REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE
Quezon City

Revenue Regulations 2; Revenue Regulations No. 2-98, as amended.
BIR Ruling No. 494-18, BIR Ruling No. 759-18; BIR Ruling No. 254-19
OT- 195 - 2022
MAY 02 2022

Commission on Elections
Palacio del Gobernador Bldg.
Gen. Luna St., Intramuros
Manila, Philippines

Attention: **Bartolome J. Sinocruz, Jr.**
Executive Director

Gentlemen:

This refers to your May 24, 2021 letter on behalf of the Commission on Elections (COMELEC) requesting for legal opinion on the exemption from withholding tax of honoraria, travel allowance and such other benefits granted to electoral boards/poll workers or persons rendering election service in the 2022 elections.

It is the position of the COMELEC that the honoraria, travel allowance and such other benefits as may be granted to electoral boards/poll workers or persons rendering election service under ***Section 4 of Republic Act (RA) No. 10756*** (Election Service Reform Act) in the 2022 elections are not subject to withholding tax.

To support the COMELEC's position, the following contentions were raised:

1. The electoral boards/poll workers, which include public school teachers, are not employees of the COMELEC. Thus, the COMELEC is not obliged to withhold taxes from the honoraria, allowances, and benefits that the electoral board/poll workers will receive for rendering election service.

2. It was also pointed out that the honoraria and allowances received by the electoral boards/poll workers are not in the nature of professional fees subject to withholding tax since they do not exercise their profession as teachers when rendering election services.

3. Moreover, since electoral board/poll workers are not employees of the income-payor (COMELEC), each of them is considered as an individual supplier of service under Section 2.57.2(J) of Revenue Regulation (RR) No. 2-98, as amended. Hence, since payment to electoral board/poll workers is a single purchase ranging from Php3,000.00 to 7,000.00, which is below the Php10,000.00 threshold, the compensation paid are exempt from withholding tax.

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4. Lastly, the compensation, honoraria and allowances received by the poll worker/electoral boards are not subject to Value-Added Tax (VAT) or percentage tax under the Tax Code.

In reply, please be informed that the Bureau of Internal Revenue (BIR) had already ruled on the tax treatment of honoraria and allowances to be received by the teachers who will serve in the upcoming elections in ***BIR Ruling No. 494-2018*** dated March 14, 2018, which was further clarified in ***BIR Ruling No. 759-2018*** dated May 8, 2018. Nevertheless, we will issue this ruling to discuss the contentions raised by the COMELEC.

I. First Contention

It is a well settled principle of taxation that income, in the broad sense, means all wealth which flows into the taxpayer other than mere return of capital. Please note that "honoraria" and "allowances", no matter how negligible the amount, are wealth that flow into the hands of the recipient, hence, subject to income tax and, consequently, to withholding tax on compensation[1]. In ***BIR Ruling 003-08*** dated April 14, 2008, this Office had the occasion to rule that –

> "***the name by which the renumeration for services is designated is immaterial.*** *Thus, salaries, wages, emoluments and honoraria, bonuses, allowances (such as transportation, representation, entertainment and the like), fringe benefits, including director's fees, taxable pensions and retirement pay and other income of a similar nature* ***constitute compensation income.***" (Emphasis and Underscoring Ours)

Therefore, the honoraria and allowances granted to the electoral boards/poll workers or persons who rendered election services in the elections are considered compensation income subject to withholding tax.

In connection therewith, ***Section 2.78 of RR No. 2-98***, as amended, provides that "the withholding of tax on compensation income is a method of collecting the income tax at source upon receipt of the income. It applies to all employed individuals whether citizens or aliens, deriving income from compensation for services rendered in the Philippines. The employer is constituted as the withholding agent."

A withholding agent is any person or entity who is in control of the payment subject to withholding tax and therefore is required to deduct and remit taxes withheld to the government. The remittance of withheld taxes is the responsibility of the withholding agent-payor of income. Based on this definition of a withholding agent, the obligation to withhold is imposed on the COMELEC being the income-payor.

II. Second and Third Contention

Based on the above discussion on honoraria and allowances, we note that what is to be taxed is the income to be received by these teachers in the performance of rendering election services to the COMELEC. The poll workers/electoral boards are not in the performance of their duties as public school teachers. Hence, the honoraria and allowances are not professional fees.

