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

Sec. 60 (B) of the Tax Code of 1997, as amended. CIR vs. GCL Retirement Plan, G.R. No. 95022
BIR Ruling No. 343-13; BIR Ruling No. 076-12;
#008-2016
1-8-2016

SILANG WATER DISTRICT
EMPLOYEES' PROVIDENT FUND, INC.
M. H. Del Pilar Street, Barangay I,
Silang, Cavite 4118

Attention : **Mr. Bonifacio B. Dela Cruz**
General Manager

Gentlemen:

This refers to your letter dated January 31, 2013, requesting for the issuance of tax exemption of the provident fund of **SILANG WATER DISTRICT EMPLOYEES' PROVIDENT FUND, INC.**

In reply thereto, please be informed that Section 60 (B) of the Tax 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 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 . . ."

Section 60 (B), *supra*, specifically exempts employees' trust 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, G.R. No. 95022,* promulgated on March 23, 1992, the Supreme Court upheld the judgment of the respondent Court of Appeals in affirming the decision of the Court of Tax Appeals, which ruled:

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"... 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 plans 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 de'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 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.*, G.R. 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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Moreover, Section 60 (B) of the Tax Code of 1997 lays down the following conditions for the income tax exemption of the employees' trust:

(1) Contributions are made to the trust by such 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, 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.

Documents submitted show that Sections 1,2,3 and 4, Article IV of the New By-Laws on Sources of Fund and Investment provide for its compliance with the conditions set forth under Section 60 (B) of the Tax Code of 1997, as amended, to wit:

Section 1. Members Contribution. Membership in the Fund shall constitute authority for the District to deduct monthly on any payroll date a sum equal to 5% of the monthly salary for the first year of the operation of the Fund as personal contribution of the employee concerned.

Section 2. District's Contribution. The district shall pay to the Fund as its monthly contribution an amount equal to 10% of the monthly salary of each employee for the operation of the fund.

Section 3. Schedule of Contribution. A schedule of employer and employee's share is hereby proposed as follows:

EMPLOYEE'S SHARE	EMPLOYER'S SHARE

Section 4. Irrevocability and Exclusivity. All contributions made by the district to the Fund shall be held solely and exclusively, for the exclusive benefit of the members or their beneficiaries, and no part of said contributions or its

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income shall be used for, or diverted to, purposes other than for the exclusive benefit of such members and their beneficiaries.

Thus, in the same way that tax exemption of an employees' trust is to be enjoyed by the income of the pension trust or provident fund, then the conditions to which the tax exemption of the employees' trust, under Section 60 (B) of the Tax Code is subject, shall also apply as the same conditions to which the income tax exemption of the pension trust or provident fund shall be subject.

In view of the foregoing, interest income derived by the **SILANG WATER DISTRICT EMPLOYEES' PROVIDENT FUND, INC.** from its currency bank deposit, deposit substitutes, trust funds and/or similar arrangements/investments in money market placements imposed under Section 24 (B)(1) of the 1997 Tax Code is exempt from the final withholding tax pursuant to Section 60 (B) of the Tax Code of 1997, as amended, provided, however, that in its investment activities, no part of the *corpus* or income of the Fund shall be used for or diverted to purposes other than for the exclusive benefit of the member-employees/officials or their beneficiaries. *(BIR Ruling No. 343-13 dated September 4, 2013 and BIR Ruling No. 076-12 dated February 15, 2012)*

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,

KIM S. JACINTO-HENARES
Commissioner of Internal Revenue

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