May 8, 2018

BIR RULING NO. 759-18

Section 36, Revenue Regulations No. 2;
Section 2.78, Revenue Regulations No.
2-98, as amended; BIR Ruling No. 494-18;
BIR Ruling No. 599-12

Commission on Elections
Intramuros, Manila

Alliance of Concerned Teachers-Philippines
2nd Floor, Napoleon Pornasdoro Bldg.,
Mines St. cor. Dipolog St., Brgy. VASRA,
Quezon City

Attention: *Atty. Maria Norina S. Tangaro-Casingal*
Director IV — COMELEC

AAA

BBB

Gentlemen :

This refers to the April 12, 2018 letter of the Commission on Elections (COMELEC) requesting for clarification of BIR Ruling No. 494-2018 dated March 14, 2018. Also, in its April 30, 2018 letter, the Alliance of Concerned Teachers-Philippines (ACT) asserts that the honoraria and allowances of teachers who will serve in the upcoming Barangay and SK elections are exempt from income tax and withholding tax.

The aforesaid BIR Ruling was issued in response to the request of COMELEC for a legal opinion on whether or not honoraria and allowances to be received by public school teachers and other qualified citizens pursuant to Republic Act (RA) No. 10756 [1] this coming May 14, 2018 Barangay and Sangguniang Kabataan Elections are subject to withholding tax.

In said BIR Ruling, we ruled that "honoraria" and "allowances," no matter how negligible the amount, are wealth that flow into the hands of the recipient, hence, subject to income tax and, consequently, to withholding tax on compensation. However, the ACT

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disagrees with the said BIR Ruling claiming that compensation package of teachers who will serve in the upcoming Barangay and SK elections will not reach the P250,000.00 threshold for income tax.

In view of the foregoing, the following matters need to be clarified:

1. Are the honoraria and allowances of Teachers with an annual salary of P250,000.00 and below who will serve as Electoral Boards subject to tax? If yes, what should be the tax treatment?

2. Are the honoraria and allowances of Teachers with an annual salary exceeding P250,000.00 subject to tax? For example, Teacher 1 with Step Increment No. 4, earning a monthly salary of P20,963.00 or annual salary of P251,556.00. What and how should be the tax treatment of their honoraria and allowances?

3. Who is the withholding agent? Is it the Commission, or the Department of Education or the agency where the Electoral Boards belong, or the bank provider of the cash card for the said Electoral Boards?

In reply, please be informed as follows:

I. Question Nos. 1 and 2.

Section 4 of RA No. 10756 provides that:

"SECTION 4. Honoraria and Allowances. — Persons rendering election service shall be entitled to honoraria, travel allowance, and such other benefits as may be granted by the Commission.

For the first implementation of this Act, the following shall be entitled to the corresponding honoraria:

Chairperson of Electoral Boards	*P6,000.00*
Members of Electoral Boards	*P5,000.00*
DESO	*P4,000.00*
Support Staff	*P2,000.00*

All the foregoing shall be entitled to an additional travel allowance of One thousand pesos (P1,000.00) each.

Such honoraria and allowances shall be paid within fifteen (15) days from the date of election.

Such amounts shall be reviewed by the Commission in consultation with the

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DepEd every three (3) years from the effectivity of this Act, but in no case, shall the revised amounts be lower than herein provided."

Moreover, RA No. 10756 itself defines "compensation" as *per diem*, honoraria, or allowances granted to the Chairperson and members of the Board of Election Inspectors (BEI), Special Board of Election Inspectors (SBEI), Board of Election Tellers (BET), Special Board of Election Tellers (SBET), hereinafter collectively referred to as "Electoral Boards," or Department of Education Supervisor Official (DESO), and their respective support staff. Also, RA No. 10756 does not expressly provide that such honoraria and allowances are exempt from income tax.

However, under Section 5 of Republic Act (RA) No. 10963 or the "Tax Reform for Acceleration and Inclusion (TRAIN) Law," amending Section 24 (A) (2) (a) of the National Internal Revenue Code of 1997, as amended, in relation to Section 3 of Revenue Regulations (RR) No. 8-2018, [2] it is provided that individual's taxable income [3] not exceeding P250,000.00 is subject to zero percent (0%) income tax rate.

Applying the foregoing, if the annual taxable income which includes the honoraria and allowances of Teachers who will serve in the Electoral Boards does not exceed P250,000.00, such honoraria and allowances shall not be subject to income tax, and consequently to the withholding tax. Conversely, if the annual taxable income which includes the honoraria and allowances of Teachers who will serve in the Electoral Boards exceed P250,000.00, such honoraria and allowances shall be subject to income tax, and consequently, to the withholding tax on compensation.

In order to determine if the teachers and other qualified persons serving in the Electoral Boards will not be subjected to withholding tax, the COMELEC shall require said persons to execute an affidavit (attached as Annex "A") prior to the release of the honorarium/allowances.

II. Question No. 3.

The obligation to withhold is imposed upon the income-payor although the burden of tax is really upon the income-earner. Thus, the person required to withhold the applicable tax is COMELEC, it being the payor of the honoraria and allowances. To ensure the proper withholding of the applicable taxes, if any, on the honorarium and allowances, the COMELEC must coordinate with its bank provider/s so that the cash card/payment that will be given to teachers and other qualified persons shall be net of the applicable withholding tax.

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,

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

Footnotes

1. "AN ACT RENDERING ELECTION SERVICE NON-COMPULSORY FOR PUBLIC SCHOOL TEACHERS, AUTHORIZING THE APPOINTMENT OF OTHER QUALIFIED CITIZENS, PROVIDING FOR COMPENSATION AND OTHER BENEFITS."
2. Implementing the Income Tax Provisions of Republic Act No. 10963, Otherwise Known as the "Tax Reform for Acceleration and Inclusion (TRAIN)" Act.
3. The gross compensation income less nontaxable income/benefits such as but not limited to the Thirteenth (13th) month pay and other benefits (subject to limitations, see Section 6 (G) (e) of these Regulations), *de minimis* benefits, and employee's share in the SSS, GSIS, PHIC, Pag-IBIG contributions and union dues.

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