April 10, 2018

BIR RULING NO. 615-18

RMC No. 039-14; Sec. 32 (B) (6) (a); Sec. 60 (A) & (B), Tax Code; 000-00

Philippine Phosphate Fertilizer Corporation
Leyte Industrial Development Estate
Brgy. Libertad, Isabel, Leyte

Attention: *AAA*

Gentlemen :

This refers to the application for tax exemption of the provident fund contributions of **BBB.**

Documents submitted to this Office show that BBB is a former employee of Philippine Phosphate Fertilizer Corporation (PHILPHOS) since May 14, 1990 and detailed as Fieldman at PAP Operations before he was medically terminated from the service on March 1, 2015.

In reply, please be informed that Revenue Memorandum Circular (RMC) No. 039-14 dated May 12, 2014 clarifies that as a general rule, Section 60 (A) of the Tax Code of 1997, as amended, subjects the income of any kind of property held in trust to income tax. By way of exception, Section 60 (B) exempts from income tax an employee's 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 subject to the following conditions:

1) 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) 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.

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Section 60 (B) subjects to income tax, in the year in which so distributed, any amount actually distributed to any employee or distributee to the extent that it exceeds the amount contributed by such employee or distributee.

Prescinding from the foregoing, the entire amounts of benefits paid by a pension, stock bonus or profit-sharing plan of an employer for the benefit of employees are taxable on the part of the employees in the year so distributed. This tax treatment, however, does not apply to payouts representing a return of an employee's personal contributions to the fund and to retirement benefits exempt under Section 32 (B) (6) (a) of the same Tax Code —

> ***"SEC. 32. Gross Income. —***
>
> *(A) General Definition. — x x x*
>
> *(B) Exclusions from Gross Income. — The following items shall not be included in gross income and shall be exempt from taxation under this Title:*
>
> xxx xxx xxx
>
> *(6) Retirement Benefits, Pensions, Gratuities, etc. —*
>
> *(a) Retirement benefits received under Republic Act No. 7641 and those received by officials and employees of private firms, whether individual or corporate, in accordance with a reasonable private benefit plan maintained by the employer: Provided, That the retiring official or employee has been in the service of the same employer for at least ten (10) years and is not less than fifty (50) years of age at the time of his retirement: Provided, further, That the benefits granted under this subparagraph shall be availed of by an official or employee only once. x x x"*

IN VIEW OF ALL THE FOREGOING, this Office hereby rules that the refund of BBB's personal contributions to and from PHILPHOS Provident Fund is not subject to income tax.

Likewise, the total benefits, consisting of personal contributions, the PHILPHOS counterpart contributions and the income of the Fund, to be received from the provident fund by BBB upon retirement shall be exempt from income tax pursuant to Section 32 (B) (6) (a) of the Tax Code of 1997, **provided**, that 1) PHILPHOS Provident Fund is an employee's trust duly approved by the BIR as tax exempt; 2) BBB has been in the service of the same employer for at least ten (10) years and is not less than fifty (50) years of age at the time of his retirement; and 3) the retirement benefits granted under the aforementioned provision shall be availed of by BBB only once.

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

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ruling shall be considered null and void.

Very truly yours,

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

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