

REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

December 2, 2010

REVENUE MEMORANDUM CIRCULAR NO. 91-2010

SUBJECT : Provides Basic Questions and Answers to Clarify on the Increase in the Statutory Minimum Wage and Other Concerns in Relation to the Income Tax Exemption Given To Minimum Wage Earner under Republic Act (RA) No. 9504, as implemented by Revenue Regulations No. 10-2008

TO : All Internal Revenue Officers and Others Concerned

For the information and guidance of all concerned this Circular is being issued in question and answer form, to clarify and address various issues encountered by employers and employees due to the effect on the increase in the Statutory Minimum Wage (SMW) approved within the year by various Regional Wages and Productivity Boards (4 regions in 2010) in coordination with the Department of Labor and Employment (DOLE) in the implementation of the aforementioned law which exempts minimum wage earner from the payment of income tax.

SCENARIO 1 (for questions 1 to 3)

From January 1, 2010 to June 30, 2010, Mrs. Sy, working eight hours a day in a Quezon City factory, is being paid basic salary of P400/day. Aside from the basic pay, she sometimes earns overtime pay. Thirteenth month pay is also provided by the employer at the end of the year. Considering that her basic daily wage of P400/day is above the “statutory minimum wage” (SMW), she was not considered a “minimum-wage earner” (MWE); thus, her employer withholds income tax from her salary from January 1 to June 30, 2010. With the issuance of the Wage Order No. NCR-15 effective July 1, 2010 increasing SMW from P383/day to 404/day (increase of P22/day), her previous salary rate of P400/day became lower than the SMW.

Q- 1: If the employer will increase her salary by P22.00/day, an amount equivalent to the increase in salary provided under Wage Order No. NCR-15, which in effect will make her daily salary to P422.00, is the employer required to withhold income tax from her salary?

A- 1: Yes, the employer shall withhold income tax from her salary considering that her daily wage is above the new SMW of P404/day.

Q- 2: What if her employer increased her salary beginning July 1 from P400/day to the mandated minimum wage only of P404/day, is the employer still required to withhold income tax from her salary from July to December?

A- 2: No, since Mrs. Sy's salary is within the minimum wage rate from July to December.

Q- 3: In the computation of the year-end adjustment, in relation to Q and A-2, will her entire compensation earned for 2010 be considered taxable?

A- 3: No, only Mrs. Sy's salary from January to June will be subjected to income tax (if it exceeded her personal and additional exemptions) since her daily salary during that period is still above the SMW. Compensation received from July to December (including overtime pay and 13th month pay) shall not be subjected to income tax since she is earning purely compensation income from only one employer and her basic daily wage rate does not exceed the SMW.

SCENARIO 2 (for question 4)

Mrs. Ching is a MWE employed at ABC Corporation located in Metro Manila, and is also earning additional income from her small “sari-sari” store business. Her employer for the past years did not provide any other benefit. In March, 2010, her salary was upgraded from P382 to P400 per day and even after the issuance of the Minimum Wage Order increasing the minimum wage to P404 per day, her salary remains at P 400.

Q- 4: What should be included in Mrs. Ching’s taxable income for 2010?

A- 4: Mrs. Ching’s taxable income shall include her entire salary earned during the year and the income from her small “sari-sari” store. She will not enjoy the exemption from income tax considering that she is earning other income aside from her salary as a MWE. Her employer is required to withhold income tax from her salary during the period.

SCENARIO 3 (for questions 5 to 7)

Gilda, is a MWE employed at XYZ Corporation, Makati City. Since the implementation of the law exempting MWE from income tax, her employer does not withhold income tax from her salary. She was given one-time commission by her employer in October only, and no other commissions earned in other months of the year.

Q- 5: Is her employer correct when it withheld income tax from her salary earned in October 2010?

A- 5: Yes, since RR No. 10-2008 provides that when the MWE receives income other than the SMW, holiday pay, overtime pay, hazard pay and night shift differential pay, which in this case is commission, he/she shall cease to be a MWE, thus, shall not enjoy the income tax exemption.

Q- 6: Is her employer correct when it withhold income tax from her minimum wage earned on November and December 2010 even though there was no commission paid in those months?

A- 6: Yes, since the employee already ceases to be a MWE.

Q- 7: Is her employer correct when it issued BIR Form 2316 indicating therein that her 2010 taxable income is inclusive of her minimum wage received?

A- 7: Yes, since RR No. 10-2008 provides that when the employee receives income other than SMW, holiday pay, overtime pay, hazard pay and night-shift differential pay, she shall be taxed on the entire income received/earned.

Q- 8: Ms. Santos has two employers and both of them pay her the SMW. Are her employers required to withhold tax from her salary?

