



Office of the Schools Division Superintendent



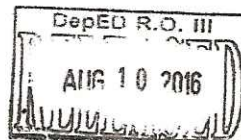
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MEMORANDUM




TO: Schools Division Superintendents
School Heads, ESC Participating Schools
All Others Concerned

FROM: THE DIRECTORATE

SUBJECT: TAX TREATMENT OF THE TEACHER SALARY SUBSIDY (TSS)
UNDER THE GASTPE PROGRAM

DATE: August 9, 2016

1. Attached is PEAC Advisory from the Executive Director of Private Education Assistance Committee (PEAC) National Secretariat, re: Tax Treatment of the Teacher Salary Subsidy (TSS) under the Government Assistance to Students and Teachers in Private Education (GASTPE) Program;
2. The Advisory serves as reference to ESC participating schools to ensure that all documentations and accounting records relating to the TSS are consistent;
3. Please be guided accordingly;
4. For immediate dissemination.


MALCOLM S. GARMA, CESO V
Director III
Officer In-Charge
Office of the Regional Director

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Commitment-Driven Performance by our Leaders, Character-Based Instruction for our Learners
Collaborating with our Leaders, Caring for our Learner

PEAC ADVISORY

August 1, 2016

**TAX TREATMENT OF THE TEACHER SALARY SUBSIDY (TSS)
UNDER THE GOVERNMENT ASSISTANCE TO STUDENTS AND TEACHERS
IN PRIVATE EDUCATION (GASTPE) PROGRAM**

TO: School Heads of Education Service Contracting (ESC) participating schools
PEAC Regional Program Directors and Regional Program Coordinators

1. As per DepEd Order 18, s. 2016 on the Policies and Implementation of the GASTPE Program Effective School Year 2016-2017, qualified teachers in private junior high schools participating in the Education Service Contracting (ESC) shall receive a subsidy of P18,000 per teacher per year.
2. In response to the concern of ESC participating schools and teachers with regard to the tax treatment of the Teacher Salary Subsidy (TSS), the enclosed advisory drafted by Salvador Llanillo Bernardo Attorneys-at-Law provides reference on the income tax treatment of the TSS.
3. The participating schools are advised to ensure that all documentation and accounting records are consistent with the treatment of the TSS given to qualified teachers as outlined in the enclosed advisory.

Please be guided accordingly.

Rhodora Angela F. Ferrer
RHODORA ANGELA F. FERRER
Executive Director

Advisory on Tax Treatment of the Teacher Salary Subsidy Program

This advisory is issued to provide guidelines and reference on the income tax treatment of benefits received by your qualified teachers covered by the Teacher Salary Subsidy (TSS) scheme under the Government Assistance to Students and Teachers in Private Education (GASTPE) Program established pursuant to Republic Act No. (RA) 6728, as amended by RA 8545. This is to ensure that your TSS-qualified teachers will be able to maximize the benefits under the TSS scheme as well as to promote uniformity in tax practice and treatment among participating schools.

As will be discussed in detail below, the TSS given to qualified teachers under the TSS scheme shall be successively treated as (1) non-taxable "other benefits"; (2) *de minimis* benefits; or (3) taxable income.

I. Primary Treatment: Non-Taxable Other Benefits

The primary treatment of the TSS is as "other benefits" excluded from the gross income of your TSS-qualified teachers. Section 32(B)(7)(e), National Internal Revenue Code of 1997, as amended ("Tax Code") exempts the 13th month pay and other benefits received by individuals from income tax to the extent of Php82,000.00. Section 32(B)(7)(e), Tax Code provides as follows:

(7) *Miscellaneous Items.* —

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(e) *13th Month Pay and Other Benefits.* — Gross benefits received by officials and employees of public and private entities: *Provided, however,* That the total exclusion under this subparagraph shall not exceed Eighty-two thousand pesos (P82,000) which shall cover:

- (i) Benefits received by officials and employees of the national and local government pursuant to Republic Act No. 6696;
- (ii) Benefits received by employees pursuant to Presidential Decree No. 851, as amended by Memorandum Order No. 28, dated August 13, 1986;
- (iii) Benefits received by officials and employees not covered by Presidential Decree No. 851, as amended by Memorandum Order No. 28, August 13, 1986; and
- (iv) Other benefits such as productivity incentives and Christmas bonus: *Provided,* That every three (3) years after the effectivity of this Act, the President of the Philippines shall adjust the amount herein stated to its present value using the Consumer Price Index (CPI), as published by the National Statistics Office (NSO).

