

**SORIANO, Pedro C.**

**Re: Opinion; Administrative Order No. 100**

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## **RESOLUTION NO. 001938**

Pedro C. Soriano, Head Civil Service Commission Field Officer, Cagayan-Batanes Field Office, this Commission, requests opinion on the following issues:

"1. The Bureau of Internal Revenue came up with a directive taxing the monetization of leave credits in excess of ten days. The contention of personnel officers is that when an employee resigns or retires and he gets his terminal leave benefit, said benefit is not taxable. How come that monetization of leave credits is taxable.

"2. The definition of ORIGINAL appointment pursuant to MC 15, s. 1999 'refers to the initial entry into the career and non-career service.' When a casual employee is appointed to a regular plantilla position without any gap in the service, will the nature of appointment be still ORIGINAL? Or is this now a case of reappointment? This came about in light of the implementing guidelines of AO 100 where original appointments are covered by the AO.

"3. In line with our placement program, when a qualified eligible (non-government employee) is suddenly available to a position with an incumbent who is temporary, can the Commission disapproved/recall the appointment of the temporary employee and certify the said eligible to the position in light of the provision of AO 100? An existing employee is merely replaced by a qualified one and thus intent of AO 100 is not violated."

Squarely in point in the resolution of the first issue is Bureau of Internal Revenue (BIR) Revenue Regulation No. 2-98, particularly Section 2.57-1(7) thereof, which reads, as follows:

"(7) Vacation and Sick Leave Allowances. Amounts of vacation allowances or sick leave credits which are to be paid to an employee constitute compensation. Thus, the salary of an employee on vacation or on sick leave, which are paid notwithstanding his absence from work, constitutes compensation. However, the monetized value of unutilized vacation leave credits of ten (10) days or less which were paid to the employee during the year are not subject to income tax and to the withholding tax." (underscoring supplied) It is clear from the aforecited provision that the value of monetized leave credits is exempt only up to a maximum of ten (10) days. The excess of such ten (10) days shall already be subject to income and withholding taxes.

However, it is worthy to note that the Commission, in CSC Resolution No. 99-1124 dated May 28, 1999, has requested the BIR through then Commissioner Beethoven Rualo, to reconsider the abovesited Revenue Regulation to the effect that the

value of monetized leave credits up to thirty (30) days or even up to 50% of all earned leave credits should be exempted from the payment of tax. Pertinent portions of said resolution read, as follows:

"WHEREAS, the intent of the Commission when the said policy was institutionalized in 1991 was to have the money value of such leave credits be tax exempt;

"WHEREAS, it is the same position that the Commission is espousing with the adoption of an increase in the maximum number of days with the adoption of an increase in the maximum number of days that can be monetized from ten (10) to thirty (30) and even up to 50% of all earned leave credits in certain meritorious cases, (such as, when the employee or an immediate member of his family is undergoing medical treatment for serious illness);

"WHEREAS, by oversight and later in deference to the BIR, the specific provision on monetized leave credits being tax exempt was not carried in its later administrative issuances;

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"WHEREAS, in light of the foregoing, this Commission is of the opinion that monetized leaves, regardless of the number of days monetized must be tax exempt;

"WHEREFORE, this Commission, through this Resolution, respectfully requests the Bureau of Internal Revenue (BIR), through Commissioner Beethoven Rualo, to reconsider said BIR policy."

Considering that the BIR has not yet responded to the request for reconsideration of the Commission, the present BIR Revenue Regulation 2-98 remains effective and should be complied with in the matter of taxability of the monetized leave credits.

Anent the second issue, the applicable provision of Administrative Order No. 100 dated December 1, 1999 is:

"Section 2. Prohibition. The hiring of new personnel whether on a permanent, temporary, substitute, co-terminous, contractual or casual status, is hereby suspended except for key positions, teaching, and uniformed personnel in the Philippine National Police, Bureau of Fire Protection and Bureau of Jail Management and Penology."

The foregoing should be read together with Item 3.0 of National Budget Circular No. 466 dated December 17, 1999 (Guidelines on the Implementation of Administrative Order No. 100) which specifically provides, as follows:

"3.0 PROHIBITION AND EXEMPTIONS

"3.1. General Prohibition. The hiring of new personnel whether on a permanent, temporary, substitute, co-terminous, contractual or casual status, is hereby suspended.

