November 15, 2018

BIR RULING NO. 1355-18

000-00

AAA

_____
Department of Education
Room 507-508, 5th Floor Mabini Building
DepEd Complex, Meralco Avenue, Pasig City

Madam :

This refers to your letter dated October 15, 2012 requesting for a ruling on whether or not the salary received during the maternity leave is taxable.

It is represented that you are an employee of Department of Education as _____ assigned at _____; that on March 23-May 21, 2010, January 11-March 11, 2011 and June 4-August 2, 2012, you availed of maternity benefits/leave with full pay or commuted.

It is further represented that the Civil Service Commission issued an opinion under CSC OLA Opinion No. 174 s. 2012 dated June 27, 2012, a portion of which provides:

> *"Nonetheless, we would like to invite your attention to Section 32(B)(6)(e) of the Tax Code of 1997, which excludes from gross income and exempts from taxation payments of benefits made under the Social Security Act of 1954, as amended. Maternity benefits are among those benefits provided under the Social Act of 1954, as amended by Republic Act of 8282 more particularly Section 14-A of the said act. Accordingly, the maternity benefits advanced by the employer to the employee are excluded from gross income, hence, exempt from withholding tax."*

In reply, please be informed that Section 11 of Omnibus Rules on Leave Rule XVI of the Omnibus Rules Implementing Book V of Executive Order No. 292, provides that:

"Section 11. Conditions for the grant of maternity leave. —

Every woman in the government service who has rendered an aggregate of two (2) or

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more years in service, shall, in addition to the vacation and sick leave granted to her, be entitled to maternity leave of sixty (60) calendar days with full pay

xxx xxx xxx"

Thus, the above provision is clear with regard to the maternity leave with full pay enjoyed by woman in government service.

Moreover, Republic Act (RA) No. 8282 [1] provides for maternity leave benefits for women employees in the private sector, regardless of whether married or not — the same is not enjoyed by women employed in the government sector, thus, your claim that your salary received under Section 32 (B) (6) (e) of the Tax Code, as amended, is exempted from income tax and consequently from withholding tax is misplaced.

Accordingly, there being no express provision of the law exempting it from tax, the salary received during the 60 days maternity leave and commuted salary is embraced within the term "taxable compensation income" which is defined as "all remuneration for services performed by an employee for his employer" under Sections 31 and 78, all of the Tax Code, unless specifically exempted under Section 32 (B) of the same Tax Code. Thus, the salary and the commuted salary constitutes taxable compensation income.

Please be guided accordingly.

Very truly yours,

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

Footnotes

1. AN ACT FURTHER STRENGTHENING THE SOCIAL SECURITY SYSTEM THEREBY AMENDING FOR THIS PURPOSE, REPUBLIC ACT NO. 1161, AS AMENDED, OTHERWISE KNOWN AS THE SOCIAL SECURITY LAW.

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