

Republic of the Philippines  
Department of Finance  
BUREAU OF INTERNAL REVENUE  
M a n i l a

March 25, 1968

**REVENUE REGULATIONS No. 1-68**

SUBJECT: Private Retirement Benefit Plan Regulations

**To all internal revenue officers and others concerned:**

Pursuant to Section 79 (B) of the Revised Administrative Code, the following regulations are hereby promulgated prescribing the terms and conditions under which a qualified employee benefit plan may avail of tax exemption provided by Republic Act No. 4917 and the application of the other provisions of said law. These regulations shall be known as the "Private Retirement Benefit Plan Regulations."

SEC. 1. **Scope.** Republic Act No. 4917 exempts from all taxes the retirement benefits received by officials and employees of private firms under a reasonable private benefit plan maintained by the employer and all amounts received by such officials and employees from their employers on account of involuntary separation, such as death, sickness, or physical disability, or any other cause beyond the control of said officials and employees.

In order to avail of the exemption, with respect to retirement benefits, the following requirements must be met:

- (a) The plan must be reasonable;
- (b) The retiring official or employee must have been in the service of the same employer for at least 10 years and is not less than 50 years of age at the time of retirement; and
- (c) The retiring official or employee shall not have previously availed of the privilege under a retirement benefit plan of the same or another employer.

A reasonable benefit plan may consist of a pension, gratuity, stock bonus or profit-sharing plan maintained by an employer for the benefit of some or all of his officials and employees, wherein contributions are made by such employer or officials and employees, or both. It may be contributory or non-contributory on the part of the officials or employees.

**SEC. 2. Requisites of a reasonable retirement benefit plan:**

(a) **Written program.** – It must be a definite written program setting forth all provisions essential for qualification;

(b) **Permanency.** – It must be a permanent and continuing program unless sooner terminated by virtue of a valid business reason;

(c) **Coverage.** – (1) **Percentage basis.** – It must cover at least 70% of all officials and employees. If the plan provides eligibility requirements and at least 70% of all officials and employees meet the eligibility requirements, at least 80% of those eligible must be covered. Under this basis, the following employees are excluded:

(a) Employees who have been employed less than minimum length of time stated in the plan;

(b) Employees who work 20 hours a week or less; and

(c) Seasonal employees who work 5 months a year or less.

(2) **Classification basis.** – If the employer does not wish to cover greater portion of his employees, he may set up a plan under a classification set-up prescribed by him and limit coverage to employees in a certain classification, over a prescribed age, employed for a stated number of years, etc., provided that the coverage of the plan must not discriminate in favor of officers, shareholders, supervisors, or highly compensated employees. A classification shall not be considered discriminatory merely because it is limited to salaried or clerical employees. Neither shall a plan be considered discriminatory merely because the contributions or benefits of or on behalf of the employees under the plan bear a uniform relationship to the total compensation, or the basic or regular rate of compensation, and the employees' length of service.

(d) **Contribution.** – The employer, or officials and employees, or both, shall contribute to a trust fund for the purpose of distributing to the officials and employees or their beneficiaries, the corpus and income of the fund accumulated by the trust in accordance with the plan.

(e) **Impossibility of diversion.** – The corpus or income of the trust fund must at no time be used for, or diverted to, any purpose other than for the exclusive benefit of the said officials and employees.

(f) **Non-discriminatory.** – There must be no discrimination in contributions or benefits in favor of officials and employees who are officers, shareholders, supervisors, or highly compensated.

(g) **Non-forfeitures.** – It must provide for non-forfeitable rights, that is upon the termination of the plan or upon the complete discontinuance of contributions under the plan, the rights of each official or employee to benefits accrued to the date of such termination or discontinuance, to the extent then funded, or the rights of each employee to the amounts credited to his account at such time are non-forfeitable.

