REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE
National Office Building
Quezon City

Section 32 (B) (6) (b) of the Tax Code, as amended
BIR Ruling No. OT-172-21
OT - 055 2023
MAY 19 2023

NATIONAL FOOD AUTHORITY
Cebu Branch Office
Gov. M. Cuenco Ave.,
Banilad, Cebu City

Attention: **Annie DL. De La Cerna**
Acting Branch Manager

Gentlemen:

This refers to your request for a Certificate of Exemption on the Service Incentive Package (SIP) granted to officials and employees of the National Food Authority (NFA) Cebu Branch Office ("NFA Cebu") who were separated from employment due to the reorganization pursuant to Republic Act (RA) No. 11203, otherwise known as *"An Act Liberalizing the Importation, Exportation and Trading of Rice, Lifting for the Purpose the Quantitative Import Restriction on Rice, and For Other Purposes"*.

Documents submitted reveal that on February 14, 2019, RA No. 11203 was signed into law. This stripped NFA of its commercial functions and regulatory powers, yet, the law retained its emergency buffer stocking mandate. This led to its reorganization which decreases the plantilla positions of the agency to 2,644 from 4,436.

The Guidelines on the Implementation of the NFA Restructuring Plan provides that affected personnel shall be served with Notice of abolished position. The said personnel are given a maximum seven (7) days from receipt thereof to decide whether to avail of the SIP or to remain in service. Those affected personnel who wish to remain in the service are issued with temporary appointments. Another option is to be matched with an unaffected employee who intends to go on voluntary separation and avail of the SIP. These employees are termed as "Parked Availees".

Affected personnel who opt to be separated from government service, if qualified, shall be entitled to the following incentives:

Years in Service	Rates
First 20 years	1 x Monthly Basic Salary x number of years
20 years & 1 day up to 30 years	1.25 x Monthly Basic Salary x number of years
30 years & 1 day and above	1.5 Monthly Basic Salary x number of years

In reply, please be informed that Section 32 (B) (6) (b) of the National Internal Revenue Code of 1997 (Tax Code), as amended, excludes separation pay from the ambit of gross income, *viz*:

"Section 32. Gross Income. –

xxx xxx xxx

(B) Exclusion from Gross Income. – The following items shall not be included in the gross income and shall be exempt from taxation under this Title:

xxx xxx xxx

(6) Retirement Benefits, Pensions, Gratuities, etc. –

xxx xxx xxx

(b) 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 because of death, sickness, or other physical disability or ***for any cause beyond the control of said official or employee****."* (Emphasis and underscoring supplied)

The provision provides that 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 is exempt from taxes regardless of age or length of service. The phrase "for any cause beyond the control of the said official or employee" in effect connotes involuntariness on the part of the official or employee. The separation from the service of the official or employee must not be of his own making.[1]

From the foregoing, this Office is of the considered opinion that the SIP granted to the affected personnel of NFA Cebu due to the its reorganization pursuant to RA No. 11203 are excluded from gross income and shall be exempt from taxation in accordance with Section 32 (B) (6) (b) of the Tax Code, as amended. Therefore, any and all amounts to be received by them as a consequence of their involuntary separation from the government service is not subject to income tax imposed under Section 24 (A) of the Tax Code, as amended, and consequently to the withholding tax on wages pursuant to Section 79 of the same Code.[2]

Nevertheless, the exemption shall not be extended to the *Parked Availees* as their separation was not due to causes beyond their control. It is noted that they are the employees who are unaffected by the reorganization but opted to avail of the SIP, thus, their separation is considered voluntary.

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,

ROMEO D. LUMAGUI, JR.
Commissioner of Internal Revenue
007855

K-1-FFR

[1] BIR Ruling No. OT-172-21, May 19, 2021
[2] BIR Ruling No. OT-172-21, *Supra*