Please note that the current tax treatment of the compensation granted in RA No. 10756 was clarified in ***BIR Ruling No. 759-18*** wherein this Office ruled in this wise:

[1] BIR Ruling No. 494-2018 dated March 14, 2018

"However, under Section 5 of Republic Act (RA) No. 10963 or the "Tax Reform for Acceleration and Inclusion (TRAIN) Law," amending Section 24 (A) (2) (a) of the National Internal Revenue Code of 1997, as amended, in relation to Section 3 of Revenue Regulations (RR) No. 8-2018, it is provided that individual's taxable income not exceeding P250.000.00 is subject to zero percent (0%) income tax rate.

Applying the foregoing, if the annual taxable income which includes the honoraria and allowances of Teachers who will service in the Electoral Boards ***does not exceed P250,000.00, such honoraria and allowances shall not be subject to income tax, and consequently to withholding tax. Conversely, if the annual taxable income which includes honoraria and allowances of Teachers who will serve in the Electoral Boards exceed P250,000.00, such honoraria and allowances shall be subject to income tax, and consequently, to the withholding tax on compensation.***

In order to determine if the teachers and other qualified persons serving in the Electoral Boards will not be subjected to withholding tax, the COMELEC shall require said persons to execute an affidavit (attached as Annex "A") prior to the release of the honorarium/allowances." (Emphasis and underscoring ours)

It can be gleaned from foregoing, that the taxability of the honoraria and allowances received will depend on the annual taxable income of the electoral boards/poll workers or persons who will render election services in the upcoming elections. The honoraria and allowances shall be subject to the graduated income tax rate under Section 24 (A) (2) of the National Internal Revenue Code (Tax Code) of 1997, as amended, and consequently to the withholding tax, if the annual taxable income exceeds Php250,000.00.

Moreover, on your contention that income received by members of the electoral board/poll worker is less than ten thousand pesos (P10,000.00), hence, exempt from withholding taxes, ***Section 2.57.2 (J) of RR No. 2-98***, as amended, provides that:

"(J) Income payments made by a government office, national or local, including barangays, or their attached agencies or bodies, and government -owned or controlled corporation to its local/resident supplier of goods/services, other than those covered by other rates of withholding tax (formerly under letter (N) – Income payments, except any single purchase which is P10,000 and below, which are made by a government office, national or local, including barangays or their attached agencies or bodies, and government-owned or controlled corporations, on their purchases of goods and purchases of services from local/resident suppliers:

Supplier of goods – One percent (1%)

Supplier of services – Two percent (2%)

xxx xxx xxx"

In connection therewith, ***Revenue Memorandum Circular No. 051-18*** dated June 8, 2018 defined supplier of services as individuals who are not identified under Section 2.57.2 (A) (1) of RR No. 2-98, as amended, and who render services or labor-only for a fee or under a contract for service.

The said provision does not apply with respect to members of the electoral board/poll since they are treated as employees, and their honoraria and allowances are considered compensation. Hence, the exemption from withholding taxes for income payment P10,000 and below is not applicable.

III. Fourth Contention

Section 105 of the Tax Code of 1997, as amended, provides for the persons subject to VAT, to wit:

> *"SEC. 105. Persons Liable. - Any person who, in the course of trade or business, sells, barters, exchanges, leases goods or properties, renders services, and any person who imports goods shall be subject to the value-added tax (VAT) imposed in Sections 106 to 108 of this Code.*
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> *xxx xxx xxx*
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> *The phrase "in the course of trade or business" means the regular conduct or pursuit of a commercial or an economic activity, including transactions incidental thereto, by any person regardless of whether or not the person engaged therein is a non-stock, nonprofit private organization (irrespective of the disposition of its net income and whether or not it sells exclusively to members or their guests), or government entity."*

Based on the above-quoted provision, any person who, in the course of trade or business, sells, barters, exchanges, leases goods or properties, renders services wherein the gross annual sales and/or receipts exceed the amount of), and any person who imports goods shall be subject to VAT. We agree, however, with the COMELEC that the honoraria and allowance to be paid to the teachers shall not be subject to VAT because the performance of service of the electoral boards/poll workers will not be made in the course of trade or business. Moreover, under Section 4.109-1 (B)(1)(i) of RR No. 16-05, services rendered by individuals pursuant to an employer-employee relationship shall be exempt from VAT. Consequently, since the honoraria and allowances granted are not subject to VAT, percentage tax does not also find application pursuant to Section 116 of the Tax Code of 1997, as amended.

Please be guided accordingly.

Very truly yours,

CAESAR R. DULAY
Commissioner of Internal Revenue

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By:

MARISSA O. CABRERA
Deputy Commissioner
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Officer-in-Charge

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