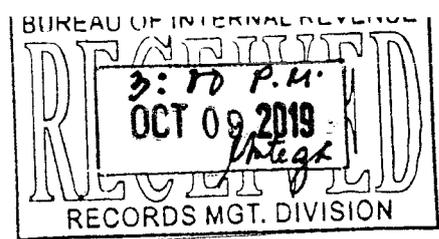




REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE
Quezon City



September 3, 2019

REVENUE MEMORANDUM CIRCULAR NO. 105-2019

SUBJECT : Clarifies the Proper Tax Treatment of Maternity Leave Benefits Under Republic Act No. 11210 Otherwise Known as the “105-Day Expanded Maternity Leave Law”

TO : All Internal Revenue Officials, Employees and Others Concerned

This Circular is hereby issued in order to clarify the proper tax treatment of salary differential to be paid by the employer in favor of female workers in the private sector, pursuant to the pertinent provisions of Republic Act (RA) No. 11210, otherwise known as the “105-day Expanded Maternity Leave Law”.

The provisions of Sec. 5 (c) of RA No. 11210 prescribes, among others that:

“Workers availing of the maternity leave period and benefits must receive their full pay. Employers from the private sector shall be responsible for payment of the salary differential between the actual cash benefits received from the SSS by the covered female workers and their average weekly or regular wages, for the duration of the maternity leave, xxx” (underscoring supplied)

and the pertinent provisions of Section 2 under the Implementing Rules and Regulations (IRR) of the said Act jointly issued by the Civil Service Commission (CSC), Department of Labor and Employment (DOLE) and Social Security System (SSS) prescribe that:

“Employed female workers shall receive full pay which consists of (i) SSS maternity benefit computed based on their average daily salary credit and (ii) salary differential to be paid by the employer, if any;”

Under the same IRR, the term “full pay” is defined under Section 1.j. of Rule II as:

“j. Full pay” refers to actual remuneration or earnings paid by an employer to a worker for services rendered on normal working days and hours not lower than the wage rate fixed by the Regional Tripartite Wages and Productivity Board (RTWPB) including allowances provided for under existing company policy of collective bargaining agreement, if any. Full pay in the public, on the other hand, includes the basic salary and allowances as may be provided under existing guidelines.”

The SSS issued Circular No. 2019-009 to All Employers and Female Members with the subject, “Guidelines on the Payment of the Maternity Benefit Effective March 11, 2019 prescribing Section 4 on salary differential, as follows:

“Employers from the private sector shall pay for the difference between the full salary and the actual cash benefits received from the SSS. xxx”

Likewise, the DOLE issued its own Department Advisory No. 01, “Guidelines on the Computation of Salary Differential of Female Workers During Her Maternity Leave and its Criteria for

Exemption Pursuant to Republic Act No. 11210 and its Implementing Rules and Regulations”, prescribing the following introductory provisions under Item II. Computation of Salary Differential”

“The employer shall pay the salary differential between the full salary of female worker during her maternity leave and the actual cash benefits received from the Social Security System (SSS), xxx”

On the other hand, Section 2.78.1(B)(1)(e) under Revenue Regulations (RR)-No. 2-98, as amended, prescribes the following remuneration received by an employee as an incident of employment that is exempt from withholding tax:

“(e) Payments of benefits made under the Social Security System Act of 1954, as amended;”

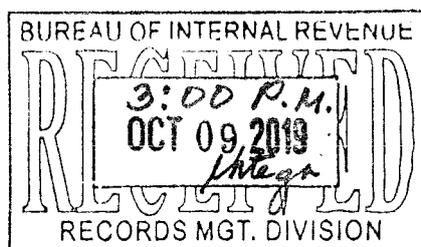
Accordingly, for purposes of determining whether salary differential is taxable or not, there is a need to resolve whether or not “salary differential” is considered as a benefit under the SSS Act of 1954, as amended.

Prior to these recently issued SSS law, Sec. 14-A of RA No. 8282, which amends RA No. 1161, otherwise known as the Social Security Law issued on June 18, 1954, a female member is entitled to a daily maternity benefit equivalent to one hundred percent (100%) of her average daily salary credit for sixty (60) days or seventy-eight (78) days in case of caesarean delivery. The term “average daily salary credit” is defined under Sec. 8 of the same law as the result obtained by dividing the sum of the six (6) highest monthly salary credit in the twelve-month period immediately preceding the semester of contingency by one hundred eighty (180).

However, based on the cited provisions of the new law, the implementing joint IRR and the respective issuances of SSS and DOLE, the maternity benefit of the female worker has been expanded from the previous 100% of the average daily salary credit to a full pay or salary which includes now the salary differential as its component, aside from the added duration of the maternity leave. Accordingly, it is therefore clear that salary differential is considered as a benefit.

Further, since the provisions of Section 2.78.1(B)(1)(e) under RR No. 2-98 do not provide any qualification in granting tax exemption on payments of benefits under the SSS law, the salary differential is exempt from income and withholding taxes.

All internal revenue officers, employees, and others concerned are hereby enjoined to give this Circular as wide a publicity as possible.



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