October 26, 2016

BIR RULING NO. 363-16

Section 32 (B) (6) (b), 1997 NIRC; BIR Ruling No. 479-2014; BIR Ruling No. 416-2012

S-Corp Philippines, Inc.
Lots 28 and 29 Efficiency Ave. cor. Innovative St.
Subic Bay Gateway Park, Subic Bay Freeport Zone

Attention: *AAA*

Gentlemen :

This refers to your letter dated July 11, 2014 requesting for a confirmatory ruling that the separation pay given to the employees of S-Corp Philippines, Inc. (S-Corp for brevity) due to redundancy of positions is exempt from income and consequently to withholding tax.

Documents submitted show that S-Corp (TIN 000-000-000-000) is a domestic corporation incorporated and registered with the Securities and Exchange Commission (SEC) under Company Reg. No. CS200501454. It was formed primarily for the purpose of engaging in the business technology services including technology outsourcing, business process outsourcing (BPO), e-commerce, and systems integration, development, installation and solutions. S-Corp received license and permit from the Subic Bay Metropolitan Authority (SBMA) and Clark Development Corporation (CDC) to operate within the Subic Freeport Zone (SBFZ) and Clark Freeport Zone (CFZ), respectively. As a registered enterprise, S-Corp is entitled to certain incentives pursuant to the provisions of Republic Act (RA) No. 7227, otherwise known as the Bases Conversion and Development Act of 1992. S-Corp is a wholly owned subsidiary of Sourcecorp BPS, Inc. (parent company) and is exclusively serving its requirements. The ultimate parent company, SourceHOV LLC and the parent company are both incorporated in Dallas, Texas, U.S.A.

The management of S-Corp had undertaken a comprehensive review of its Philippine business operations for the taxable year ended December 31, 2013. As a result, S-Corp had found out that the functions of one of its executive positions, particularly occupied by BBB

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its _____, is no longer necessary in the operation of its business. In this regard, the appropriate notice of termination of employment was properly served to the concerned employee and the Department of Labor and Employment (DOLE), and that he would be given separation benefits in accordance with the applicable provision of the Labor Code and Social Legislation. It is your opinion that the said separation pay to be given to your severed employee as a result of his separation from the service is exempt from income tax and consequently from the withholding tax.

In reply, please be informed that pursuant to Section 32 (B) (6) (b) of the Tax Code of 1997, as amended, 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 due to death, sickness or other physical disability or for any cause beyond the control of the said official or employee shall not be included in the gross income and shall be exempt from taxation under Title II of the same Tax Code. (BIR Ruling No. 416-2012 dated June 25, 2012)

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.

Submitted documents show that S-Corp has already informed the Department of Labor and Employment (DOLE-Regional Office III, Zambales Field Office) on June 20, 2014 thru an Establishment Termination Report stating that the afore-mentioned employee has been separated from employment due to termination of S-Corp's BPO contract with Scalepoint Technologies and that the said worker has been duly notified of his termination.

Accordingly, the separation pay to be received by the retrenched employee as a result of his separation from the service is exempt from income tax and consequently from the withholding tax prescribed by Section 79 of the 1997 Tax Code, as implemented by Revenue Regulations (RR) No. 2-98, as amended by RR Nos. 6-2001 and 12-2001.

Moreover, 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.

It is, however, understood that this exemption does not include the payment of the separated employee's salaries and the payment of the 13th month pay and other benefits in

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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 Nos. 479-2014 dated December 3, 2014 and 416-2012 dated June 25, 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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