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The Bureau of Internal Revenue (BIR) promulgated Revenue Regulations ("Rev. Regs.") No. 3-2015 dated March 9, 2015 to implement the foregoing. Section 2, Rev. Regs. 3-2015 provides as follows:

SEC. 2 AMENDATORY PROVISION ON REVENUE REGULATIONS NO. 2-98. – The amount of Thirty Thousand Pesos (P30,000.00), specifically referring to the total amount of 13th month pay and other benefits as one of the exclusions from gross compensation income received by an employee prescribed under the pertinent provisions, including the example computations of Revenue Regulations (RR) No. 2-98, as amended, is hereby increased to "Eighty Two Thousand Pesos (P82,000.00)" pursuant to the provisions of RA No. 10653.

Accordingly, the amount of P82,000 shall ONLY apply to the 13th month pay and other benefits prescribed under the provisions of Section 2.78.1(B)(11) of RR No. 2-98, as amended, and shall in no case apply to other compensation received by an employee under an employer-employee relationship such as basic salary and other allowances. Further, it must be emphasized that this exclusion from gross income is not applicable to self-employed individuals and income generated from business.

In relation thereto, Sec. 2.78.1(B)(11), Rev. Regs. No. 2-98 dated April 1, 1998, as amended, provides as follows:

- (11) *Thirteenth (13th) month pay and other benefits.* –
- (a) Thirteenth (13th) month pay equivalent to the mandatory one (1) month basic salary of officials and employees of the government, (whether national or local), including government-owned or controlled corporations, and or private offices received after the twelfth (12th) month pay; and
 - (b) Other benefits such as Christmas bonus, productivity incentive bonus, loyalty award, gifts in cash or kind and other benefits of similar nature actually received by officials and employees of both government and private offices.

The TSS should be treated as "other benefits" of similar nature to the Christmas bonus, productivity incentive bonus, loyalty award, and gifts in cash or kind considering that it is a salary augmentation or enhancement benefit. In fact, a counterpart benefit granted to qualified public school teachers under Executive Order No. 219 s. 2000, the Additional Compensation Allowance, was classified as part of the "other benefits" which were excluded from gross compensation income provided the total amount of such benefit does not exceed Php82,000.¹ The TSS, or any portion thereof, which are treated as "other benefits" in accordance with the foregoing rules and excluded from gross compensation income, shall not be subject to income tax and, consequently, to withholding tax on compensation.

If the entire TSS can be subsumed under the "other benefits" exclusion of the TSS-qualified teacher, then nothing more needs to be done. However, if only a portion of the TSS can be treated as non-taxable "other benefits" in accordance with this section, the remainder, to the extent possible, shall be treated as "de minimis" benefits which are exempt from income tax and, consequently, to withholding tax on compensation as discussed in the following section.

¹ Section 2.78.1(6)(a), Rev. Regs. No. 2-98, as amended.

II. Secondary Treatment: *De Minimis* Benefits

If the TSS, or any portion thereof, cannot be distributed as "other benefits" in accordance with the preceding section, they may be treated as *de minimis* benefits that are also excluded from the gross income of your TSS-qualified teachers pursuant to Section 33(C)(4), Tax Code which provide as follows:

SEC. 33. Special Treatment of Fringe Benefit. —

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(C) Fringe Benefits Not Taxable. —

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(4) *De Minimis* benefits as defined in the rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner.

The Secretary of Finance is hereby authorized to promulgate, upon recommendation of the Commissioner, such rules and regulations as are necessary to carry out efficiently and fairly the provisions of this Section, taking into account the peculiar nature and special need of trade, business or profession of the employer.

De minimis benefits are facilities or privileges furnished or offered by an employer to his employees that are of relatively small value and offered or furnished by the employer merely as a means of promoting the health, goodwill, contentment, or efficiency of his employees, and as such, they are subject to neither compensation income tax nor to fringe benefits tax. They are, therefore, not subject to withholding tax as well.² However, unlike the tax exclusion provision found in Section 32(B)(7)(e)(iv), Tax Code, as amended by RA No. 10653, Rev. Regs. No. 2-98, as amended, provides the different kinds of *de minimis* benefits and the maximum values of such benefits which are exempt from income tax, to wit:

The following shall be considered as "*de minimis*" benefits not subject to income tax as well as withholding tax on compensation income of both managerial and rank and file employees:

- (a) Monetized unused vacation leave credits of private employees not exceeding ten (10) days during the year;
- (b) Monetized value of vacation and sick leave credits paid to government officials and employees;
- (c) Medical cash allowance to dependents of employees, not exceeding P/50 per employee per semester or P125 per month;
- (d) Rice subsidy of P1,500 or one (1) sack of 50 kg. rice per month amounting to not more than P1,500;
- (e) Uniform and Clothing allowance not exceeding P5,000 per annum;

² Section 2.78.1 (A) (3), Rev. Regs. No. 2-98, as amended by Rev. Regs. No. 8-2000; Sec. 2.33. (C), Rev. Regs. No. 3-98.

