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

Section 32(B)(6)(a), 1997 NIRC RA 7641
BIR Ruling No. 063-2013 BIR Ruling No. 171-2011
#119-2016
4-12-2016

U.P. Business Research Foundation, Inc.
College of Business Administration Bldg.
UP Campus, Diliman, Quezon City

Attention : Dr. Ben Paul B. Gutierrez
Executive Vice-President

Gentlemen:

This refers to your letter dated October 3, 2014 requesting for a confirmatory ruling exempting from withholding tax the retirement benefit of one of your former employees, Marlin B. Santiago, pursuant to Republic Act (RA) No. 7641 or the Retirement Pay Law.

Documents submitted show that Marlin B. Santiago with TIN is a full-time staff of U.P. Business Research Foundation, Inc. (UPBRFI), working as an Administrative Officer/Accountant since March 7, 1977. When Ms. Santiago turned 60 years old on July 9, 2014, she signified her intention to retire from work with UPBRFI (TIN), a non-stock non-profit corporation organized and existing under the laws of the Philippines which was registered with the Securities and Exchange Commission (SEC) under SEC Registration No. UPBRFI is organized primarily to establish and provide a private institutional medium with the assistance of which the College of Business Administration of the University of the Philippines can effectively undertake, promote, develop or enhance research in the business and management operations of industry, agriculture, commercial, governmental, and other sectors.

The Board of Trustees of UPBRFI approved Ms. Santiago's retirement benefits computed based on the formula under RA No. 7641 and to monetize all her unused leave credits pursuant to Board Resolution No. 2014-10 dated August 4, 2014. Per Director's Certificate dated August 18, 2015, its Executive Vice-President confirmed that there is no retirement plan between UPBRFI and its employees, neither is there any Collective Bargaining Agreement (CBA) duly contracted by and between them.

In reply, please be informed that under Section 1 of RA No. 7641, amending the Labor Code of the Philippines, provides for retirement pay to qualified private sector employees in the absence of any retirement plan in the establishment, viz.:

> "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:

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> 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 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)

The foregoing provision allows the retirement of an employee upon reaching the retirement age as may be provided under the applicable employment contract entered into by the Company and its employees, and the parties to the employment contract may agree on the retirement benefits that will be received by the employees provided that such benefits shall not be less than those provided under the Labor Code of the Philippines. In the absence of a retirement plan or other agreement providing for the retirement benefits of employees in the establishment, the retirement benefits as set forth under Section 1 of R.A. 7641 shall apply, i.e., at least one-half (1/2) month salary for every year of service of an employee who has reached the age of sixty (60) years or more, but not beyond sixty-five (65) years, and rendered at least five (5) years of service in the company.

In the absence of any showing that there is a reasonable retirement benefit plan or CBA established by the Company, Section 1 of RA No. 7641 shall apply in this case. As regards the taxability of the subject retirement benefits, Section 32(B)(6)(a) of the Tax Code of 1997, as amended, states, thus:

> "(a) Retirement benefits received under R.A. 7641 and those received by officials and employees of private firms, whether individual or corporate, in accordance with a reasonable private benefit plan maintained by the employer: Provided, that the 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: xxx, shall not be included in gross income and shall be exempt from taxation." (underscoring supplied)

The retirement benefits received by an employee pursuant to RA 7641 are exempt from income tax provided that the two (2) conditions - that the retiring official or employee has been in the service of the same employer for at least 10 years and is not less than 50 years old at the

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time of retirement are complied with. In the instant case, Ms. Santiago retired from UPBRFI on July 2014 upon reaching the age of 60 and has rendered an aggregate period of thirty-seven (37) years of service in UPBRFI, thus, the retirement benefits of Ms. Santiago are not subject to income tax and consequently, to the withholding tax under Section 79, Chapter XIII, Title II of the Tax Code of 1997, as amended, since the age and length of service requirements set forth in Section 32(B)(6)(a) of the Tax Code of 1997, as amended, were complied with. (BIR Ruling No. 171-2011 dated May 25, 2011)

Moreover, pursuant to Section 2.78.1 (A) (7) of Revenue Regulations No. 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 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. 063-2013 dated February 12, 2013)

It must be understood that the payment to Ms. Santiago of his salaries and the payment of the 13th month pay and other benefits in excess of the Php82,000[1] threshold shall be subject to income tax, and consequently to withholding tax.

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 as null and void.

Very truly yours,

KIM S. JACINTO-HENARES
Commissioner of Internal Revenue

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[1] As amended by Revenue Regulations No. 3-2015 dated March 13, 2015