

REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE
Quezon City

June 13, 2011

REVENUE MEMORANDUM ORDER No. 26-2011

SUBJECT : Guidelines in the tax treatment of Separation Benefits received by officials and employees on account of their separation from employment due to death, sickness or other physical disability and the issuance of Certificate of Tax Exemption from income tax and from the withholding tax.

TO : All Internal Revenue Officials and Others Concerned

I. BACKGROUND

Pursuant to Section 32 (B)(6)(b) of the Tax Code of 1997, as amended, any amount received by an official or employee or by his heirs from the employer as a consequence of separation of such official or employee from the service of the employer because of death, sickness or other physical disability or for any cause beyond the control of the said official or employee shall be excluded from the gross income and shall be exempt from income tax regardless of age or length of service.

Section 32(B)(6)(b) requires the presence of two (2) conditions in order that the employee benefits may be granted tax exemption, namely (1) the official or employee is separated from the service of the employer due to death, sickness or other physical disability, or for any cause beyond the control of the said official or employee; and (2) the official or employee or his heirs receives any amount from the employer on account of such separation.

It has come to the attention of this Office that requests for rulings of this nature are usually secured by employees of private entities who are separated from employment. The employee submits to his employer the issued ruling to prove that his separation benefits are exempt from income tax and that no withholding taxes should be deducted therefrom. Without a ruling, the employer deducts withholding taxes and remits the same to the BIR to avoid the possibility of being assessed. To the detriment of the employee, the recovery of the withheld taxes can only be made through tax refund.

Thus, this Order is being issued to devolve to the Revenue Regions the processing of requests for rulings confirming that the amounts received by employee or by his heirs from the employer because of death, sickness or other physical disability are tax exempt. Provided, however, that instead of a confirmatory ruling, a Certificate of Tax Exemption shall be issued by the Regional Director. Provided, further, that the processing of requests for rulings providing that amounts received by an official or employee from his

employer for any other causes beyond the control of the said official or employee are tax exempt, shall continue to be processed at the Law Division in the National Office.

II. DOCUMENTARY REQUIREMENTS

In order to facilitate the processing of requests for tax exemption of separation benefits received by officials/employees or his/her heirs as a result of their separation from employment due to death, sickness or other physical disability, regardless of age and length of service, the following documents are required to be submitted to the Revenue District Office (RDO) where the employer is originally registered, to support such request:

- 1) Letter request from the Official/Employee (or by his heirs) or the Employer for the exemption of separation benefits from income tax and withholding tax;
- 2) Death – Certified true copy of Death Certificate;
- 3) Sickness/Physical Disability
 - a) Sworn Affidavits to be executed by the employer's physician or the employee's attending physician and the Head of Office/Entity or his representative, attesting to the fact that the retiring/separated official or employee is suffering from a serious illness or physical disability that affects the performance of his duties and endangers his life, if he continues working;
 - b) Clinical Record of the official/employee concerned indicating the history of illness/physical disability and initial diagnosis; and
 - c) Laboratory examination confirming the illness suffered by such official/employee or medical certificate confirming the physical disability of the official/employee.

The Bureau shall not be precluded from requiring additional documents to prove entitlement to tax exemption under the prevailing circumstances.

A Checklist of Requirements which will be provided to the requesting Official/Employee or Employer is hereby attached as **Annex “A”**.

III. PROCESSING OF REQUEST FOR ISSUANCE OF CERTIFICATE OF TAX EXEMPTION OF SEPARATION BENEFITS RECEIVED AS A RESULT OF SEPARATION FROM EMPLOYMENT DUE TO DEATH, SICKNESS OR OTHER PHYSICAL DISABILITY OF THE EMPLOYEE

