November 15, 2018

BIR RULING NO. 1336-18

Section 32 (B) (6) (a) of the Tax Code of 1997, as amended; BIR Ruling No. 495-2014; BIR Ruling No. 286-2014

AAA

_____

_____

Sir :

This refers to your letter dated October 08, 2015, requesting for clarification on the taxability of your retirement benefits received from West Negros University.

It is stated in your letter that you were a _____ of West Negros University located at Burgos Street, Bacolod City for more or less thirty (30) years; that you availed for optional retirement on January 25, 2011 when you were fifty nine (59) years old; and that the company has no retirement plan covering its rank and file employees.

In reply, please be informed that Section 32 (B) (6) (a) of the National Internal Revenue Code of 1997, as amended, states:

> *"Section 32. Gross Income. —*
>
> *(B) Exclusions from Gross Income. — The following items shall not be included in gross income and shall be exempt from taxation under this Title:*
>
> *xxx xxx xxx*
>
> *(6) Retirement Benefits, Pensions, Gratuities, etc. —*
>
> *(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: . . ., shall not be included in gross income and shall be exempt from taxation." (underscoring supplied)*

Section 1 of Republic Act (R.A.) No. 7641; amending the Labor Code of the

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Philippines, provides that:

> *"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.*
> >
> > *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)

In view of the foregoing provisions, retirement benefits received by an employee shall be exempt from income tax, provided the two (2) conditions set forth under Section 1 of Republic Act (R.A.) No. 7641 are met, *viz*.:

1) the employee had been in the service of the same private firm for at least five (5) years; and

2) he is at least sixty (60) years old at the time of retirement.

Accordingly, since you retired when you were then fifty nine (59) years old, the retirement benefits you received under Section 1 of Republic Act No. 7641 shall not be exempt from income tax. Thus, your request for tax exemption of your retirement benefits is hereby denied for lack of legal and factual basis.

Please be guided accordingly.

Very truly yours,

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

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