REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

Quezon City

Sec. 60(B), Tax Code
BIR Ruling No. 1301-18
OT-040-2022
JAN 24 2022

PMR GROUP RETIREMENT PLAN, INC.
Barangay Alasasin, Mariveles, Bataan

Attention: **Mr. Kenneth Roy A. Hidalgo**
Officer-in-Charge

Gentlemen:

This refers to your letter dated September 4, 2020 requesting for a ruling exempting from capital gains tax and withholding tax the sale of a parcel of land by **PMR Group Retirement Plan, Inc. ("PGRPI")**.

As represented, PGRPI is a duly registered employees' retirement plan pursuant to Section 32 (B)(6)(a) of the National Internal Revenue Code of 1997 (Tax Code), as amended, as provided under BIR Ruling No. ERP-282-07 dated October 15, 2007. On May 26, 2020, PGRPI sold a parcel of land situated in Brgy..Casabangan, Pio V. Corpus, Masbate to PMR Farms and Forests, Inc. ("buyer"). PGRPI consequently filed the BIR Form No. 2550M (VAT Return) since the land was originally intended to be used for business. The buyer filed and paid the corresponding documentary stamp tax.

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

"SEC. 60. Imposition of Tax. –

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(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 (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*

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thereafter) used for, or diverted to, purposes other than for the exclusive benefit of his employees. . ."

The above-cited provision lays down the following requirements in order that the earnings of a retirement fund may be exempt from income tax, to wit: 1) the contributions are made to the 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 (in the taxable year and at any time thereafter prior to the satisfaction of all liabilities with respect to employees under the trust) for any part of the corpus or income to be used for, or diverted to, purposes other than for the exclusive benefit of the employees. It is noted that the foregoing conditions are present in PGRPI, thus, it is exempt from income tax. Since the final tax and the withholding tax thereof are embraced within the title on "Income Tax," it follows that said trust is exempt from the coverage of the withholding tax regulations.

In the case of *Commissioner of Internal Revenue vs. Court of Appeals*[1], 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:

'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 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.

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[1] G.R. No. 95022, promulgated on March 23, 1992.

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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. Enlightening 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.

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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.

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Considering that (i) PGRPI is an employees' trust fund established under Section 32 (B)(6)(a) of the Tax Code, as amended, for the exclusive benefit of all its member-employees and the corpus or income of the fund is not used for or diverted to purposes other than for the exclusive benefit of the members and their beneficiaries; (ii) it remains to be a qualified reasonable retirement benefit plan; (iii) no amendments were made that will prejudice the right of the employees and the fund created to implement the provisions of the Plan; and (iv) the retirement pay to qualified retirees remains exempt pursuant to law, this Office is of the opinion as it hereby holds that its investments remain exempt from income tax and consequently from withholding tax pursuant to Section 60 (B) of the Tax Code, as amended. Thus, the

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income it earned from the sale of its parcel of land to the buyer is exempt from CGT under Section 27 (D)(2) of the Tax Code, as amended, pursuant to Section 60 (B) of the same Code, and consequently from withholding tax prescribed in Revenue Regulations No. 2-98, as amended.

However, it is to be noted that a retirement fund or pension trust is only entitled to exemption from income tax under Section 60 (B) of the Tax Code, as amended. Thus, it may still be subject to other applicable taxes imposed under other provisions of the same Code, such as value-added tax and documentary stamp tax if warranted.

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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