officers and Others Concerned

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This refers to the request recommendation of the Chief, Legal Division, Revenue Region No. 8, Makati City, for revocation/cancellation of BIR Rulings Nos. 076-88 dated March 4, 1988, 004-89 dated January 19, 1989 and 191-89 dated September 4, 1989 addressed to then Honorable Secretary of Budget and Management, and to Sycip, Gorres, Velayo & Co. and Siguion, Reyna, Montecillo & Ongsiako, respectively, in connection with the Decision of the Court of Tax Appeals (CTA) in CTA Case No. 5233 entitled "AB Capital and Investment Corporation vs. Comm. of Internal Revenue."

Whereas, in the aforesaid CTA case, AB Capital and Investment Corporation (ABCIC) alleging over-remittance of withholding taxes in 1993, filed a claim for refund as it did not withhold any tax on the retirement of Mr. Ramon R. del Rosario, Jr. from Asian Bank. Apparently, Mr. del Rosario, Jr. retired from the company to join the government service as the Secretary of Finance under the Ramos Administration. The non-withholding of income tax on the benefits received was based on the above-mentioned BIR rulings which categorically ruled that "xxx leaving the private sector to join the government service is beyond the *employee/officer's* control, *thus*, any and all amounts received as a result thereof are exempt from all taxes and consequently from the withholding taxes." (Italics supplied)

Whereas, on petition for review with the CTA, raising as one of the issues "whether or not Mr. Del Rosario, Jr. retirement was due to cause beyond his control" as one of the situations contemplated under then Sec. 28(b)(7)(B) of the Tax Code, as amended (now Sec. 32(B)(6)(b) of the 1997 Tax Code, the CTA categorically held that "**his separation from the company (ABCIC) by reason of his acceptance of a position as Secretary of Finance cannot be considered as something beyond his control**" Hence, any and all benefits received by a retiring employee/officer from the private sector to join the government service are therefore, subject to tax and consequently to the withholding tax.

In view of the foregoing, this Office hereby revokes BIR Ruling Nos. 076-88 (3/4/88), 004-89 (1/19/89) and 191-89 (9/4/89).

For your guidance.

(Original Signed)
GUILLERMO L. PARAYNO, JR.
Commissioner of Internal Revenue

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mmcD(Revocation)