**March 16, 2018**

# BIR RULING NO. 530-18

Section 32 (B) (6) (b), 1997 NIRC; BIR Ruling No. 192-2016; BIR Ruling No. 479-2014; BIR Ruling No. 416-2012

*Mygold and Jewels Shop, Inc.*
M/F, Cebu Long Se Temple Bldg.
Osmeña Blvd. cor. Jasmin St.
Capitol Site, Cebu City

Attention: *AAA*

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Gentlemen :

This refers to your letter dated September 7, 2015 requesting for confirmation that the separation benefits to be given by MyGold and Jewels Shop, Inc. (MyGold for brevity) to its employees due to closure and cessation of its business operations are exempt from income tax and consequently to withholding tax pursuant to Section 32 (B) (6) (b) of the Tax Code of 1997, as amended.

It is represented that MyGold (TIN 000-000-000-000) is a domestic corporation duly organized and existing under the laws of the Republic of the Philippines. It is duly registered with the Securities and Exchange Commission (SEC) under Company Reg. No. CS201025141 to engage in buying, selling, trading, distributing, importing, exporting and otherwise dealing in any all kinds of jewelries, jewels and other jewelry products, and in general, to carry on the business of a retailer and wholesaler of goods and merchandise.

On August 12, 2015, at least a majority of the Board of Directors and Stockholders owning at least 2/3 of the outstanding capital stock of MyGold approved the closure and cessation of operations of all its business establishments effective on September 15, 2015. In view thereof, MyGold shall terminate all of its existing employees effective September 15, 2015, and pay them a separation pay equivalent to one (1) month pay for every year of service. On August 14, 2015, MyGold served on all its existing employees, Notices of Termination of their services due to closure and cessation of operations, which shall be effective on September 15, 2015. On the same date, MyGold also filed an Establishment Employment (Termination) Report with the Department of Labor and Employment (DOLE-Region 7), Cebu City. The separated employees are hereto enumerated as

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follows:

| | Name of Worker | Address |
|---|---|---|
| 1. | AAA | _____ |
| 2. | BBB | _____ |
| 3. | CCC | _____ |
| 4. | DDD | _____ |
| 5. | EEE | _____ |
| 6. | FFF | _____ |
| 7. | GGG | _____ |
| 8. | HHH | _____ |
| 9. | III | _____ |
| 10. | JJJ | _____ |
| 11. | KKK | _____ |
| 12. | LLL | _____ |
| 13. | MMM | _____ |
| 14. | NNN | _____ |
| 15. | OOO | _____ |
| 16. | PPP | _____ |
| 17. | QQQ | _____ |
| 18. | RRR | _____ |
| 19. | SSS | _____ |
| 20. | TTT | _____ |
| 21. | UUU | _____ |
| 22. | VVV | _____ |
| 23. | WWW | _____ |
| 24. | XXX | _____ |
| 25. | YYY | _____ |
| 26. | ZZZ | _____ |
| 27. | AAAA | _____ |
| 28. | BBBB | _____ |
| 29. | CCCC | _____ |
| 30. | DDDD. | _____ |
| 31. | EEEE | _____ |
| 32. | FFFF | _____ |
| 33. | GGGG | _____ |

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| | | |
|---|---|---|
| 34. | HHHH | _____ |
| 35. | IIII | _____ |
| 36. | JJJJ | _____ |
| 37. | KKKK | _____ |
| 38. | LLLL | _____ |
| 39. | MMMM | _____ |
| 40. | NNNN | _____ |
| 41. | OOOO | _____ |
| 42. | PPPP | _____ |
| 43. | QQQQ | _____ |
| 44. | RRRR | _____ |
| 45. | SSSS | _____ |
| 46. | TTTT | _____ |
| 47. | UUUU | _____ |
| 48. | VVVV | _____ |
| 49. | WWWW | _____ |
| 50. | XXXX | _____ |
| 51. | YYYY | _____ |
| 52. | ZZZZ | _____ |
| 53. | AAAAA | _____ |
| 54. | BBBBB | _____ |

In reply, please be informed that pursuant to Section 32 (B) (6) (b) of the Tax Code of 1997, as intended, 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.

Accordingly, the separation pay to be received by the above-listed employees of Mygold as a result of its closure and cessation of its business operation is exempt from

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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 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. 192-2016 dated May 16, 2016 and BIR Ruling No. 479-2014 dated December 3, 2014)

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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