June 21, 2021

BIR RULING NO. OT-214-21

Sec. 32 (B) (6) (a), NIRC; BIR Ruling No. 286-14

Isetann Department Store, Inc.
C.M. Recto Avenue cor. Quezon Blvd.
Quiapo, Manila

Attention: *AAA*

Gentlemen :

This refers to your letter dated October 19, 2015, requesting exemption from the payment of withholding tax on the retirement benefits of your retiring employees, namely:

Name	TIN	Date Hired	Date of Birth	Date of Retirement	Age	Years in Service
BBB		12/05/84		03/19/17	60	32
CCC		02/18/89		05/30/17	60	28
DDD		06/20/83		12/06/17	60	34

pursuant to a Collective Bargaining Agreement (CBA).

Documents show that **Isetann Department Store, Inc.** (TIN: _____), with principal office address at Isetann Cinerama Complex, C.M. Recto Avenue corner Quezon Boulevard, Quiapo, Manila, is a corporation duly organized and existing under the laws of the Republic of the Philippines, with Securities and Exchange Commission (SEC) Company Registration No. 89598.

Nagkakaisang Manggagawa ng Isetann, with principal office address at No. 600 Carriedo Street, Sta. Cruz, Manila and Isetann Department Store, Inc. entered into a Collective Bargaining Agreement (CBA) duly registered with the Department of Labor and

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Employment (DOLE) under Certificate of Registration No. NCR-MFO-CBA-02-2013-05 dated February 11, 2013. The aforesaid CBA has an effectivity period from October, 2012 to October, 2017. Section 13 of the CBA provides —

> "**Section 13. Retirement Pay.** — The Company agrees to give retirement pay pursuant to existing laws."

In reply, please be informed that pursuant to Section 32 (B) (6) (a) of the Tax Code of 1997, as amended, retirement benefits received under Section 1 of Republic Act (RA) No. 7641 shall not be included in the gross income and therefore not forming part of the taxable income. Under the said Act, in the absence of a retirement plan or agreement providing for retirement benefits of employees in the establishment, an employee upon reaching the age of sixty (60) years or more, but not beyond sixty-five (65) years which is declared the compulsory retirement age, who has served at least five (5) years in the service of the same employer, may retire and shall be entitled to retirement pay equivalent to at least one-half (1/2) month salary for every year of service, a fraction of at least six (6) months being considered as one whole year.

Considering that the CBA specifically provided that the provisions of the existing laws shall be applicable as regards the retirement benefits of its employees, RA No. 7641 will apply in this case. Accordingly, **BBB, CCC**, and **DDD** may retire upon reaching the retirement age as provided for in RA No. 7641. Moreover, since their years in service are more than the five (5)-year requirement, their retirement benefits are exempt from income tax and consequently, from the withholding tax as prescribed in Section 79, Chapter XIII, Title II of the Tax Code of 1997, as amended.

Moreover, pursuant to Section 2.78.1 of Revenue Regulations No. 2-98, as amended, the terminal pay, *i.e.*, commutation and payment of monetized unused vacation leave credits not exceeding ten (10) days during the year are not subject to income tax and consequently to the withholding tax. Conversely, the cash equivalent of vacation leave exceeding ten (10) days is subject to tax. However, this same principle cannot apply to sick leave credits since an employee must actually go on sick leave to be able to avail of said leave credits. (BIR Ruling No. 199-2011 dated June 29, 2011)

It is, however, understood that this exemption does not include the payment of the separated employees' salaries and the payment of the 13th month pay and other benefits in excess of the Php90,000.00 [1] threshold under Section 2.78.1 (A) (3) (a) and (A) (7) of Revenue Regulations No. 2-98, as amended. (BIR Ruling No. 199-2011 dated June 29, 2011)

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

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ruling shall be considered null and void.

Very truly yours,

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

Footnotes

1. Republic Act No. 10963 increased the threshold from P82,000 to P90,000 effective January 1, 2018.

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