- (f) Actual medical assistance, e.g., medical allowance to cover medical and healthcare needs, annual medical/executive check-up, maternity assistance, and routine consultations, not exceeding P10,000.00 per annum;
- (g) Laundry allowance not exceeding P300 per month;
- (h) Employees achievement awards, e.g., for length of service or safety achievement, which must be in the form of a tangible personal property other than cash or gift certificate, with an annual monetary value not exceeding P10,000 received by the employee under an established written plan which does not discriminate in favor of highly paid employees;
- (i) Gifts given during Christmas and major anniversary celebrations not exceeding P5,000 per employee per annum;
- (j) Daily meal allowance for overtime work and night/graveyard shift not exceeding twenty-five percent (25%) of the basic minimum wage on a per region basis;

All other benefits given by employers which are not included in the above enumeration shall not be considered as "de minimis" benefits, and hence, shall be subject to income tax as well as withholding tax on compensation income.³

The school may choose to distribute the TSS, or any portion thereof, to TSS-qualified teachers in the form and nature of any of the *de minimis* benefits listed above up to prescribed threshold amount. Please note, however, that each *de minimis* benefit is treated independently of another and, therefore, the aggregation of amounts of *de minimis* benefits is not allowed. For instance, the school cannot choose give the TSS-qualified employee the aggregate amount of Php8,600.00 as "clothing and laundry allowance." Under the non-aggregation rule, the school will have to separately grant a "clothing allowance" of Php5,000.00 per year and a "laundry allowance" of Php3,600.00 per year (which is does not exceed the Php300.00 per month threshold provided above) to the TSS-qualified teacher.

You may freely determine the form of *de minimis* benefits which the TSS will partake as long as these *de minimis* benefits are in the nature of the specific *de minimis* benefit and shall not exceed the thresholds mentioned above. The TSS, or any portion thereof, which are treated as *de minimis* benefits in accordance with this section shall not be subject to income tax and, consequently to withholding tax on compensation.

III. Taxable Income

In case the TSS cannot be distributed as "other benefits" in accordance with Section I above or as *de minimis* benefits under Section II above, the TSS, or any portion thereof, shall form part of the TSS-qualified teachers' compensation income subject to income tax and the applicable withholding tax on compensation.

³ Rev. Regs. No. 2-98, as amended by Rev. Regs. No. 005-11 and Rev. Regs. No. 008-12.

III. Illustrative Examples

We provide the following examples below to illustrate the application of the foregoing recommended approach. For purposes of the examples, we assume that the TSS is equivalent to Php18,000.00.

Example A:

Teacher A receives a monthly salary of Php15,000.00. For simplicity of illustration, assume that Teacher A receives only the mandatory 13th month bonus in addition to the monthly compensation, i.e., there are no other bonuses or benefits given to Teacher A. In this case, if Teacher A is TSS-qualified, the entire amount of TSS will be treated as non-taxable "other benefits."

Example B:

Teacher B receives a monthly salary of Php30,000.00. Teacher B also receives a productivity incentive bonus allowance of Php45,000.00 at the end of the year in addition to the mandatory 13th month bonus. In this case, if Teacher B is TSS-qualified, only a portion of the TSS (i.e., to the extent of Php7,000)⁴ will be treated as non-taxable "other benefits" and the remainder (Php11,000)⁵ may be distributed in the form of any of the *de minimis* benefits.

Example C:

Teacher C receives a monthly salary of Php30,000.00. Teacher C also receives a loyalty award equivalent to one-month salary and a productivity incentive bonus of Php30,000.00 at the end of the year in addition to the mandatory 13th month bonus. The school which employs Teacher C already grants its employees all of the *de minimis* benefits listed under Rev. Regs. No. 2-98, as amended. In this case, since: (i) the Php82,000 threshold of "other benefits" will not be able to accommodate the TSS,⁶ and (ii) there are no other form of *de minimis* benefits to which the TSS may be distributed, then the TSS will be treated as taxable compensation income subject to withholding tax on compensation.

⁴ Computed as follows: $\text{Php82,000.00} - [(\text{Christmas Bonus of Php30,000.00}) + (\text{Productivity Incentive Bonus of Php45,000.00})] = \text{Php7,000.00}$.

⁵ Computed as follows: $\text{Php18,000.00} - \text{Php7,000.00} = \text{Php11,000.00}$.

⁶ The total of the: (i) Loyalty Award of Php30,000.00; (ii) Christmas Bonus of Php30,000.00; and (iii) Productivity Incentive Bonus of Php30,000.00 is Php90,000.00 which has already breached the Php82,000.00 threshold.