A- 8: Yes, considering that her total daily wage from her two employers already exceeded the prevailing minimum wage. Ms. Santos ceases to be a MWE.

Q- 9: In relation to Q8, what should be the personal exemption to be considered by Ms. Santos’ employers?

A- 9: The actual personal exemption of P50,000 and additional exemption of P25,000 for each qualified dependent child, not exceeding four (4) children, if applicable, as stated in Ms. Santos’ Application for Registration duly filed with the BIR, shall be considered by the main employer in the computation of withholding tax. The other employer shall neither consider any personal nor additional exemptions. Both employers must require the employee to accomplish the

aforementioned “Application for Registration (BIR Form 1902)” within ten (10) days from date of employment, in order for them to determine the appropriate exemption to be applied. In case it is disclosed in the application form that the employee has other employment/s, it shall be their responsibility to require the employee to also submit a photocopy of submitted BIR Form 1902 to the other employer.

Q- 10: A MWE was promoted during the latter part of the year (e.g., December) and was given a raise in salary which is beyond the minimum wage. Is the entire salaries earned during the calendar year taxable? How can the employer withhold the required tax if the year-end adjustment was already made before the effectivity of the promotion?

A- 10: No, the MWE shall still be exempted from income tax during the time that her salary does not exceed the SMW. He shall only be subjected to tax for the month of December if his salary exceeds his personal and additional exemptions. The employer should amend the year-end adjustment to reflect the adjustment in salaries of the promoted employee.

Q-11: Can the employer of the MWE withhold tax from the salary of the MWE if the employer has knowledge of the MWE’s other source of income which are beyond the employer’s control?

A-11: No, since the law only requires employers to withhold the corresponding income tax from income payments wherein they have control. However, the employee is mandated to file an Income Tax Return to reflect the income from all sources (employment, business or practice of profession), and pay the tax due, if any.

Q-12: How can employers recover over-remitted taxes as a result of the implementation of RA 9504?

A-12: The over-remitted taxes can be applied as payments in the immediately succeeding months’ remittable withheld taxes pursuant to the provision of Section 79 (C) (1) of the Tax Code.

Q-13: Mr. D, a government employee of DPWH-Manila, receives P11,460.00 (P382/day x 30 days) as monthly regular compensation. However, on June 15, 2010, he resigned and was subsequently employed in XYZ Corporation-Makati City on July 1, 2010, with a monthly basic salary of P15,000 per month (above the SMW in NCR). The BIR Form 2316 he submitted to his new employer did not reflect any tax withheld from the previous employer. In the final year-end adjustment to be conducted by the new employer, can the gross income from his previous employment be included as part of gross income for the year and the taxable income shall only be from July-December?

A-13: Being a MWE from January to June 15, 2010 (previous employer), his income for that period shall be exempted from income tax. Only his compensation income from July to December shall be subjected to withholding tax by the present employer (if it exceeded his personal and additional exemptions) since her daily salary during that period is above the SMW. In the conduct of year-end adjustment to ensure tax due equals tax withheld by the current employer, the gross income from his previous employment shall be included as part of gross income for the year and the taxable income shall only be from July-December.

Q-14: Mr. A is an employee of the Philippine National Police, assigned in NCR from January 1, 2010 to April 30, 2010, receiving a salary of P382/day. He was transferred to PNP-Laguna on May 1, 2010 with the same rate. Is PNP-Laguna correct in subjecting Mr. A’s salary to withholding tax?

A-14: Yes, since his daily wage rate is above the prevailing minimum wage in that region (Laguna).

Q-15: In relation to Q & A 14, is the entire income earned by Mr. A taxable?

A-15: No, only that income earned from PNP-Laguna shall be subject to income tax.

Q-16: Are employees receiving the SMW but are also receiving commissions from their employers amounting to P500, still considered exempt from income tax?

A-16: No, since they have additional income other than those expressly stated to be exempt from income tax. Under RA No. 9504, the income of minimum wage earner that are exempt from income tax are the SMW, holiday pay, hazard pay, night-shift differential and overtime pay.

Q-17: Mr. E was employed on February 1, 2010 with a monthly basic salary equivalent to the SMW. Aside from that, he also received from his employer (a private entity) commission and fixed monthly transportation allowance. Can Mr. E still enjoy the tax exemption provided under RA 9504? Is the entire payment made by his employer subject to withholding tax?

A-17: Mr. E can no longer enjoy the income tax exemption of a minimum wage earner. Since he is receiving commission and fixed monthly transportation allowance, the entire payments being made by the employer, including the SMW, shall be subjected to withholding tax.

All revenue officials and employees are enjoined to give this Circular a wide publicity as possible.

(Original Signed)
KIM S. JACINTO-HENARES
Commissioner of Internal Revenue