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

Sec. 32 (B)(6)(a) & (b), NIRC
BIR Ruling No. 231-16
OT- 025 - 2021
FEB 17 2021

TRACTEBEL INC.
Units 201-203, 2nd Floor, Hanston Building
F. Ortigas Jr. Road, Ortigas Center
Pasig City 1605

Attention: **Ms. Gemma C. Patricio**
Finance Manager

Gentlemen:

This refers to your letter dated May 20, 2019 requesting for tax exemption of the retirement benefits of the following employees:

1. Evelyn A. Orda; and
2. Nenita N. Flores.

As represented, Evelyn A. Orda, sixty (60) years of age, last held the position of President of **Tractebel Inc.** (the "Company"). She was employed on January 24, 2005 and served the Company for a period of fourteen (14) years.

On the other hand, Nenita N. Flores, sixty (60) years of age, last held the position of Project Management Specialist. She was hired on November 16, 2007 and served the Company for eleven (11) years.

The Company has no existing retirement plan or policy providing for retirement benefits of its employees.

In reply, please be informed that Section 1 of Republic Act (R.A.) No. 7641 provides, *viz:*

> *"SEC. 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 benefits 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.

Unless the parties provide for broader inclusions, the term one-half (1/2) month salary shall mean fifteen (15) days plus one-twelfth (1/12) of the 13th month pay and the cash equivalent of not more than five (5) days of service incentive leaves."

Pursuant to the above provision, in the absence of a retirement plan or other agreement providing for the retirement benefits of employees in the establishment, the retirement benefits set forth under R.A. No. 7641 shall apply, i.e., at least one-half (1/2) month salary for every year of service of an employee who has reached the age of sixty (60) years or more, but not beyond sixty-five (65) years, and rendered at least five (5) years of service in the Company.

Considering that Tractebel Inc. has no retirement plan or policy providing for retirement benefits of its employees, and that the abovementioned employees are sixty (60) years of age and have more than five (5) years in the service of the Company, the retirement benefits provided in R.A. No. 7641 shall apply.

By express provision of Section 32 (B)(6)(a) of the National Internal Revenue Code of 1997, as amended (Tax Code), the retirement benefits of employees who meet the age and length of service requirement under R.A. No. 7641 shall be exempt from withholding tax.

THEREFORE, this Office hereby holds that the retirement benefits to be paid by Tractebel Inc. to Evelyn A. Orda and Nenita N. Flores shall be exempt from income tax and consequently, to the withholding tax pursuant to Section 32 (B)(6)(a) of the Tax Code.

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 null and void.

Very truly yours,

CAESAR R. DULAY
Commissioner of Internal Revenue

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