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

Section 30(E), Tax Code; Revenue Memorandum Circular No. 007-12
BIR Ruling No. 485-12; BIR Ruling No. 023-10
OT- 013-2022
JAN 14 2022

FRANCISCAN MISSIONARIES OF MARY
#6 3rd St. New Manila
Quezon City, Philippines

Attention: **Sr. MARILYN P. OLIVA, FMM**
Provincial Superior

Gentlemen:

This refers to your request on behalf of Franciscan Missionaries of Mary ("**FMM**") for exemption from the payment of capital gains tax ("**CGT**") and documentary stamp tax ("**DST**") on its sale of land to K-Homes Realty and Development Corporation ("**K-Homes**").

It is represented that FMM is a religious institution organized and existing under the laws of the Philippines with office address at 6th 3rd St., New Manila, Quezon City Philippines; that on August 23, 2021, FMM entered into a Deed of Absolute Sale ("**Agreement**") with K-Homes over a parcel of land with improvements located at Arcadia Avenue, Brookside Hills Subdivision, San Isidro, Cainta, Rizal, covered by Transfer Certificate of Title ("**TCT**") No. containing a total land area of Six Thousand Four Hundred Thirteen (6,413) square meters, more or less (the "**Property**"); and that the proceeds from the sale were used to help the poor especially those affected by the pandemic.

In reply, please be informed that Section 30 (E) of the National Internal Revenue Code of 1997, as amended ("**Tax Code**") provides that a non-stock, non-profit religious organization is exempt from the payment of income tax on its income received as such organization, to *wit* –

> *"**SEC. 30. Exemptions from Tax on Corporations.** — The following organizations shall not be taxed under this Title in respect to income received by them as such:*
>
> *xxx xxx xxx*
>
> *(E) Nonstock corporation or association organized and operated exclusively for religious, charitable, scientific, athletic, or cultural purposes, or for the rehabilitation of veterans, no part of its net income or asset shall belong to or inure to the benefit of any member, organizer, officer or any specific person;"*

Based on the foregoing, a non-stock corporation or association organized and operated exclusively for religious, charitable, scientific, athletic, or cultural purposes, or for the

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rehabilitation of veterans, no part of its net income or asset shall belong to or inure to the benefit of any member, organizer, officer, or any specific person is exempt from income taxation.[1]

However, please note that the last paragraph of Section 30 of the Tax Code expressly provides that income of whatever kind and character of religious institution from any of their properties, real or personal, regardless of the disposition made of such income, shall be subject to tax, to *wit*:

> *"SEC. 30. Exemptions from Tax on Corporations. — ...*
>
> *xxx xxx xxx*
>
> *Notwithstanding the provisions in the preceding paragraphs, the income of whatever kind and character of the foregoing organizations from any of their properties, real or personal, or from any of their activities conducted for profit regardless of the disposition made of such income, shall be subject to tax imposed under this Code."*
> (Underscoring supplied)

Hence, it is clear that any income derived from the sale of real property, regardless of how that income is used, whether for profit or for non-profit purposes, is subject to the corresponding internal revenue taxes imposed under the Tax Code.[2] The Supreme Court ruled in the case of *CIR v. YMCA of the Philippines*,[3] that the last paragraph of Section 30 relating to the income does not make any distinction. It is a well-settled rule that where the law does not distinguish, neither should we distinguish.

Such being the case, this Office hereby rules that the sale by FFM of the Property to K-Homes is subject to capital gains tax based on the gross selling price or current fair market value as determined in accordance with Section 6 (E) of the Tax Code, whichever is higher, of such land.[4] Moreover, the Deed of Absolute Sale of said real property shall be subject to DST imposed under Section 196 of the Tax Code.

Thus, your request that the sale by FFM of its real property be exempt from the payment of CGT and DST is hereby denied for lack of legal basis.

Please be guided accordingly.

Very truly yours,

CAESAR R. DULAY
Commissioner of Internal Revenue

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[1] BIR Ruling No. 115-2011 dated April 12, 2011.
[2] BIR Ruling No. 485-12 dated July 30, 2012; BIR Ruling No. 023-10 dated August 4, 2010; Revenue Memorandum Circular No. 007-12, Circularization of BIR Ruling No. 023-10 dated August 4, 2010 on the Capital Gains Tax and Documentary Stamp Tax Liability of a Non-stock Non-profit Organization on its Disposition of Real Property, February 23, 2012.
[3] G.R. No. 124043, October 14, 1988.
[4] Section 27(D)(5) of the Tax Code.