"Hiring of new personnel" as used in Section 2 of AO 100 refers to the first-time entry of personnel in the career and non-career service, involving the issuance of an original appointment/contract, or reemployment, whether on a permanent, temporary, substitute, co-terminous, contractual or casual status."

As clearly provided above, the prohibition in AO No. 100 and its Implementing Guidelines on the hiring of new personnel covers two (2) situations, namely:

First-time entry of personnel in the career and non-career service which would involve the issuance of an original appointment/contract; and

Reemployment, whether on a permanent, temporary, substitute, co-terminous, contractual or casual status. 4. In the situation contemplated, while it may be true that the appointment to be issued to a casual employee who is subsequently appointed to a regular plantilla position is original, the other requirement as expressed in the phrase "first-time entry" is not present since the appointee is already an existing employee, albeit in casual status.

As regards the third issue, the above-quoted provisions of AO No. 100 and its Implementing Guidelines are also applicable. If we interpret the said provisions strictly, then clearly the situation contemplated would be covered since the qualified eligible who would replace the temporary employee is a new personnel and the nature of the appointment to be issued to him would be original. Hence, the requirements if the prohibition are present.

However, this interpretation would render ineffective the policy of the Commission as mandated in Section 27(2), Chapter V, Subtitle A, Title I, Book V of the Administrative Code of 1987 and as expressed in Section 13(b), Rule V of the Omnibus Rules Implementing Book V of Executive Order No. 292 and Other Pertinent Civil Service Laws, that a temporary appointee may be replaced at anytime if a qualified eligible who is willing to accept the appointment becomes actually available.

This interpretation should, therefore, be avoided since it would amount to a repeal of the aforesaid policy provided under the Administrative Code of 1987 and its Implementing Rules. Aside from the fact that Administrative Order No. 100 could not have repealed the Administrative Code of 1987 and its Implementing Guidelines issued by the this Commission, the President was also aware of said policy as proven by the fact that the guidelines implementing Administrative Order No. 100 adopted the definition of terms found in the Memorandum Circulars issued by this Commission, specifically Memorandum Circular No. 40, series of 1998 as amended by Memorandum Circular No. 15, series of 1999.

Having, thus, in mind the policy of this Commission relative to temporary employees, the President is deemed to have issued Administrative Order No. 100 in accordance with said policy as embodied in the Administrative Code of 1987, its

Implementing Guidelines as well as in Memorandum Circular No. 40, series of 1998, as amended. It is, therefore, safe to state that the policy of the Commission that a temporary appointee may be replaced at anytime by a qualified eligible still subsists and that it is not covered by the prohibition on the hiring of new personnel as embodied in AO No. 100 and its Implementing Guidelines.

This interpretation would be in consonance with the principle in statutory construction that "the best method of interpretation is that which makes laws consistent with other laws (Interpretare et concorde leges legibus, est optimum interpretandi modus)".

WHEREFORE, the Commission hereby rules that:

The provision of BIR Revenue Regulation No. 2-98 imposing an income and withholding tax to monetized leave credits in excess of ten(10) days is valid and should be followed until the same is withdrawn or repealed by the BIR;

Administrative Order No. 100 and its Implementing Guidelines do not cover a situation wherein a casual employee is subsequently appointed to a regular plantilla position without gap in the service; and

A temporary appointee may be replaced at anytime in accordance with Section 27(2), Chapter V, Subtitle A, Title I, Book V, Administrative Code of 1987 and Section 13(b), Rule V of the Omnibus Rules Implementing Book V of Executive Order No. 292 and Other Pertinent Civil Service Laws without violating the prohibition on the hiring of new personnel embodied in Administrative Order No. 100 and its Implementing Guidelines. 6. Quezon City, August 23, 2000

signed

**CORAZON ALMA G. DE LEON**

Chairman

signed

**JOSE F. ERESTAIN, JR.**

Commissioner

signed

**ELMOR D. JURIDICO**

Commissioner

Attested by:

signed

**ARIEL G. RONQUILLO**

Director III

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