November 19, 2018

BIR RULING NO. 1382-18

Section 32 (B) (6) (b), 1997 NIRC; BIR Ruling No. 555-2012; BIR Ruling No. 425-2011; BIR Ruling No. 008-2011

Carlos Villa-Abrille & Sons, Inc.
Rm. 209, CVA Building
C.M. Recto cor. Jacinto Sts.
Davao City

Attention: *AAA*

Gentlemen :

This refers to your letter dated June 22, 2015, as indorsed by the Regional Director of Revenue Region No. 19, Davao City requesting for a certificate of tax exemption that the severance pay received by the employees of Carlos Villa-Abrille & Sons, Inc. (CVASI) due to its expiration of corporate term are exempt from taxation pursuant to Sec. 32 (B) (6) (b) of the 1997 Tax Code, as amended.

Documents submitted show that CVASI (TIN 000-000-000-000) is a domestic corporation organized and registered with the Securities and Exchange Commission (SEC) under Company Reg. No. 26839 dated March 16, 1965. The corporate existence of CVASI ended last March 16, 2015 and it is now in the process of winding up the affairs of the corporation, including the retirement/separation of its employees. The following is the list of CVASI's employees that will be separated from employment:

No.	Name of Employee	Position	TIN
1	BBB	President	000-000-000
2	CCC	Vice-President	000-000-000
3	DDD	Gen. Manager	000-000-000
4	EEE	Corporate Secretary	000-000-000
5	FFF	Consultant	000-000-000
6	GGG	Treasurer	000-000-000

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7	HHH	Bldg. Supervisor	000-000-000
8	III	Cashier	000-000-000
9	JJJ	Bookkeeper	000-000-000
10	KKK	Accounting Staff	000-000-000
11	LLL	External Affairs	000-000-000
12	MMM	Messenger	000-000-000
13	NNN	Messenger	000-000-000
14	OOO	Dorm Caretaker	000-000-000

the Employer's Monthly Report on Employees' Termination/Dismissal/Suspension was duly received by the Department of Labor and Employment-Davao City Office on December 15, 2015, and the corresponding Notices of Termination to the affected employees are duly received by the afore-stated workers.

In reply, please be informed that pursuant to Section 32 (B) (6) (b) of the Tax Code of 1997, any amount received by an official or employee or by his heirs from the employer as a consequence of separation of such official or employee from the service of the employer because of death, sickness or other physical disability or for any cause beyond the control of the said official or employee is exempt from taxes regardless of age or length of service. The phrase "for any cause beyond the control of said official or employee" connotes involuntariness on the part of the official or employee. The separation from the service of the official or employee must not be asked for or initiated by him.

This Office had several occasions to rule that the above-mentioned law requires the presence of two (2) conditions in order that the employee benefits may be granted tax exemption, namely: (1) the employee is separated from the service of the employer due to death, sickness or other physical disability or for any cause beyond the control of the said official or employee; and (2) the employer pays benefits to the official or employee or his heirs as a consequence of such separation. (BIR Ruling No. 008-11 dated 19 January 2011).

In view thereof, this Office is of the opinion that since it appears that the employees of CVASI, as enumerated herein have proven to have been separated from the service of the employer because of expiration of corporate term, a cause beyond the control of said employees, any amount to be received by them as a consequence of said separation is exempt from income tax and consequently from the withholding tax prescribed under Section 79, Chapter XIII, Title II of the Tax Code of 1997, as implemented by Revenue Regulations No. 2-98, as amended by Revenue Regulations Nos. 6-2001 and 12-2001.

Accordingly, no withholding taxes shall be deducted from the separation benefits and the entire amount thereof shall be given to the entitled separated employee.

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Also, 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. 425-11 dated 4 November 2011)

It is, however, understood that this exemption does not include the payment of the separated employees' salaries and the payment of the 13th month pay and other benefits in excess of the Php82,000.00 [1] threshold under Section 2.78.1 (A) (3) (a) and (A) (7) of RR 2-98, as amended. (BIR Ruling No. 555-12 dated September 6, 2012)

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,

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

Footnotes

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

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