REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

Quezon City

Sec. 60(B) NIRC; Section 109(P) NIRC
CIR vs. GCL Retirement Plan, G.R. No. 95022
BIR Ruling No. 409-2015 *BIR Ruling Nos. ERP-282-07; DA (TSF-013) 518-2008*
#216-2017 5-3-2017

PMR Group Retirement Plan, Inc.
1906 The Orient Square, Don Francisco Ortigas, Jr. Road
Ortigas Center, Pasig City

Attention: **Ma. Sheena B. Fortes**
Representative

Gentlemen:

This refers to your letter dated January 6, 2015 requesting exemption from capital gains tax (CGT) on the sale by **PMR Group Retirement Plan, Inc.** (the **"Retirement Plan"**) of a parcel of land in favor of AC Energy Holdings, Inc. under Section 60(B) of the 1997 Tax Code, as amended.

It is represented that the Retirement Plan is a BIR-approved retirement plan pursuant to *BIR Ruling No. ERP-282-07* dated October 15, 2007 and *BIR Ruling No. DA (TSF-013) 518-2008* dated December 11, 2008; that the Retirement Plan is the owner of a parcel of land with an area of Eleven Thousand Eight Hundred Ninety One (11,891) square meters located in Barangay Libertad, Municipality of Kauswagan, Lanao del Norte, covered by Transfer Certificate of Title (TCT) No. of the Registry of Deeds for Lanao del Norte; that on November 17, 2014, the Retirement Plan executed a Deed of Absolute Sale in favor of AC Energy Holdings, Inc. for the sale of the aforesaid land for a consideration of C

On the basis of the foregoing representations, it is now being requested that the sale by the Retirement Plan of the subject parcel of land to AC Energy Holdings, Inc. be exempt from CGT.

In reply, please be informed that this Office had already ruled in *BIR Ruling No. ERP-282-07* dated October 15, 2007 and *BIR Ruling No. DA (TSF-013) 518-2008* dated December 11, 2008, that PMR Group Retirement Plan:

1. is a definite written program;
2. is more or less permanent in character;
3. covers all regular employees of the company;
4. is non-discriminatory;
5. is duly funded and trusteed;
6. provides 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 the members accrued to the date of such termination or discontinuance to the extent then funded, or the rights to the amounts credited to the account at such time are non-forfeitable;
7. expressly provides that forfeitures must not be applied to increase the benefits any employee would receive, but must be used to reduce the employer's contribution under the plan; and
8. finally, provides that no part of the corpus or income of the Trust Fund shall be used for or diverted to purposes other than for the exclusive benefit of the members-employees and their beneficiaries.

which are all in conformity with the requirements prescribed by law.

Considering that there were no amendments made that would prejudice the rights of the employees, this Office finds that the Retirement Plan remains to be a "reasonable retirement plan." The governing provision relative to the tax exemption of income derived by a retirement benefit fund is Section 60(B) of the 1997 Tax Code, as amended, which states that:

"Section 60(B). Imposition of Tax.-

(B) Exception. - The tax imposed by this Title shall not apply to employee's trust which forms part of a pension, stock bonus or profit-sharing plan of an employer for the benefit of some or all of his employees (1) if contributions are made to the trust by such employer, or employees, or both for the purpose of distributing to such employees the earnings and principal of the fund accumulated by the trust in accordance with such plan, and (2) if under the trust instrument it is impossible, at any time prior to the satisfaction of all liabilities with respect to employees under the trust, for any part of the corpus or income to be (within the taxable year or thereafter) used for, or diverted to, purposes other than for the exclusive benefit of his

> *employees: Provided, That any amount actually distributed to any employee or distributee shall be taxable to him in the year in which so distributed to the extent that it exceeds the amount contributed by such employee or distributee."*

The above-cited provision sets forth two (2) conditions in order that the earnings of a retirement fund may be exempt from income tax, to wit: 1) the contributions are made to the trust by the employer, or employees, or both for the purpose of distributing to such employees the earnings and principal of the fund accumulated by the trust in accordance with such plan; and (2) under the trust instrument it is impossible, at any time prior to the satisfaction of all liabilities with respect to employees under the trust, for any part of the corpus or income to be used for, or diverted to, purposes other than for the exclusive benefit of the employees. (*BIR Ruling No. ERP-040-2014* dated March 25, 2014). These two (2) conditions are sufficiently met by the Retirement Plan as in fact, this Office had already approved the same as a reasonable retirement benefit plan in *BIR Certification/Ruling* dated December 28, 1981 and *BIR Ruling No. ERP-111-2009* dated May 11, 2009.

