REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

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RECORDS MGT. DIVISION
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Date: August 03, 2012

REVENUE MEMORANDUM CIRCULAR NO. 39-2012

Subject: **Withholding of Income Tax on Backwages, Allowances, and Benefits Received by Employees through Garnishments of Debts or Credits Pursuant to a Labor Dispute Award.**

To: ***All Internal Revenue Officials, Employees and other Concerned***

This Circular is issued to require the withholding of taxes on backwages, allowances and benefits received by virtue of a labor dispute award through garnishments of debts due to the employers and other credits to which the employer is entitled including bank deposits, financial interests, royalties, or commissions.

It should be noted that backwages, allowances and benefits awarded in a labor dispute constitute remunerations for services that would have been performed by the employee in the year when actually received, or during the period of his dismissal from the service which was subsequently ruled to be illegal. The employee should report as income and pay the corresponding income taxes by allocating or spreading his backwages, allowances and benefits through the years from his separation up to the final decision of the court awarding the backwages. The said back wages, allowances and benefits are subject to withholding tax on wages.

However, when the judgment awarded in a labor dispute is enforced through garnishment of debts due to the employer or other credits to which the employer is entitled, the person owing such debts or having in possession or control of such credits (e.g. banks or other financial institutions) would normally release and pay the entire garnished amount to the employee. As a result, employers who are mandated to withhold taxes on wages pursuant to Section 79 of the Tax Code of 1997, as amended, as implemented by Revenue Regulations No. 2-98, as amended, cannot withhold the appropriate tax due thereon.

In this regard, the provisions of Section 78(D)(1) of the Tax Code of 1997, as amended, and Section 2.78.4(A) of Revenue Regulations No. 2-98, as amended, provide, thus:

"SEC. 78. Definitions. -As used in this Chapter:

xxx *xxx* *xxx*

(D) Employer. - The term 'employer' means the person for whom an individual performs or performed any service, of whatever nature, as the employee of such person, except that:

*(1) **If the person for whom the individual performs or performed any service does not have control of the payment of the wages for such services, the term 'employer' (except for the purpose of Subsection A) means the person having control of the payment of such wases."** (Emphasis and underscoring supplied)*

"SECTION 2.78.4. Employer - xxx xxx xxx

*(A) Person for whom the services are or were performed does not have control. - **The term "employer" also refers to the person having control of the payment of the compensation in cases where the services are or were performed for a person who does not exercise such control.** For example, where compensation, such as certain types of pensions or retirement pay, are paid by a trust and the person for whom the services were preformed has no control over the payment of such compensation, the trust is deemed to be the "employer". (Emphasis and underscoring supplied)*

Based on the foregoing provisions, persons having control of the payment of wages or salaries are authorized to deduct and withhold upon such wages or salaries the withholding tax due thereon. In this case, the garnishees are the persons owning debts due to the employer or in possession or control of credits to which the employer are entitled. Accordingly, they are in control of the payment of backwages, allowances and benefits and they are authorized to deduct and withhold the income tax due from the backwages, allowances and benefits to be paid to employees, and are respectively liable for such deductions.

In order to ensure the collection of the appropriate withholding taxes on wages, garnishees of a judgment award in a labor dispute are constituted as withholding agents with the duty of deducting the corresponding withholding tax on wages due thereon in an amount equivalent to five percent (5%) of the portion of the judgment award representing the taxable backwages, allowances and benefits.

All internal revenue officers and others concerned are hereby enjoined to give this Circular as wide a publicity as possible

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