May 24, 2018

BIR RULING NO. 968-18

Sec. 36, RR 2; Sec. 2.78, RR 2-98; BIR Ruling No. 599-12

AAA

_____

_____

Dear AAA :

This refers to your letter dated April 21, 2017, as indorsed by the National Economic and Development Authority (NEDA) on August 31, 2017, requesting, in effect, for tax exemption of the monthly honorarium you receive as a senior citizen and a Barangay Kagawad of Negros Occidental.

You represented, that you are a Senior Citizen of _____, Negros Occidental and registered member of the Office of the Senior Citizens Affair (OSCA) with ID Control Number _____. You are duly elected as Barangay Kagawad receiving a monthly Honorarium in the amount of PhP_____. Your taxable income from the previous year does not exceed the poverty threshold of Negros Occidental in the amount of PhP_____. Your net take home pay, after deducting the corresponding tax, is PhP_____ only.

It is your opinion that honorarium is a token for services rendered in the Barangay and not a salary. You now request for a clarificatory ruling on whether honorarium is subject to tax.

In reply, please be informed that it is a well settled principle of taxation that income, in the broad sense, means all wealth which flows into the taxpayer other than mere return of capital (Section 36, Revenue Regulations (RR) No. 2, "The Income Tax Regulations").

Based on the above principle, it is without argument that "honoraria," no matter how negligible the amount, is wealth that flows into the hands of a barangay official, hence, subject to income tax and, consequently, to withholding tax on compensation.

In BIR Ruling No. 003-08 dated April 14, 2008, this Office had the occasion to rule that —

"the name by which the remuneration for services is designated is

Copyright 2020 CD Technologies Asia, Inc.

immaterial. Thus, salaries, wages, emoluments and honoraria, bonuses, allowances (such as transportation, representation, entertainment and the like), fringe benefits (monetary and non-monetary), fees, including director's fees, taxable pensions and retirement pay and other income of a similar nature constitute compensation income."

In connection therewith, Section 2.78 of RR No. 2-98, as amended, provides that "the withholding of tax on compensation income is a method of collecting the income tax at source upon receipt of the income. It applies to all employed individuals whether citizens or aliens, deriving income from compensation for services rendered in the Philippines. The employer is constituted as the withholding agent."

Further, Section 2.78.3 of the same regulations, defines an employee as "an individual performing services under an employer-employee relationship. The term covers all employees, including officers and employees, whether elected or appointed, of the Government of the Philippines, or any political subdivision thereof or any agency or instrumentality."

Based on the foregoing, this Office holds, as it had ruled in BIR Ruling No. 422-11 dated November 4, 2011 that ". . . that barangay officials come within the definition of 'employees' whose compensation is subject to income tax. Therefore, the honoraria, which they receive as remuneration for their services constitute income subject to income tax and, consequently, to the withholding tax on compensation pursuant to RR No. 2-98, as amended."

With regard to your request for the non-imposition of withholding tax on your honoraria starting October 2011, we regret to inform you that the same cannot be granted. This is in consonance with the principle that taxes are the lifeblood of the government, and their prompt and certain availability is an imperious need. The exercise of the power to tax emanates from necessity, for without taxes, government cannot fulfill its mandate of promoting the general welfare and well-being of the people. (*Roman Catholic Archbishop of Cebu vs. CIR*, G.R. No. L-16683 dated January 31, 1962)

For further clarification, your tax exemption incentive as a senior citizen under Republic Act (R.A.) No. 9994 or the "Expanded Senior Citizens Act of 2010" cannot be granted. Section 3 of Revenue Regulations No. 007-10 dated July 20, 2010 provides:

*"**SEC 3. Income Tax of Senior Citizens**. — Generally, qualified Senior Citizens deriving returnable income during the taxable year, whether from compensation or otherwise, are required to file their income tax returns and pay the tax as they file the return.*

However, if the returnable income of a Senior Citizen is in the nature of compensation income but he qualifies as a minimum wage earner under RA No. 9504, he shall be exempt from income tax on the said compensation income subject to the rules provided under Revenue Regulations No. 10-2008 applicable to minimum wage earners.

Copyright 2020 CD Technologies Asia, Inc.

Likewise, if the aggregate amount of gross income earned by the Senior Citizen during the taxable year does not exceed the amount of his personal exemptions (basic and additional), he shall be exempt from income tax and shall not be required to file an income tax return."

Considering that you are receiving a monthly honorarium of PhP_____ deemed as "compensation income" and which is more than the statutory minimum wage set by the Regional Tripartite Wage and Productivity Board (RTWPB)/National Wages and Productivity Commission (NWPC) per Wage Order No. RBVI-23 effective March 16, 2017 applicable to Region VI, Western Visayas which includes Negros Occidental, you are, therefore, not qualified as a "Minimum Wage Earner" under RR No. 10-2008. Such being the case, your income is subject to income tax and consequently, to 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,

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

Copyright 2020 CD Technologies Asia, Inc.