REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

Quezon City

E.O. 226
Secs. 57(B); 106(A)(1)(a) ;196 NIRC
BIR Ruling No. 450-2012
#074-2016

3-1-2016

Manila Water Company, Inc.
MWSS Compound, 489 Katipunan Road
Balara, Quezon City

Attention: **Luis Juan B. Oreta**
Chief Finance Officer & Treasurer

Gentlemen:

This refers to your letters dated January 14, 2013 and November 3, 2014 requesting, on behalf of **Manila Water Company, Inc. ("Manila Water")**, certificate of tax exemption from income tax on account of its registration with the Board of Investments (BOI) under Executive Order No. 226, otherwise known as the "Omnibus Investments Code of 1987".

Documents submitted show that **Manila Water**, with Tax Identification No. (TIN) is a domestic corporation duly organized under the Philippine laws; that it is registered with the Securities and Exchange Commission (SEC) bearing SEC Certificate of Registration No. dated January 6, 1997; that it is registered with the Board of Investments per Certificate of Registration No. dated August 1, 2012 as an Expanding Operator of Water Supply and Distribution (Rodriguez Water Treatment Plant Project) under the Omnibus Investments Code of 1987 (E.O. 226); that based on the same Certificate of Registration, **Manila Water** shall be entitled to the income tax holiday (ITH) for the said activity for a period of three (3) years beginning from August 2012 or actual start of commercial operations/selling, whichever is earlier, but in no case earlier than the date of registration subject to a base figure of 45.9 MCM representing the firm's actual billed volume prior to the full implementation of the RWTPP (end of April 2012); and that the ITH of **Manila Water** shall be limited only to the revenue generated from its registered activity as **Expanding Operator of Water Supply and Distribution (Rodriguez Water Treatment Plant Project)**.

The **Manila Water**, under the Specific Terms and Conditions of its BOI Registration for the above registered activity, shall observe the following sales revenues:

	1	2	3	4	5
Water production (in MLD)	146.61	150.67	153.80	157.27	161.09
Non Revenue Water	10%	10%	10%	10%	10%
Billed Volume (in MLD)	131.95	135.60	138.42	141.54	144.98
Billed Volume (in MCM): MLD x 360/1000	47.50	48.82	49.83	50.96	52.19

039389

Average Water Tariff /cu.m.	20.12	21.89	23.77	25.77	27.89
Revenues:					
Water	956	1,069	1,184	1,313	1,456
Environmental Charge (20% of water)	191	214	237	263	291
Total Revenues P'Million	**1,147**	**1,282**	**1,421**	**1,576**	**1,747**

In reply, please be informed that under Section 2.57.5 (B)(2) of Revenue Regulations (RR) No. 2-98, as amended by RR No. 6-2001 implementing Section 57 (B) of the Tax Code of 1997, as amended, the withholding tax prescribed in the said Regulations shall not apply to income payments to persons enjoying exemption from the income tax provided by the Omnibus Investments Code of 1987, as amended. Accordingly, since the **Manila Water's Operation of Water Supply and Distribution (Rodriguez Water Treatment Plant Project)**, is a BOI registered activity, this Office is of the opinion as it hereby holds, that income payments received by **Manila Water** in connection with its operation as expanding operator of water supply and distribution (Rodriguez Water Treatment Plant Project), are exempt from creditable withholding tax imposed under RR No. 2-98, as amended, for a period of three (3) years beginning from August 2012 or actual start of commercial operations/selling, whichever is earlier, but in no case earlier than the date of registration subject to a base figure of 45.9 MCM representing the firm's actual billed volume prior to the full implementation of the RWTPP (end of April 2012).

It must be emphasized that the above exemption from income tax covers only the revenues directly attributable to **Manila Water's** registered activity as **Expanding Operator of Water Supply and Distribution (Rodriguez Water Treatment Plant Project)**. (*BIR Ruling No. 450-2012* dated July 10, 2012)

Moreover, **Manila Water's** entitlement to ITH for its registered activity as **Expanding Operator of Water Supply and Distribution (Rodriguez Water Treatment Plant Project)** is not automatic as it has still to comply with the provisions of the Specific Terms and Conditions of the BOI Registration, *viz:*

(1) Prior to ITH availment, **Manila Water** shall show proof that it has reinvested its tax savings accrued from prior ITH availments in projects to enhance its service obligations. Proof shall be certified by MWSS.

