**April 25, 2019**

# BIR RULING NO. 254-19

Section 36, RR 2; Sec. 2.78, RR 2-98; Sec. 2.78.3, RR 2-98; Section 2.57.2, RR 2-98; RMC 51-08; BIR Ruling No. 03-08; BIR Ruling No. 494-18; BIR Ruling No. 759-2018

*Commission on Elections*
Intramuros, Manila

Attention: *Maria Lea R. Alarkon*
*Director III, Finance Services Department*
*Jose M. Tolentino Jr.*
*Executive Director*

Gentlemen :

This refers to your letter dated February 11, 2019 requesting for legal opinion on the application of rules on withholding of taxes on the income particularly the honoraria and allowances of the members of the Electoral Board (EB) contemplated under Republic Act (RA) No. 10756 who will be serving in the May 2019 National and Local Elections.

It is represented that last 2018 Barangay and Sangguniang Kabataan Elections, the Commission on Elections (COMELEC) withheld 5% tax on income from the honoraria and allowances of the members of the EB classifying them as professional fees for services rendered under Section 2.57.2 of Revenue Regulations (RR) No. 2-98, as amended by RR No. 11-2018. COMELEC argues that withholding tax on professional fees does not apply since members of EB are performing work as mandated by the Omnibus Election Code (OEC) and not in the practice of profession.

It is also contended that since income payments received by members of EB is less than TEN THOUSAND PESOS (P10,000) the same is exempt from withholding taxes under Section 2.57.2 (J) of RR No. 2-98, as amended.

In reply, please be informed that in BIR Ruling 494-18 dated March 14, 2018 this Bureau has ruled that it is a well settled principle of taxation that income, in the broad sense, means all wealth which flows into the taxpayer other than mere return of capital (Section 36, RR No. 2, "The Income Tax Regulations").

Based on the above principle, it is without argument that "honoraria" and

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"allowances" no matter how negligible the amount, are wealth that flow into the hands of the recipient, hence, subject to income tax and, consequently, to withholding tax on compensation.

In BIR Ruling No. 003-08 dated April 14, 2008, this office had the occasion to rule that:

> *"the name by which the remuneration for services is designated is immaterial. Thus, salaries, wages, emoluments and **honoraria**, bonuses, **allowances** (such as transportation, representation, entertainment and the like), fringe benefits (monetary and non-monetary), fees, including director's fees, taxable pensions and retirement pay and other income of a similar nature **constitute compensation income**." (Emphasis provided)*

In connection therewith, Section 2.78 of RR No. 2-98, as amended, provides that "the withholding of tax on compensation income is a method of collecting the income tax at source upon receipt of the income. It applies to all employed individuals whether citizens or aliens, deriving income from compensation for services rendered in the Philippines. The employer is constituted as the withholding agent."

Further, Section 2.78.3 of the same regulations, defines an employee as "an individual performing services under an employer-employee relationship. The term covers all employees, including officers and employees, whether elected or appointed, of the government of the Philippines, or any political subdivision thereof or any agency or instrumentality."

Based on the afore-quoted provisions, the honoraria and allowances of members of EB are considered compensation hence, subject to income tax, and withholding tax on compensation under Section 2.78 of RR No. 2-98 and not under Section 2.57.2 of the same regulations.

However, under Section 5 of RA No. 10963 or the "Tax Reform for Acceleration and Inclusion (TRAIN) Law, amending Section 24 (A) (2) (a) of the National Internal Revenue Code of 1997, as amended, in relation to Section 3 of RR No. 8-2018, [1] it is provided that individual's taxable income not exceeding P250,000.00 is subject to zero percent (0%) income tax rate.

Likewise, BIR Ruling No. 759-2018 dated May 8, 2018 it was ruled that —

> *"Applying the foregoing, if the annual taxable income which includes the honoraria and allowances of teachers who will serve in the EB does not exceed P250,000.00, such honoraria and allowances shall not be subject to income tax, and consequently to the withholding tax. Conversely, if the annual taxable income which includes the honoraria and allowances of teachers who will serve in the Electoral Boards exceed P250,000,00, such honoraria and allowances shall be subject to income tax, and consequently, to the withholding tax on compensation.*
>
> *In order to determine if the teachers and other qualified persons serving in*

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*the Electoral Boards will not be subjected to the withholding tax, the COMELEC shall require said persons to execute an affidavit (attached as Annex "A") prior to the release of the honorarium/allowances."*

On your contention that income received by members of EB is less than Ten Thousand Pesos (P10,000), hence, exempt from withholding taxes, Section 2.57.2 (J) of RR No. 2-98, as amended, provides that:

*"(J) Income payments made by a government office, national or local, including barangays, or their attached agencies or bodies, and government-owned or controlled corporation to its local/resident supplier of goods/services, other than those covered by other rates of withholding tax (formerly under letter (N)] — Income payments, except any single purchase which is P10,000 and below, which are made by a government office, national or local, including barangays, or their attached agencies or bodies, and government-owned or controlled corporations, on their purchases of goods and purchases of services from local/resident suppliers:*

*Supplier of goods — One percent (1%)*

*Supplier of services — Two percent (2%)*

xxx xxx xxx"

Moreover, Revenue Memorandum Circular No. 051-18 dated June 8, 2018 defined supplier of services as individuals who are not identified under Section 2.57.2 (A) (1) of RR No. 2-98 and who render services or labor-only for a fee or under a contract for service.

The said provision does not apply with respect to members of EB since they are treated as employees and their honoraria and allowances are considered compensation. Hence, the exemption from withholding taxes for income payments P10,000 and below is not applicable.

Please be guided accordingly.

Very truly yours,

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

**Footnotes**

1. Implementing the Income Tax Provisions of Republic Act No. 10963, otherwise known as the "Tax Reform for Acceleration and Inclusion (TRAIN)" Act.

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