May 24, 2021

BIR RULING NO. OT-188-21

Section 60 (B) of the National Internal Revenue Code of 1997, as amended; BIR Ruling No. 752-2018

Private Education Retirement Annuity Association
16th Floor Multinational Bancorporation Centre
6805 Ayala Avenue, Salcedo Village
Makati City

Attention: *AAA*

Gentlemen :

This refers to your letter dated March 16, 2015, requesting for a ruling that the income derived by the Private Education Retirement Annuity Association ("PERAA") from the sale of its condominium unit is exempt from the payment of capital gains tax (CGT) pursuant to Section 60 (B) of the National Internal Revenue Code of 1997, as amended.

It is represented that PERAA is an employees' trust and retirement fund established under Section 32 (B) (6) (a) of the National Internal Revenue Code of 1997, as amended; that it is the owner of a condominium unit registered under the name of The Board of Trustees of PERAA, in their capacities as Trustees, covered by Condominium Certificate of Title (CCT) No. _____ issued by the Registry of Deeds for Makati City; and that on March 12, 2015, a Deed of Absolute Sale was executed in favor of RJOSEPH XII, INC. conveying the above-mentioned condominium unit.

In reply thereto, please be informed that Section 60 (B) of the National Internal Revenue Code of 1997, as amended, provides that:

> *"Sec. 60 (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*

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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 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 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 PERAA, thus, it is exempt from income tax. Since the final tax and the withholding 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 plan 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 d'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

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benefit and for no other purpose.

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. Engineering 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., GR. 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 PERAA is an employee's trust fund established for the exclusive benefit of its member-employees/officials and the corpus or income of the fund is not used for or diverted to purposes other than for the exclusive benefit of its member-employees/officials or their beneficiaries, this Office rules that the PERAA is considered an employees' trust and, therefore, income of the trust fund from its investments is exempt from income tax and consequently from withholding tax pursuant to Section 60 (B) of the National Internal Revenue Code of 1997, as amended. Accordingly, the Deed of Absolute Sale dated March 12, 2015 executed by The Members of the Board of Trustees of PERAA, in their capacities as Trustees, in favor of RJOSEPH XII, INC. is not subject to income tax/CGT/withholding tax pursuant to Section 60 (B) of the National Internal

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Revenue Code of 1997, 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 National Internal Revenue Code of 1997, as amended. Thus, it may still be subject to other applicable taxes imposed under other provisions of the same Code. In this case at hand, based on Tax Declaration No. E-027-04695 which was issued by the City Assessor of Makati City, the actual use of the subject property is for commercial purpose. Accordingly, the sale of the subject property to RJOSEPH XII, INC. is subject to value-added tax (VAT) pursuant to Section 106 of the National Internal Revenue Code of 1997, as amended.

Lastly, it is also subject to the documentary stamp taxes (DST) imposed in Section 188 and Section 196 of the National Internal Revenue Code of 1997, as amended.

This ruling is being issued on the basis of the foregoing facts as represented. However, if upon investigation, it will be disclosed that the facts are different, then this ruling shall be considered null and void.

Very truly yours,

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

Footnotes

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

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