

**[BIR REVENUE MEMORANDUM ORDER NO, 26-11,
June 13, 2011]**

**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**

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