



Republic of the Philippines
DEPARTMENT OF FINANCE

Roxas Boulevard Corner Pablo Ocampo, Sr. Street
Manila 1004

DOF OPINION NO. 002.2023

MR. ALVINNE REX D. ABARICIA, PMP, CSCPPM, CWNP

Compulsory/Sole heir

Block 10B #08-558, Bedok South Avenue 2,
Singapore 461010

**SUBJECT: REQUEST FOR REVIEW OF BUREAU OF INTERNAL
REVENUE (BIR) RULING NO. M-095-2023**

Dear **Mr. Abaricia**:

This resolves the Request for Review filed before this Office requesting that BIR Ruling No. M-095-2023¹ subjecting the Total Administrative Disability (TAD) Pension Benefits received by a surviving spouse of a veteran/member of the Armed Forces of the Philippines (AFP), and thus, have formed part of her estate when she died to Estate Tax be reversed and set aside, and another opinion be issued exempting the same thereof.

This Office notes that you received the subject BIR Ruling on 04 May 2023, and sent thru electronic mail (e-mail) a request for review addressed to the Department of Finance (DOF) Legal Services Group (LSG) on 19 May 2023.

Pursuant to DOF Department Order (DO) No. 007-02,² a taxpayer who receives an adverse ruling from the Commissioner of Internal Revenue (CIR) may, within thirty (30) days from the date of receipt of such ruling, seek its review by the Secretary of Finance (SOF).³ Since the BIR Ruling was received on 04 May 2023, you have until 03 June 2023 to file the subject request for review, hence it was filed within the prescribed period and was given due consideration accordingly.

¹ Dated 25 April 2023.

² Providing for the Implementing Rules of the First Paragraph of Section 4 of the National Internal Revenue Code of 1997, repealing for this purpose Department Order No. 005-99 and Revenue Administrative Order No. 1-99.

³ Section 3 of DO No. 007-02.

Merits of the Case

In your Request for Review of the assailed BIR Ruling, you cited Section 4 of Republic Act (R.A.) No. 9040, otherwise known as "*An Act Exempting from Tax Certain Allowances and Benefits Granted to the Members of the Armed Forces of the Philippines*", to argue that the TAD pension benefits remained exempt even from estate tax due to him as sole heir of the deceased surviving spouse, thus:

SEC. 4. Retirement Benefits, Pensions, Death and Disability Benefits. — Benefits received from and enjoyed under the Armed Forces of the Philippines Retirement and Separation Benefits System (AFP-RSBS) in accordance with the provisions of Presidential Decree No. 361, as amended by Presidential Decree No. 1909, as well as death and disability benefits enjoyed by AFP personnel as provided by law, shall likewise be exempted from any tax of whatever nature.

The BIR Ruling, on the other hand, had capped the exemption up to the level of the late surviving spouse's receipt of the TAD pension benefits ruling that Section 8 of R.A. No. 7696⁴ provides in part that "any pension granted a beneficiary under this Act shall not, wholly or partly, be subject to income tax, attachment, execution, forfeiture, or retention under any legal or equitable proceedings, except for membership dues to the Veterans Federation of the Philippines".

In fine, the BIR is of the opinion that the exemption granted under Section 8 of RA No. 7696 refers to exemption from income tax, and not necessarily from estate tax. It is for this reason that the BIR found it important to distinguish one from the other. Thus, income tax is defined as a tax on a person's income, emoluments, profits arising from property, practice of profession, conduct of trade or business or on the pertinent items of gross income specified in the Tax Code of 1997 (Tax Code), as amended, less the deductions if any, authorized for such types of income, by the Tax Code, as amended, or other special laws.⁵

Estate tax refers to tax on the right of the deceased person to transmit his/her estate to his/her lawful heirs and beneficiaries at the time of death and on certain transfers, which are made by law as equivalent to testamentary

⁴ An Act Amending Certain Sections of Republic Act No. 6948 otherwise known as "An Act Standardizing and Upgrading the Benefits for Military Veterans and their Dependents".

⁵ From BIR's official website, <https://www.bir.gov.ph/index.php/tax-information/income-tax.html>, last accessed on 09 August 2023.

disposition. It is not a tax on property; it is a tax imposed on the privilege of transmitting property upon the death of the owner.⁶

The Ruling

At the outset, this Office believes that when it comes to income tax, the provision is clear that TAD Pension Benefits are exempt from its coverage as Section 8 of R.A. No. 7696 expressly provides for its exemption. We now resolve the issue on the exemption from estate tax in purview of Section 4 of R.A. No. 9040.

