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

Sec. 32(B)(6)(a), NIRC of 1997, as amended
BIR Ruling No. 1151-2018, BIR Ruling No. 231-2016
CT-243-2021
JUL 12 2021

ALLIED METALS, INC.
2000 Gov. Halili Highway, Muzon
San Jose Del Monte City, Bulacan

Attention: **Mr. Joselito C. Dalauidao**
Plant & Manufacturing Manager

Gentlemen:

This refers to your undated letter requesting for exemption from payment of taxes on the retirement benefits of your workers to be received based on the Collective Bargaining Agrement (CBA) dated April 12, 2019 entered into by and between Allied Metals, Inc. and Federation of Free Workers (Allied Metals Chapter)

Documents submitted disclosed that Allied Metals, Inc. (TIN:) is a corporation duly organized and existing under the laws of the Philippines. On the other hand, Federation of Free Workers – Allied Metals, Inc. Chapter is a legitimate labor union duly registered with the Department of Labor and Employment (DOLE). On April 12, 2019, Allied Metals, Inc. and Federation of Free Workers – Allied Metals, Inc. Chapter entered into a CBA, Article XIII of which grants termination and retirement benefits, *viz*:

"Article XIII
TERMINATION AND RETIREMENT BENEFITS

xxx xxx xxx

Section 2. Any regular employee or worker may apply for VOLUNTARY RETIREMENT, as follows:

(a) 5 to 9 years	*-P 4,500 per year of service*
(b) 10 to 14 years	*- 16 days per year of service*
(c) 15 to 19 years	*- 27 days per year of service*
(d) 20 years and above	*- 30 days per year of service*

However, only four (4) employees shall be allowed to retire per year. Provided further that such employee who has voluntarily retired is hereby prohibited from working for any person or entity who engaged in the same business as the COMPANY, for at least one year from the date of his voluntary retirement.

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Section 3. Any regular employee or worker shall be retire upon reaching the age of sixty (60) years or more but not beyond sixty five (65) years old and have served the company for at least five (5) years. The employee or worker retired shall entitled to retirement pay in an amount equivalent to THIRTY TWO (32) days pay for each completed service.

Section 4. The COMPANY shall give priority in employment to the sons of employees who have retired, provided that they are qualified, and provided further that the seniority of existing employees are protected.

Section 5. TAX EXEMPTION OF RETIREMENT PAY. – Exempted from taxation are the retirement benefits received under R.A. 7641 (NOW ARTICLE 302 HEREIN) and those received by officials and employees of private firms, whether individual or corporate, in accordance with a reasonable private benefits plan maintained by employer: Provided, that the retiring official or employee has been in service of the same employer for atleast ten (10) years and is not less than fifty (50) years of age at the time of his retirement: Provided, further, That the benefits granted under this subparagraph shall be availed of by an official or employee only once.

For purposes herein, the term 'reasonable private benefit plan' means a pension, gratuity, stock bonus or profit – sharing plan maintained by an employer for the benefit of some or all of his officials or employees, or both, for the purpose of distributing to such officials and employees the earnings and principal of the fund thus accumulated, and wherein it is provided in said plan that at no time shall any part of the corpus or income of the fund be used for, or be diverted to, any purpose other than for the exclusive benefits of the said officials and employees."

In reply, please be informed that Section 32 (B)(6)(a) of the National Internal Revenue Code (NIRC) of 1997, as amended, provides, *viz*:

"SEC. 32. Gross Income. –

xxx xxx xxx

(B) Exclusion from Gross Income. – The following items shall not be included in gross income and shall be exempt from taxation under this Title:

xxx xxx xxx

(6) Retirement Benefits, Pensions, Gratuities, etc. –

xxx xxx xxx

(a) Retirement benefits received under Republic Act No. 7641 and those received by official and employees of private firms, whether individual or corporate, in accordance with a reasonable private benefit plan maintained by the employer: Provided, That the

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> *retiring official or employee has been in the service of the same employer for at least ten (10) years and is not less than fifty (50) years of age at the time of his retirement: Provided further, That the benefits granted under this subparagraph shall be availed of by an official or employee only once. For purpose of this subsection, the term* ***'reasonable private benefit plan'*** *means a pension, gratuity, stock bonus or profit-sharing plan maintained by an employer for the benefit of some or all of his officials or employees, wherein contributions are made by such employer for the officials or employees, or both, for the purpose of distributing to such officials and employees the earnings and principal of the fund thus accumulated, and wherein it is provided in said plan that at no time shall any part of the corpus or income of the fund be used for, or be diverted to, any purpose other than for the exclusive benefit of the said officials and employees.*

Based on the above-quoted provision, if the company maintains a private retirement plan which have been determined by the Bureau of Internal Revenue (BIR) as a "reasonable retirement benefit plan," the retirement benefits that will be received by the employees shall be exempt from income tax, provided that the two (2) conditions are met, *viz.*: (1) the employee had been in the service of the same private firm for at least ten (10) years; and (2) he is at least fifty (50) years old at the time of retirement. However, even if the company maintains a retirement plan but was not approved by the BIR as a "reasonable retirement benefit plan," the provisions of Republic Act (RA) No. 7641 shall apply. Section 1 of RA No. 7641, amending the Labor Code of the Philippines, provides:

> *"Section 1. Article 287 of Presidential Decree No. 442, as amended, otherwise known as the Labor Code of the Philippines, is hereby amended to read as follows:*
>
> > *Art. 287. Retirement. — Any employee may be retired upon reaching the retirement age established in the collective bargaining agreement or other applicable employment contract.*
> > *In case of retirement, the employee shall be entitled to receive such retirement benefits as he may have earned under existing laws and any collective bargaining agreement and other agreements: Provided, however, that an employee's retirement under any collective bargaining and other agreements shall not be less than those provided herein.*
> >
> > *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 hereby*

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> *declared the compulsory retirement age, who has served at least five (5) years in the said establishment, 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."* (Underscoring supplied)

Under Section 1 of RA No. 7641, in the absence of an approved reasonable retirement plan providing for retirement benefits of employees in the establishment, the retirement benefits that will be received by the employees shall be exempt from income tax, provided that the two (2) conditions are met, *viz.*: (1) the employee had been in the service for at least five (5) years; and (2) he is at least sixty (60) years old but not beyond sixty-five (65) years old at the time of retirement.

In the instant case, considering that the Article XIII of the CBA which provides for termination and retirement benefits was not determined or approved by the BIR as a "reasonable retirement benefit plan," the requirements under Section 1 of RA No. 7641, in order that the employee benefits received may be granted tax exemption must be present, to wit: (1) the employee had been in the service for at least five (5) years; and (2) he is at least sixty (60) years old but not beyond sixty-five (65) years old at the time of retirement.

Please take note also that pursuant to Section 2.78.1 (A) (7) of Revenue Regulations (RR) 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.[1]

It is must be also understood that the payment to the retiring employees of their salaries, except if minimum wage earners, and the payment of the 13th month pay and other benefits in excess of the Php90,000.00 threshold shall be subject to income tax, and consequently to withholding tax, under Section 2.78.1 (A) (3) (a) and (A) (7) of RR 2-98, as amended.[2]

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 ruling shall be considered null and void.

Very truly yours,

CAESAR R. DULAY
Commissioner of Internal Revenue
No. 043973

[1] BIR Ruling No. 231-2016 dated June 1, 2016
[2] *Ibid*