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

Sections 32 (B) (6) (b) of the Tax Code, as amended
RMO No. 26-2011, as amended
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PHILIPPINE AMUSEMENT AND GAMING CORPORATION
PAGCOR Main Corporate Office, iMET BPO Tower
CBP-1A Metropolitan Park, Roxas Boulevard
Pasay City 1300

Attention: **Roderick R. Consolacion**
Vice President II, Legal Group

Gentlemen:

This refers to your request for clarification on whether the separation benefits of Mr. Philip G. Lo ("Mr. Lo") and Manuel C. Roxas ("Mr. Roxas") (collectively referred as "the former directors"), former Directors of Philippine Amusement and Gaming Corporation (PAGCOR), are taxable.

It is represented that Mr. Lo and Mr. Roxas were appointed as Directors on June 11, 2002 and March 20, 2001, respectively. Being coterminous with their appointing authority, their appointments ceased on July 1, 2010. As such, Mr. Lo has served a total of eight (8) years and twenty (20) days, while Mr. Roxas has served for nine (9) years, three (3) months and twenty-one (21) days.

On January 27, 2022, the grant of separation benefits to the former directors has been approved. However, the said benefits were subject to tax since they did not meet the 10-year minimum service requirement provided under Section 32(B) (6) (a) of the National Internal Revenue Code of 1997 (Tax Code), as amended.

The former directors sought reconsideration on the computation of their separation benefits claiming tax exemption. They asserted that they were separated from the service for causes beyond their control because they were prevented from continuing their functions as directors effective July 1, 2010 as their successors have been already appointed. Thus, they maintain the applicability of Section 32 (B) (6) (b) instead of Section 32 (B) (6) (a), in establishing their tax exemption. Hence, this request.

In reply, please be informed that temporary appointment is defined as one made in an acting capacity, the essence of which lies in its temporary character and its terminability at pleasure by the appointing power.[1]

[1] Cuadra v. Cordova, G.R. No. L-11602, April 21, 1958

In the same vein, a painstaking review of the representations reveal that the appointment of the former directors is co-terminus with the appointing authority. Accordingly, their appointment falls under Section 14 of the Omnibus Rules Implementing Book V of the Revised Administrative Code of 1987 which provides that:

> *"Sec. 14. An appointment may also be co-terminus which shall be issued to a person whose entrance and continuity in the service is based on the trust and confidence of the appointing authority or that which is subject to his pleasure, or co-existent with his tenure, or limited by the duration of project or subject to the availability of funds.*
>
> *The co-terminus status may thus be classified as follows:*
>
> *xxx xxx xxx*
>
> *(2) Co-terminus with the appointing authority – when appointment is co-existent with the tenure of the appointing authority or at his pleasure; xxx"*

The appointee accepts the position with the condition that he shall surrender the office when called upon to do so by the appointing authority or at the expiration of the appointing authority's term of office. The termination of appointment may be with or without a cause since the appointee serves merely at the pleasure of the appointing authority.[2]

It is well-established that the meaning of retirement in this jurisdiction is the result of a bilateral act of the parties, a voluntary agreement between the employer and the employee whereby the latter, after reaching a certain age, agrees to sever his or her employment with the former.[3]

The statutory authority under Section 32 (B) (6) (b) of the Tax Code, as amended, therefore does not apply because the former directors, being appointees, negates the possibility of having a voluntary agreement with the employer. Moreover, their removal is dependent on the expiration of the term of the appointing authority or at his pleasure. Section 32 (B) (6) (b) of the Tax Code, as amended, provides:

> *"SEC. 32. Gross Income. –*
>
> *(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*

[2] Ong v. Office of the President, G.R. No. 184219, January 30, 2012
[3] Cercado v. Uniprom, Inc., G.R. No. 188154, October 13, 2010

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(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."

It can be gleaned from the afore-cited provision 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 because of death, sickness or other physical disability or for any cause beyond the control of the said official or employee shall be excluded from the gross income and shall be exempt from income tax regardless of age or length of service.[4] This requires the presence of two (2) conditions in order that the employee benefits may be granted tax exemption, namely: (1) the official or 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 official or employee or his heirs receives any amount from the employer on account of such separation.[5]

Being appointees, the former directors agreed to hold office with the knowledge that anytime, with or without cause, they can be required to relinquish their office. This runs contrary to the involuntary nature of separation or termination being contemplated under Section 32 (B) (6) (b) of the Tax Code, as amended. Accordingly, the separation benefits received by the former directors are subject to income tax as the same does not fall within the ambit of Section 32 (B) (6) (b) of the Tax Code, as amended.

Please be guided accordingly.

Very truly yours,

ROMEO D. LUMAGUI, JR.
Commissioner of Internal Revenue

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[4] Revenue Memorandum Order (RMO) No. 26-2011 dated June 13, 2011
[5] *Ibid*