REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

Quezon City

Section 32(B)(6)(a) of the Tax Code of 1997, as amended,
BIR Ruling No. 286-14
#096-2016 3-17-2016

MS. ELENA L. GENOVA
1748 Villaruel St., Jose Abad Santos
Tondo, Manila

Madam:

This is refers your letter dated April 10, 2015 requesting tax exemption of your retirement pay.

Documents submitted disclosed that you are a former employee of Gocheco Brothers, Inc. (TIN); that you applied for retirement on January 26, 2015; that you (TIN have been employed with Gocheco Brothers, Inc. from October 19, 1984 up to January 25, 2015 or about thirty (30) years in service as Secretary[1]; that at the time of your retirement, you are 62 years old; and that your employer, Gocheco Brothers, Inc., has certifies that it has no retirement plan.

In support of your request, the following documents were submitted:

1) A copy of Gocheco Brothers, Inc.'s SEC Amended Articles of Incorporation and BIR Certificate of Registration ;
2) Photocopy of TIN Card:
3) Certificate of Employment of Elena L. Genova; and
4) Original NSO Certificate of Birth.

In reply thereto, 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 (R.A.)No. 7641[2] shall not be included in the gross income and therefore

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[1] *Certificate of Employment dated April 10, 2015*

[2] *"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.

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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 (½) month salary for every year of service, a fraction of at least six (6) months being considered as one whole year. (BIR Ruling No. 286-14 dated July 9, 2014)

Based on the foregoing and since at the time of your retirement on January 26, 2015 you are already 62 years old and has rendered service for 30 years with Gocheco Brothers, Inc., the retirement benefits you will received pursuant to R.A. No. 7641 is not subject to income tax and consequently, to the withholding tax prescribed by Section 79, Chapter XIII, Title II of the Tax Code of 1997. (BIR Ruling No. 286-14 dated July 9, 2014)

Moreover, pursuant to Section 2.78.1(A)(7) of 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. (BIR Ruling No. 286-14dated July 9, 2014)

It is, however, understood that this exemption does not include the payment of the your salaries and the payment of the 13th month pay and other benefits in excess of the Php82,000.00[3] threshold under Section 2.78.1 (A)(3)(a) and (A)(7) of RR 2-98, 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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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) which is declared the compulsory retirement age, who has served at least five (5) years in the 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 (1) whole year."

[3] *As amended by R.A. No. 10653 and implemented by RR No. 3-2015*