October 1, 2019

BIR RULING NO. 545-19

Sec. 32 (B) (6) (a) & (b), Tax Code; BIR Ruling No. 231-16

Mr. Manuel Q. Quimpo, Jr.

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Sir :

This refers to your letters dated May 28, 2019 and June 20, 2019 requesting for exemption from payment of tax on your retirement benefits.

As represented, you are an employee of the National Grid Corporation of the Philippines (NGCP) since June 30, 2009. On June 25, 2019, you will automatically or compulsorily be retired from NGCP upon reaching the age of sixty-five (65) years old. However, you were informed that your years of service is four (4) days short of the 10-year requirement in order for your retirement benefits to be exempt from tax.

NGCP is a privately owned corporation which officially started its operations on January 15, 2009. Republic Act (R.A.) No. 9511 gives NGCP the franchise to operate and maintain the transmission facilities of state-owned power-grid National Transmission Corporation (TransCo) of which you were also an employee before you were absorbed by NGCP. It is likewise represented that your service was uninterrupted during the transition period from TransCo to NGCP and NGCP has no retirement plan or policy providing for retirement benefits of its employees.

In reply, please be informed that Section 1 of R.A. No. 7641 provides, *viz.*:

> *"SEC. 1. Article 287 of Presidential Decree No. 442, as amended, otherwise known as the Labor Code of the Philippines, is hereby amended to read as follows:*
>
> > *ART. 287. Retirement. — Any employee may be retired upon reaching the retirement age established in the collective bargaining agreement or other applicable employment contract. In case of retirement, the employee shall be entitled to receive such retirement benefits as he may have earned under existing laws and any collective bargaining agreement and other agreements: Provided, however, That an employee's retirement benefits under any collective bargaining and other agreements shall not be*

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less than those provided herein.

In the absence of a retirement plan or agreement providing for retirement benefits of employees in the establishment, an employee upon reaching the age of sixty (60) years or more, but not beyond sixty-five (65) years which is hereby declared the compulsory retirement age, who has served at least five (5) years in the said establishment, may retire and shall be entitled to retirement pay equivalent to at least one-half (1/2) month salary for every year of service, a fraction of at least six (6) months being considered as one whole year.

Unless the parties provide for broader inclusions, the term one-half (1/2) month salary shall mean fifteen (15) days plus one-twelfth (1/12) of the 13th month pay and the cash equivalent of not more than five (5) days of service incentive leaves."

Pursuant to the above provision, in the absence of a retirement plan or other agreement providing for the retirement benefits of employees in the establishment, the retirement benefits set forth under R.A. No. 7641 shall apply, *i.e.*, at least one-half (1/2) month salary for every year of service of an employee who has reached the age of sixty (60) years or more, but not beyond sixty-five (65) years, and rendered at least five (5) years of service in the company.

Considering that NGCP has no retirement plan or policy providing for retirement benefits of its employees, and that you are more than sixty (60) years of age and have more than five (5) years in the service of NGCP, the retirement benefits provided in R.A. No. 7641 shall apply.

By express provision of Section 32 (B) (6) (a) of the Tax Code, as amended, the retirement benefits of employees who meet the age and length of service requirement under R.A. No. 7641 shall be exempt from withholding tax.

THEREFORE, this Office hereby holds that the retirement benefits to be paid by NGCP to you shall be exempt from income tax and consequently, to the withholding tax pursuant to Section 32 (B) (6) (a) of the 1997 Tax Code, as amended.

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 null and void.

Very truly yours,

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

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