(h) **Forfeitures.** – The plan must expressly provide that forfeitures arising from severance of employment, death or for any other reason, must not be applied to increase the benefits any employee would otherwise receive under the plan at any time prior to the termination of the plan or the complete discontinuance of employer contributions thereunder. The amounts so forfeited must be used as soon as possible to reduce the employer's contributions under the plan.

(i) **Trust.** – The retirement fund shall be administered by a trust.

**SEC. 3. Involuntary separation.** – All amounts received by officials and employees, or their heirs upon separation from the service of the employer by reason of death, sickness or other physical disability or for any cause beyond the control of said officials or employees are also exempt from all taxes and from attachment, garnishment, levy or seizure except to pay a debt of the official or employees concerned arising from liability imposed in a criminal action.

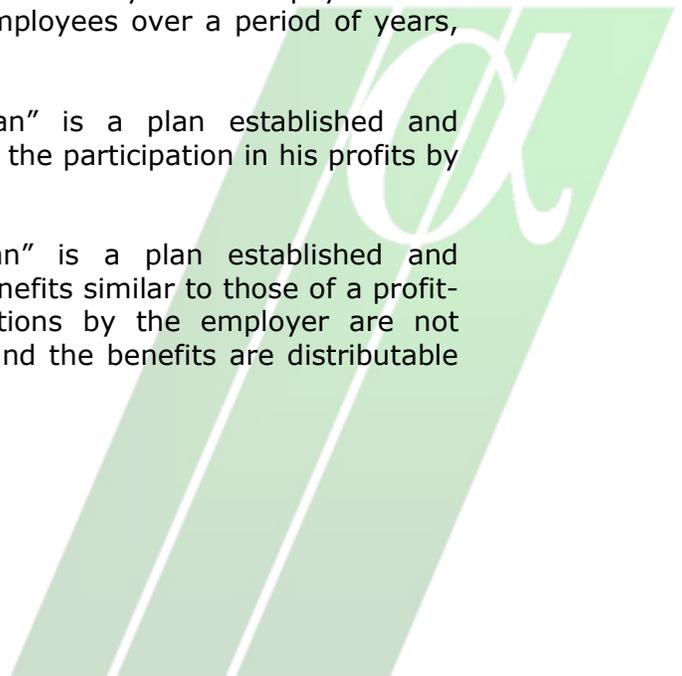
In contradistinction to the qualification for exemption under a qualified plan, the exemption under an involuntary separation is not qualified as to the length of service and age of the official or employee. Therefore, amounts received by reason of involuntary separation remains exempt from tax even if the official or employee at the time of separation had less than 10 years of service and/or is below 50 years in age.

**SEC. 4. Definition or meaning of words, terms, and phrases.**

(a) The term "Pension Plan" is a Plan established and maintained by an employer primarily to provide systematically for the payment of definitely determinable benefits to his employees over a period of years, usually for life, after retirement.

(b) The term "Profit-Sharing plan" is a plan established and maintained by an employer to provide for the participation in his profits by his employees or their beneficiaries.

(c) The term "Stock Bonus Plan" is a plan established and maintained by an employer to provide benefits similar to those of a profit-sharing plan, except that the contributions by the employer are not necessarily dependent upon the profits and the benefits are distributable in stock of the employer company.



(d) The term "Gratuity Plan" is a plan established and maintained by an employer to provide for the payment of definitely determined benefits to his employees after retirement. This plan is similar to a pension plan, except that the benefits are not payable during a certain period or life of the retiree but totally and immediately after retirement.

