April 3, 2018

BIR RULING NO. 590-18

Sec. 60 (B) 1997 Tax Code; BIR Ruling No. 076-2012

Bureau of Jail Management and Penology
National Headquarters
Juco Building, 144 Mindanao Avenue
Project 8, Quezon City

Attention: *Doris R. Dorigo, CESO IV*
Jail Chief Superintendent
Deputy Chief for Administration
Chairperson, Provident Trust Fund

Gentlemen :

This refers to your letter dated May 5, 2014 requesting Certificate of Tax Exemption on behalf of the **Bureau of Jail Management and Penology (BJMP) Provident Fund** pursuant to Section 60 (B) of the 1997 Tax Code, as amended.

It is represented that the BJMP, a line bureau under the Department of the Interior and Local Government (DILG), created the BJMP Provident Fund pursuant to Executive Order (EO) No. 641 dated July 25, 2007 and Department of Budget and Management (DBM) Budget Circular No. 2008-3 dated June 20, 2008.

It is further represented that the primary objective in creating the BJMP Provident Fund is to promote the welfare and morale, and to supplement the retirement or separation benefits of all its members (uniformed and non-uniformed). The sources of fund shall be the membership fees and capital contributions of the members, and service fees from BJMP clients. In March 2014, the BJMP Provident Fund already started collecting the membership fees and the monthly capital contributions of the members. After every end of the fiscal year, the BJMP Provident Fund can declare dividends, based on its realized earnings from the operations and investment.

In reply thereto, please be informed that Section 60 (B) of the Tax Code of 1997

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provides that:

> *"Sec. 60 (B). Exception. — The tax imposed by Title II shall not apply to employees' trust which forms part of a pension, stock bonus, or profit-sharing plan of an employer for the benefit of some or all of his employees (1) if contributions are made to the trust by such employer, or employees, or both for the purpose of distributing to such employees the earnings and principal of the fund accumulated by the trust in accordance with such plan, and (2) if under the trust instrument it is impossible, at any time prior to the satisfaction of all liabilities with respect to employees under the trust, for any part of the corpus or income to be (within the taxable year or thereafter) used for, or diverted to, purposes other than for the exclusive benefit of his employees. . ."*

The above-cited provision lays down the following requirements in order that the earnings of a retirement fund may be exempt from income tax, to wit: 1) the contributions are made to the trust by the employer, or employees, or both; 2) such contributions are made for the purpose of distributing to such employees the earnings and principal of the fund accumulated by the trust in accordance with such plan; and 3) under the trust instrument it is impossible (in the taxable year and at any time thereafter prior to the satisfaction of all liabilities with respect to employees under the trust) for any part of the corpus or income to be used for, or diverted to, purposes other than for the exclusive benefit of the employees. It is noted that the foregoing conditions are present in **BJMP Provident Fund**, thus, it is exempt from income tax. Since the final tax and the withholding thereof are embraced within the title on "Income Tax," it follows that said trust is also exempt from the coverage of the withholding tax regulations.

In the case of *Commissioner of Internal Revenue vs. Court of Appeals, G.R. No. 95022*, promulgated on March 23, 1992, the Supreme Court upheld the judgment of the respondent Court of Appeals in affirming the decision of the Court of Tax Appeals, which ruled:

> *". . . it is significant to note that the GCL Plan was qualified as exempt from income tax by the Commissioner of Internal Revenue in accordance with Republic Act (R.A.) No. 4917 approved on June 17, 1967. This law specifically provided:*
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> *"Sec. 1. Any provision of law to the contrary notwithstanding, the retirement benefits received by officials and employees of private firms, whether individual or corporate, in accordance with a reasonable private benefit plans maintained by the employer shall be exempt from all taxes and shall not be liable to attachment, levy or seizure by or under any legal or equitable process whatsoever except to pay a debt of the official or employee concerned to the private benefit plan or that arising from liability imposed in a criminal action;*

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"xxx xxx xxx

"And rightly so, by virtue of the raison de'etre behind the creation of employees' trusts. Employees' trusts or benefit plans normally provide economic assistance to employees upon occurrence of certain contingencies, particularly, old age retirement, death, sickness, or disability. It provides security against certain hazards to which members of the Plan may be exposed. It is an independent and additional source of protection for the working group. What is more, it is established for their exclusive benefit and for no other purpose.

"The tax advantage in R.A. No. 1983, Section 56(b), was conceived in order to encourage the formation and establishment of such private plans for the benefit of laborers and employees outside of the Social Security Act. Enlightening is a portion of the explanatory note to H.B. No. 6503, now R.A. 1983, reading:

"Considering that under Section 17 of the Social Security Act, all contributions collected and payments of sickness, unemployment, retirement, disability and death benefits made thereunder together with the income of the pension trust are exempt from any tax, assessment, fee, or charge, it is proposed that a similar system providing for retirement, etc. benefits for employees outside the Social Security Act be exempted from income taxes. (Congressional Record, House of Representatives, Vol. IV, Part 2, No. 57, p. 1859, May 3, 1957; cited in Commissioner of Internal Revenue vs. Visayan Electric Co., et al., G.R. No. L-22611, May 27, 1968, 23 SCRA 715).

"It is evident that tax-exemption is likewise to be enjoyed by the income of the pension trust. Otherwise, taxation of those earnings would result in a diminution of accumulated income and reduce whatever the trust beneficiaries would receive out of the trust fund. This would run afoul of the very intent of the law.

"xxx xxx xxx

"There can be no denying either that the final withholding tax is collected from income in respect of which employees' trusts are declared exempt (Sec. 56(b), now Sec. 53(b), Tax Code). The application of the withholding system to interest on bank deposits or yield from deposit substitutes is essentially to maximize and expedite the collection of income taxes by requiring its payment at the source. If an employees' trust like the GCL enjoys a tax-exempt status from income, we see no logic in withholding a certain percentage of that income which it is not supposed to pay in the first place.

"xxx xxx xxx"

In view of the foregoing, interest income derived by **BJMP Provident Fund** from its bank deposits, and yield or any monetary benefit from deposit substitutes, trust funds and similar arrangements, are exempt from income tax, and consequently, from final withholding

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tax. Provided, however, that in its investment activities, no part of the corpus or income of the Fund shall be used for or diverted to purposes other than for the exclusive benefit of the member-employees/officials or their beneficiaries. *(BIR Ruling No. 076-2012 dated February 15, 2012)*

This ruling is being issued on the basis of the foregoing facts as represented. However, if upon investigation, it will be disclosed 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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