It bears mentioning that the tax exemption of the income derived by a retirement fund from its investments had already been settled in the case of *Commissioner of Internal Revenue vs. Court of Appeals, G.R. No. 95022,* promulgated on March 23, 1992, where the Supreme Court upheld the judgment of the respondent Court of Appeals which affirmed the decision of the Court of Tax Appeals, the pertinent potion of which is quoted below:

> *". . . it is significant to note that the GCL Plan was qualified as exempt from income tax by the Commissioner of Internal Revenue in accordance with Republic Act (R.A.) No. 4917 approved on June 17, 1967. This law specifically provided:*
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> *"Sec. 1. Any provision of law to the contrary notwithstanding, the retirement benefits received by officials and employees of private firms, whether individual or corporate, in accordance with a reasonable private benefit plans maintained by the employer shall be exempt from all taxes and shall not be liable to attachment, levy or seizure by or under any legal or equitable process whatsoever except to pay a debt of the official or employee concerned to the private benefit plan or that arising from liability imposed in a criminal action;"*
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> *xxx xxx xxx*
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> *"And rightly so, by virtue of the raison de'etre behind the creation of employees' trusts. Employees' trusts or benefit plans*

normally provide economic assistance to employees upon occurrence of certain contingencies, particularly, old age retirement, death, sickness, or disability. It provides security against certain hazards to which members of the Plan may be exposed. It is an independent and additional source of protection for the working group. What is more, it is established for their exclusive benefit and for no other purpose.

"The tax advantage in R.A. No. 1983, Section 56(b), was conceived in order to encourage the formation and establishment of such private plans for the benefit of laborers and employees outside of the Social Security Act. Engineering is a portion of the explanatory note to H.B. No. 6503, now R.A. 1983, reading:

"Considering that under Section 17 of the Social Security Act, all contributions collected and payments of sickness, unemployment, retirement, disability and death benefits made thereunder together with the income of the pension trust are exempt from any tax, assessment, fee, or charge, it is proposed that a similar system providing for retirement, etc. benefits for employees outside the Social Security Act be exempted from income taxes." (Congressional Record, House of Representatives, Vol. IV, Part 2, No. 57, p. 1859, May 3, 1957; cited in Commissioner of Internal Revenue vs. Visayan Electric Co., et al., G.R. No. L-22611, May 27, 1968, 23 SCRA 715).

"It is evident that tax-exemption is likewise to be enjoyed by the income of the pension trust. Otherwise, taxation of those earnings would result in a diminution of accumulated income and reduce whatever the trust beneficiaries would receive out of the trust fund. This would run afoul of the very intent of the law.

xxx xxx xxx"

Accordingly, the Retirement Plan, being a reasonable retirement benefit plan established for the benefits of the employees of the PMR Group, is exempt from CGT on its sale of the subject parcel of land in favor of AC Energy Holdings, Inc. pursuant to Section 60(B) of the 1997 Tax Code, as amended. To ensure, however, that the proceeds of the sale shall accrue to the Retirement Fund, the cash or check payment therefor shall be made in the name of PMR Group Retirement Plan. A proof to this effect shall be presented to the concerned Revenue District Officer before the issuance of the Certificate Authorizing Registration (CAR).

However, a retirement fund or pension trust is only entitled to exemption from income tax under Section 60(B) of the 1997 Tax Code, as amended. Hence, it may still be subject to other applicable taxes imposed under other provisions of the same Code.

Thus, the sale by the Retirement Fund of the subject lot, which is classified as industrial property, in favor of AC Energy Holdings, Inc., shall still be subject to value-added tax (VAT) pursuant to Section 106 of the 1997 Tax Code, as amended. It is noted in the Deed of Absolute Sale dated November 17, 2014 that the consideration for the sale of the subject lot is inclusive of VAT and that the same shall be for the account of the buyer. (BIR Ruling No. 409-2015 dated December 14, 2015)

Likewise, the sale by the Retirement Plan of the subject lot in favor of AC Energy Holdings, Inc. is subject to documentary stamp tax (DST) computed based on whichever is higher of the consideration or the fair market value of the property as determined in accordance with Section 6(E) of the 1997 Tax Code.

This ruling is being issued on the basis of the foregoing facts as represented. However, if upon investigation, it will be disclosed that the facts are different, then this ruling shall be considered null and void.

Very truly yours,

CAESAR R. DULAY
Commissioner of Internal Revenue

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