October 27, 2016

BIR RULING NO. 364-16

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

International Academy of Film and Television, Inc.
One Holywood Blvd., Bigfoot I.T. and Media Park
Lapu-Lapu City, Cebu

Attention: *AAA*

Gentlemen :

This refers to your letter dated December 9, 2013, as indorsed by the OIC-Regional Director of Revenue Region No. 13, Cebu City, requesting for a ruling that the separation benefits to be received by an employee due to redundancy is exempt from income tax and consequently from withholding tax pursuant to Section 32 (B) (6) (b) of the Tax Code of 1997, as amended.

It is represented that International Academy of Film and Television, Inc. (IAFTI) is a domestic corporation duly organized and existing under the laws of the Republic of the Philippines with principal place of business located at One Holywood Blvd., Bigfoot I.T. and Media Park, Lapu-Lapu City, Cebu. It is duly registered with the Securities and Exchange Commission (SEC) under Company Reg. No. CS200425209 and was issued Taxpayer's Identification No. 000-000-000-000. IAFTI had to undergo a reorganization in order to prevent further losses and such has resulted to the termination of BBB as _____on December 13, 2013.

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

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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.

Documents submitted show that IAFTI has already submitted an Establishment Termination Report with the Department of Labor and Employment (DOLE), Region 7, Cebu City on December 10, 2013 with information that the above-stated employee has been terminated due to redundancy and that she has been duly notified of her termination.

Accordingly, the separation pay to be received by the retrenched employee as a result of her 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 excess of the Php30,000.00 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

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