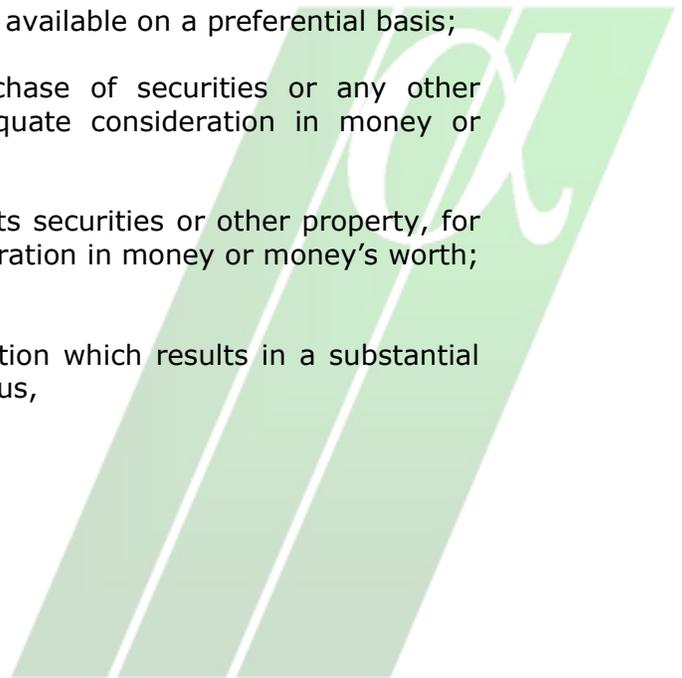
(e) The phrase "at no time shall any part of the corpus or income of the fund be used for, or diverted to, any purpose other than for the exclusive benefit of the said officials and employees" includes all objects or aims not solely designed for the proper satisfaction of all liabilities to employees covered by the trust.

(f) The phrase "for any cause beyond the control of said official and employee" in effect connotes involuntariness on the part of the official and employee. The separation from the service of the official or employee must not be asked for or initiated by him. The separation was not of his own making, like death, sickness or other physical disability.

Whether or not a separation is beyond the control of the official or employee, being essentially a question of fact, shall be determined on the basis of the prevailing facts and circumstances.

**SEC. 5. Investment.** – No specific limitations are provided in the law with respect to investments which may be made by the trustees of an employees trust. Generally, the fund may be used by the trustees to purchase any investments permitted by the trust agreement. However, the exemption of the trust income under Section 56 (b) of the National Internal Revenue Code, as amended, may be denied if the trust –

- (a) lends any part of its income or corpus without adequate security and a reasonable rate of interest;
- (b) pays any compensation in excess a reasonable allowance for salaries or other compensation for personal services actually rendered;
- (c) makes any part of its services available on a preferential basis;
- (d) makes any substantial purchase of securities or any other property for more than adequate consideration in money or money's worth;
- (e) sells any substantial part of its securities or other property, for less than an adequate consideration in money or money's worth; or
- (f) engages in any other transaction which results in a substantial diversion of its income or corpus,



to or from the employer or, if the employer is an individual, to or from a member of the family of the employer, or to or from a corporation controlled by the employer through the ownership, directly or indirectly, of 50% or more of the total combined voting power of all classes of stock entitled to vote or 50% or more of the total value of shares of all classes of stock of the corporation.

**SEC. 6. Determination of qualification.** – Before availing of the privileges afforded by pension, gratuity, profit-sharing, or stock bonus plans, employers must secure a prior determination of the qualification of the plan by submitting to the Commissioner of Internal Revenue BIR Form No. 17.60 duly filled out and accompanied by the written program constituting the plan and the trust instrument.

**SEC. 7. Coverage of the exemption.** – Republic Act No. 4917 took effect on June 17, 1967. Employees retiring after this date under a benefit plan established prior to said date but which qualifies as herein provided shall be entitled to exemption. Such plan must, however, be submitted for determination of its qualification as provided for in the preceding section.

Exemption shall also apply to employees involuntarily separated from services of their employers after said date.

**SECTION 8. Effectivity.** – These regulations shall take effect upon publication in the Official Gazette.

(Sgd.) EDUARDO Z. ROMUALDEZ  
*Secretary of Finance*

Recommended by:

(Sgd.) MISAEL P. VERA  
*Commissioner of Internal Revenue*

