May 19, 2021

BIR RULING NO. OT-180-21

Section 32 (A) and 32 (B) (6), Tax Code, as amended; RMC No. 39-2012; BIR Ruling No. OT-700-2020

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Sir :

This refers to your letter dated January 29, 2021 seeking reconsideration of BIR Ruling No. OT-700-2020 dated December 29, 2020, denying your previous request for a policy ruling that categorically exclude backwages awarded from a judgement of illegal dismissal from the ambit of gross taxable income.

In reply, please be informed that the National Internal Revenue Code (Tax Code) of 1997, as amended, defined gross income as all income derived from whatever source. [1] All income not expressly excluded or exempted from the class of taxable income, irrespective of the voluntary action of the taxpayer in producing the income, and regardless of the source of income, is taxable. [2] Likewise, any economic benefit to the employee that increases his net worth; whatever may have been the mode by which it is effected, is taxable. [3]

It is very clear that the basis of considering backwages within the ambit of gross taxable income is the broad scope of its definition. Unless a statute provides otherwise, the inclusion thereof is inevitable.

The reliance on the case entitled *American Power Conversion Corporation, et al. vs. Jayson Lim* [4] is misplaced. In said case, the Supreme Court, *pro hac vice*, granted the claim of the respondent for backwages despite the bizarre circumstances surrounding the case. However, there was nothing in the said case that categorically justifies the exclusion of backwages from the scope of gross taxable income.

Please take note that *"[a] tax exemption represents a loss of revenue to the State and must therefore not be lightly granted or inferred. When claimed, it must be strictly construed against the taxpayer, who must prove that he comes under the exemption rather than the rule*

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that everyone must contribute his just share in the maintenance of the government." [5] *"He who claims tax exemptions must be able to justify his claim or right."* [6]

In establishing tax exemptions, it should be borne in mind that taxation is the rule, exemption is the exception. Accordingly, statutes granting tax exemptions must be construed in *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority. One who claims an exemption from tax payments rests the burden of justifying the exemption by words too plain to be mistaken and too categorical to be misinterpreted. [7] It cannot be over-emphasized that tax exemption represents a loss of revenue to the government and must, therefore, not rest on vague inference. Exemption from taxation is never presumed. For tax exemption to be recognized the grant must be clear and express; it cannot be made to rest on doubtful implications. [8]

In view of the foregoing, this Office hereby rules to deny your request for reconsideration. Consider this as our final resolution on the matter.

Please be guided accordingly.

Very truly yours,

(SGD.) CAESAR R. DULAY
Commissioner of Internal Revenue

Footnotes

1. Section 32 (A) of the NIRC.
2. *Gutierrez vs. CTA* 101 Phil. 713.
3. *Commissioner vs. Smith* 324 US 177.
4. G.R. No. 214291, January 11, 2018.
5. Justice Cruz, Dissenting opinion in *Maceda vs. Macaraig*, G.R. No. 88291, May 31, 1991.
6. *Commissioner of Internal Revenue vs. P.J. Liener Co., Ltd*., G.R. No. L-24754, July 18, 1975.
7. *Michel J. Lhuiller Pawnshop, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 166786 dated May 3, 2006.
8. *First Planters Pawnshop, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 174134 dated July 30, 2008.

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