(2) In the grant of incentives, the extent of the project's ITH entitlement shall be based on the project's ability to contribute to the economy's development based on the following parameters in this order of importance: (1) project's net value added, (2) job generation, (3) multiplier effect, and (4) measured capacity. IN the event that the registered enterprise fails to implement the project as represented in its project application, the Board may reduce the project's ITH entitlement proportionate to the actual performance of the enterprise. The project's entitlement to incentives shall be based on the following:

a. Net Value Added should be at least 25%

Project's Net Value Added P'Million	**1**	**2**	**3**	**4**	**5**
Total Cost of Services	846	1,079	1,139	1,233	1,331

039389

#074-2016
3-1-2016

Depreciation and amortization	613	699	729	789	849
Net Value Added	**28%**	**35%**	**36%**	**36%**	**36%**
Average (5 years)	**34%**				

b. Job Generation

	No. of Employees				
Year	**1**	**2**	**3**	**4**	**5**
Direct	650	650	650	650	650
Indirect	40	40	40	40	40
Administrative	40	40	40	40	40
Total	**730**	**730**	**730**	**730**	**730**

c. Investments and Timetable

Activity	Start Date	End Date	Cost (PhP)
Obtain appropriate license/agreement/ permit from the government	January 2010	April 2010	
Rodriguez Treatment Plant	February 2010	April 2010	
Site acquisition through execution of deed of sale or lease contract of land			
Preparation, Evaluation and Award of Bids			
Intake structure			
Raw Water Conveyance			
150MLD Treatment Plant			
Treated Water Transmission Mains			
40 ML Service Reservoir			
Pump Station			
Rodriguez Transmission Main	October 2010	April 2010	
Steel pipelaying			
Design and Build of 200lm pipe bridge			
Pump Station			
10 ML Reservoir			
8.9km steel pipelaying			
Pump Station			
Rodriguez Distribution Main	May 2011	March 2012	

039389

RDM Package 1			
RDM Package 2			
RDM Package 3			
Commissioning and Start of Commercial Operation	February 2012	August 2012	
TOTAL PROJECT COST			

d. Sales Revenues

	1	2	3	4	5
Water production (in MLD)					
Non Revenue Water					
Billed Volume (in MLD)					
Billed Volume (in MCM): MLD x 360/1000					
Average Water Tariff /cu.m.					
Revenues:					
Water					
Environmental Charge (20% of water)					
Total Revenues P'Million					

Income qualified for ITH availment shall not exceed by more than 10% of the projected income represented by the enterprise in its application provided the project's actual investments and employment match the enterprise's representations in its application. In cases where the project's actual revenues exceed the projections in its application by more than 10%, the Board may increase the project's ITH availment proportionately for reasons such as but not limited to (a) additional investments; (b) new markets/orders; (c) additional employment and/or increase in number of working shifts. Request/s for adjustment of projected income may be submitted to the Board within the ITH entitlement period.

(3) Prior to availment of ITH, the enterprise shall submit copy of its Environmental Compliance Certificate pursuant to P.D. No. 1586 (Philippine Environmental Impact Statement System) or Certificate of Non-Coverage (CNC) issued by the Environmental Management Bureau (EMB), whichever is applicable to the registered project, and other applicable clearances under relevant environmental laws;

(4) The enterprise shall maintain a separate set of books of accounts for this registered project, separate from all the other operations of the enterprise;

(5) File an application with the BOI Incentives Department within one (1) month from the filing of the final Income Tax Return (ITR) with the Bureau of Internal Revenue (BIR) in order to validate the claim for income tax exemption. The application shall be accompanied by a certification from the Social Security System (SSS) that the enterprise is in good standing in the remittance of SSS contributions of its employees;

039389

(6) Secure from BOI Supervision and Monitoring Department, a certificate of ITH Entitlement prior to filing of income tax return with BIR, otherwise, ITH for that particular taxable year without COE will be forfeited; and

(7) The enterprise shall submit to the BOI Supervision and Monitoring Department, on a semestral basis within fifteen (15) days from the end of each semester, a report on actual investments, employment, sales, production costs and other information that the Board may require at any given time with respect to the registered project.

Furthermore, BOI-registered enterprises enjoy no tax exemption/privileges other than those granted under E.O. 226. In this regard, under the terms and conditions of its BOI registration, **Manila Water's Operation of Water Supply and Distribution (Rodriguez Water Treatment Plant Project)** was clearly granted a three (3) – year ITH but such terms and conditions do not provide for any exemption from other taxes that it may be subject to on its business transactions.

It should be understood that **Manila Water** shall be constituted as a withholding agent for the government if it acts as employer and any of its employees received compensation income subject to compensation withholding tax, or if it makes payments to individuals or corporations subject to the withholding taxes at source as required under Chapter XIII and Section 57 of the Tax Code of 1997, as amended and implemented by *Revenue Regulations (RR) No. 2-98*, as amended.

Likewise, **Manila Water** is required to file on or before the 15th day of the fourth month following the close of its accounting period of a Profit and Loss Statement and Balance Sheet with the Annual Information Return under oath, stating its gross income and expenses incurred during the taxable year.

Finally, the **Manila Water's** books of accounts and other pertinent records shall be subject to periodic examination by revenue enforcement officers of this Bureau for the purpose of ascertaining whether it has been complying with the conditions under which it has been granted tax exemption or tax incentives and its tax liability, if any, pursuant to Section 235 of the Tax 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,

KIM S. JACINTO-HENARES
Commissioner of Internal Revenue

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FEB 24 2016

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