A) APPLICATION AND PRE-EVALUATION BY THE REVENUE DISTRICT OFFICE

- 1) The requesting Official/Employee (or by his heirs) who was separated from employment due to death, sickness or other physical disability, regardless of age and length of service, or requesting Employer, shall be required to submit all the documentary requirements for the processing of the Certificate of Exemption with the RDO where the Employer is originally registered.
- 2) The Officer of the Day in the concerned RDO shall pre-evaluate the application if it satisfactorily complies with the herein prescribed guidelines using the Action Sheet-Checklist of Requirements (**Annex “B”**).
 - a) If found complete, he shall then forward the application together with the pertinent supporting documents to the Revenue District Officer who, in turn, shall thoroughly evaluate the same. Otherwise, a Notice to Comply (**Annex “C”**) shall be issued to the requesting Official/Employee/Heirs or Employer.
 - b) If after the lapse of the period given in the Notice to Comply, the applicant has not submitted the documents required, a Notice of Archiving (**Annex “D”**) shall be issued.
- 3) The Revenue District Officer will now prepare an endorsement letter addressed to the Chief, Legal Division of the Revenue Region having jurisdiction over the RDO. The said pro-forma endorsement is attached hereto as **Annex “E”**.
- 4) The Revenue District Officer, within five (5) days from receipt of the application, shall then transmit the complete set of documentary requirements to the Legal Division for evaluation proper and preparation of appropriate action.

B) EVALUATION AND PREPARATION OF CERTIFICATES OF TAX EXEMPTION BY LEGAL DIVISION

- 1) Upon receipt by the Legal Division Chief of the Regional Office of the requests/applications for tax exemption, he shall assign the same to an action officer for evaluation and drafting of the appropriate action.
- 2) The Certificate of Tax Exemption to be issued shall contain the applicable tax exemptions to which the requesting Official/Employee/Heirs is entitled to, hereto attached as **Annex “F”**.

C) REVIEW, APPROVAL OF TAX EXEMPTIONS AND ISSUANCE OF CERTIFICATES BY THE REGIONAL DIRECTOR

- 1) The applications for tax exemption shall be re-evaluated and approved by the Regional Director.
- 2) Only applications for tax exemption which strictly comply with the legal and documentary requirements prescribed herein shall be approved by the Regional Director.

D) NUMBERING AND RELEASING OF TAX CERTIFICATES OR TAX RULINGS

- 1) Immediately after the Certificate of Tax Exemption has been approved and signed by the Regional Director, the same shall be numbered in the upper right portion of the Certificate of Tax Exemption.
- 2) The Certificate of Tax Exemption shall adopt the following numbering code:

“BIR CTE No. RR 01-RDO 001-10-00001” where

 - a) RR 01 stands for the issuing Revenue Region;
 - b) RDO 001 refers to the RDO No. where the employer is registered;
 - c) 10 represents the calendar year 2010; and
 - d) 00001 indicates that this is the first Certificate of Tax Exemption issued for the year in the Regional Office concerned.
- 3) The Certificates of Tax Exemption shall be numbered sequentially as they are issued.

- 4) The Legal Division of the Revenue Region shall prepare the Certificate of Tax Exemption in three (3) copies to be issued and distributed as follows:

Original	-	taxpayer's copy
Duplicate copy	-	to be attached to the docket
TriPLICATE copy	-	to the ACIR, Legal Service

- a) The Legal Division must ensure that the original copy of the signed Certificates of Tax Exemption bear the official dry seal of the Bureau before the release to taxpayers to avoid invalidation of the same.
- b) The Legal Division shall maintain a permanent record book where the Certificate of Tax Exemption Number, Applicant/Requesting Taxpayer, and the Date of Issue shall be sequentially written.

IV. TAX EXEMPTIONS AND INCENTIVES OF SEPARATION BENEFITS

The separation benefits received by an official or employee or by his heirs from the employer as a consequence of separation of such official or employee from the service of the employer because of death, sickness or other physical disability, regardless of age and length of service, shall have the following tax implications:

1) INCOME TAX

The separation benefits shall not be included in gross income of the employee and shall be exempt from taxation pursuant to Section 32(B)(6)(b) of the 1997 Tax Code, as amended.

However, other income received prior to separation shall be subject to tax pursuant to Section 24 of the same Code.

2) WITHHOLDING TAX

The separation benefits shall be exempt from withholding tax as prescribed by Section 79 of the 1997 Tax Code, as implemented by Revenue Regulations No. 2-98, as amended by Revenue Regulations No. 6-2001 and 12-2001.

Accordingly, no withholding taxes shall be deducted from the separation benefits and the entire amount thereof shall be given to the entitled separated employee.

V. TRANSITORY PROVISION

All applications for tax exemption filed and are still pending with the Law Division in the National Office prior to the issuance of this RMO shall be acted upon therein accordingly.

VI. REPEALING CLAUSE

All other issuances and/or portions thereof that are inconsistent herewith are hereby repealed accordingly.

VII. EFFECTIVITY

This Order shall take effect immediately.

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

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