This Office notes that there were veterans who died before TAD pension benefits could be paid to them, and thus were released directly to their surviving spouses or beneficiaries, as in the instant case. Thus, when your veteran father died on 09 August 2009,⁷ the TAD pension benefits were remitted directly to his surviving spouse/beneficiary sometime in September 2016.⁸

At any rate, this Office agrees with the BIR that the release of the TAD pension benefits to the surviving spouse partakes the nature of an income pursuant to Sec. 32(A)(10) of the NIRC, as amended:

SEC. 32. Gross Income. --

(A) General Definition. – Except when otherwise provided in this Title, gross income means all income derived from whatever source, including (but not limited to) the following items:

- (1) Compensation for services in whatever form paid, including, but not limited to fees, salaries, wages, commissions, and similar items;
- (2) Gross income derived from the conduct of trade or business or the exercise of a profession;
- (3) Gains derived from dealings in property;
- (4) Interests;
- (5) Rents;
- (6) Royalties;

⁶ From BIR's official website, <https://www.bir.gov.ph/index.php/tax-information/estate-tax.html#:~:text=Estate%20Tax%20is%20a%20tax,not%20a%20tax%20on%20property>, last accessed on 09 August 2023.

⁷ As alleged in the BIR Ruling No. M-095-2023.

⁸ Mr. Abaricia claimed he received a letter dated 23 September 2023 from Philippine Veterans Affairs Office (PVAO) informing that the unpaid TAD pension benefits was remitted in his mother's account as the surviving spouse of the veteran.

- (7) Dividends;
- (8) Annuities;
- (9) Prizes and winnings;
- (10) Pensions;** and
- (11) Partner's distributive share from the net income of the general professional partnership.

Applying the foregoing provision, the amount of Php314,500.00 released to the surviving spouse represents income that under Section 8 of R.A. No. 7696 is expressly exempt by law. However, the case is different in terms of estate tax since what is being subject to tax is not the right of the person to receive such income, but the right of the person to transmit the property to their respective heirs at the time of death.

Relative thereto, Section 84 of the NIRC, as amended, provides that there shall be levied, assessed, collected and paid upon the transfer of the net estate as determined in accordance with Sections 85 and 86 of every decedent, whether resident or nonresident of the Philippines, a tax at the rate of six percent (6%) based on the value of such net estate.

In the instant case, the TAD pension benefits were already remitted to the surviving spouse sometime in September 2016, and upon the spouse's death on October 2016, the right to transfer her property to the lone heir, Mr. Abaricia accrued, and it is such right which is being subject to estate tax at the rate specifically provided above.

Further, your reliance in claiming that TAD pension benefits that had formed part of your mother's gross estate should likewise be exempt from estate tax pursuant to Section 4 of R.A. No. 9040⁹ similarly lacks merit. This Office believes that the tax exemption privileges under Section 4 of R.A. No. 9040 apply to the receipt of the TAD pension benefits either by the veteran or by his surviving spouse as a beneficiary thereof. This Office believes, however, that said tax exemption privileges do not anymore apply in subsequent transfers, i.e., as inheritance.

Taking into consideration the arguments above, this Office finds the BIR's position more in accord with legislative intent to subject the right to transfer


⁹ SEC. 4. Retirement Benefits, Pensions, Death and Disability Benefits. — Benefits received from and enjoyed under the Armed Forces of the Philippines Retirement and Separation Benefits System (AFP-RSBS) in accordance with the provisions of Presidential Decree No. 361, as amended by Presidential Decree No. 1909, as well as death and disability benefits enjoyed by AFP personnel as provided by law, shall likewise be exempted from any tax of whatever nature.

properties to heirs to tax in accordance with existing tax laws. Thus, we find no reason to reverse and set aside BIR Ruling M-095-2023.

In view of the foregoing, this Office resolves to deny the prayer in the Request for Review and affirm the decision of the CIR in BIR Ruling No. M-095-2023, subjecting the TAD Pension Benefits that have formed part of the decedent's gross estate to estate tax.

Thank you.

Very truly yours,


BENJAMIN E. DIOKNO
Secretary of Finance
SEP 21 2023



CC: **HON. ROMEO D. LUMAGUI, JR.**
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