June 27, 2018

BIR RULING NO. 1028-18

Sec. 32 (B) (6) (a) NIRC; BIR Ruling No. ERP-01-2011

Cavite Naval Base Savings and Loan Association, Inc.
Fort San Felipe, Cavite City

Attention: *AAA*

Gentlemen :

This refers to your letter dated June 14, 2013, indorsed to this Office by Revenue Region No. 9, San Pablo City on March 21, 2014, requesting confirmation as to whether or not the Cavite Naval Base Savings and Loan Association, Inc. (CNBSLAI) Employees Retirement and Separation Plan (the "PLAN"), is a "reasonable private benefit plan" within the contemplation of Section 32 (B) (6) (a) of the Tax Code of 1997, as amended.

In reply, please be informed that Section 2 of Revenue Regulations (RR) No. 01-68, as amended, provides for the requisites of a reasonable retirement benefit plan, among others, to wit:

> *"(e) Impossibility of Diversion. — The corpus or income of the trust fund must at no time be used for, or diverted to, any purpose other than for the exclusive benefit of the said officials and employees.*
>
> *(f) x x x*
>
> *(g) Non-forfeitures. — It must provide for non-forfeitable rights, that is upon the termination of the plan or upon the complete discontinuance of contributions under the plan, the rights of each official or employee to benefits accrued to the date of such termination or discontinuance, to the extent then funded, or the rights of each employee to the amounts credited to his account at such time are non-forfeitable.*
>
> *(h) Forfeitures. — The plan must expressly provide that forfeitures arising from severance of employment, death or for any other reason, must not be applied to increase the benefits any employee would otherwise receive under the plan at any time prior to the termination of the plan at the complete discontinuance or employer contributions thereunder. The amounts so*

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forfeited must be used as soon as possible to reduce the employer's contributions under the plan.

(i) Trust. — The retirement fund shall be administered by a trust."

It is noted that Section 2, Article VII of the Plan, provides that upon the termination of the plan or upon the complete discontinuance of contributions under the plan, the right of the members accrued to the date of such termination or discontinuance to the extent then funded, or the rights to the amount credited to the account at such time are forfeitable, which provision is in contrary to the requirement under Section 2 (g) of RR No. 01-68, as amended. Moreover, it was represented that the Plan is not administered by a trust but is being managed solely by the CNBSLAI Board of Trustee, hence, not compliant with the requirement under Section 2 (i) of RR No. 01-68, as amended.

Based on the foregoing, this Office is of the opinion, as it hereby rules, that the Plan, being non-compliant with certain requisites set forth under Section 2 of RR No. 01-68, as amended, cannot qualify as a reasonable private benefit plan within the contemplation of Section 32 (B) (6) (a) of the Tax Code of 1997, as amended. Hence, the Plan cannot enjoy the tax incentives given to retirement plans under the provisions of the 1997 Tax Code, as amended.

It bears stressing that tax exemptions are construed in *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority. The basic principle in the construction of laws granting tax exemptions has been very stable. He who claims an exemption from his share of the common burden of taxation must justify his claim by showing that the Legislature intended to exempt him by words too plain to be beyond doubt or mistake *(City of Iloilo, et al. vs Smart Communications, Inc., G.R. No. 167260 dated February 27, 2009)*.

Please be guided accordingly.

Very truly yours,

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

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