REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE
National Office Building
Quezon City

BIR Ruling No. OT-284-2022
Revenue Regulations No. 7-2003
OT# 0 3 2 - 2 0 2 3
APR 2 0 2023

J&M GANDABEL CORP.
2nd Floor, State Condominium I
Salcedo St., Legaspi Village
Makati City

Attention: **RODOLFO O. REYES**
Corporate Secretary

Gentlemen:

This refers to your letter, on behalf of **J&M GANDABEL CORP. ("J&M")**, requesting for a confirmatory ruling that the sale of its parcel of land is subject only to six percent (6%) capital gains tax ("CGT") and documentary stamp tax ("DST") under Sections 27(D)(5) and 196, respectively, of the National Internal Revenue Code ("Tax Code") of 1997, as amended, and not subject to creditable withholding tax ("CWT") and value-added tax ("VAT").

It is represented that J&M is a domestic corporation registered with the Securities and Exchange Commission ("SEC") with Company Registration No. . It is likewise registered with the Bureau of Internal Revenue with Tax Identification Number ("TIN") , with principal place of business at 2nd Floor, State Condominium I, Salcedo St., Legaspi Village, Makati City.

According to the documents submitted, J&M's primary purpose is to "*engage in, conduct, and carry on the business of buying, selling, distributing, marketing at wholesale, insofar as may be permitted by law, all kinds of goods, commodities, wares and merchandise of every kind and description; to enter into all kinds of contracts for the export, import, purchase, acquisition, sale at wholesale and other disposition for its own account as principal or representative capacity as manufacturer's representative, merchandise broker, indetor, commission merchant, factors or agents, upon consignment of all kinds of goods, wares, merchandise or products whether natural or artificial*".

That on September 14, 2004, J&M acquired a residential house and lot located in Makati City for investment purposes and not for sale or for lease in the ordinary course of business. This residential house and lot are covered by Transfer Certificate of Title No. issued by the Registry of Deeds for Makati City and Tax Declaration Nos. and F- issued by the City of Makati. The subject property is recognized and booked under "Non-Current Assets" of J&M's Audited Financial Statement with the account title "Investment Property". The subject property has remained vacant and has never been leased-out from the time of its acquisition, as evidenced by a Certificate of Non-Tenancy dated February 14, 2023 issued by Dasmarinas Village Association Incorporated.

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In reply, please be informed that Section 39 (A)(1) of the Tax Code of 1997, as amended, states that:

"SEC. 39. Capital Gains and Losses. —

(A) Definitions. — As used in this Title —

*(1) Capital Assets. — **The term 'capital assets' means property held by the taxpayer (whether or not connected with his trade or business)**, but does not include stock in trade of the taxpayer or other property of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the taxable year or property held by the taxpayer primarily for sale to customers in the ordinary course of his trade or business, or property used in the trade or business, of a character which is subject to the allowance for depreciation provided in Subsection (F) of Section 34; or real property used in trade or business of the taxpayer."* (Emphasis and underscoring supplied)

In relation thereto, Section 2 of Revenue Regulations ("RR") No. 7-2003 states that:

"SECTION 2. Definition of Terms. — For purposes of these Regulations, the following terms shall be defined as follows:

*a. **Capital assets shall refer to all real properties held by a taxpayer, whether or not connected with his trade or business, and which are not included among the real properties considered as ordinary assets under Sec. 39 (A) (1) of the Code.***

b. Ordinary assets shall refer to all real properties specifically excluded from the definition of capital assets under Sec. 39 (A) (1) of the Code, namely:

1. Stock in trade of a taxpayer or other real property of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the taxable year; or
2. Real property held by the taxpayer primarily for sale to customers in the ordinary course of his trade or business; or
3. Real property used in trade or business (i.e., buildings and/or improvements) of a character which is subject to the allowance for depreciation provided for under Sec. 34 (F) of the Code; or
4. Real property used in trade or business of the taxpayer.

-xxx-"
(Emphasis and underscoring supplied)

Under the above quoted provisions, it is undisputed that the yardstick for determining whether the property is capital asset or ordinary asset is the actual use of the said property. Thus, if the property is not actually used in trade or business of the taxpayer, whether or not connected with his trade or business, or not held for lease or sale to customers, it will be classified as a capital asset. Also, if the property is merely held for capital appreciation and investment purposes and remains vacant and idle, it is deemed a capital asset.

In stressing the rationale of the above-mentioned rule, this Office elucidated the matter in BIR Ruling No. 014-2003 dated October 28, 2003, as follows:

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"It is apparent under the foregoing provision that for a property to be considered an ordinary asset, it must be actually used in the business of the corporation. Accordingly, on the condition that Wendell Holdings Co., Inc. is not habitually engaged in the real estate business as represented, the property under consideration is capital asset. The property was neither held primarily for sale to customers nor actually used in the business of Wendell Holdings Co., Inc. x x x The property is not actually used in the business of Wendell Holdings, Inc. as it has remained idle and undeveloped. Therefore, the sale of the properly under consideration is a sale of capital asset, not an ordinary asset. As such, the transaction is subject to capital gains tax of 6% under Section 27(D) (5) and not to the creditable withholding tax."

J&M which is engaged in the business of wholesale of machineries and equipment, is not considered as a company habitually engaged in the real estate business. Where the taxpayer is not engaged in the real estate business, a property not forming part of its inventory is considered a capital asset.

In view of the foregoing, considering that J&M is not engaged in the real estate business, being not a real estate dealer, developer or lessor; that the subject property has been idle and vacant since its acquisition; and that the subject property has been treated in the books of accounts and reflected in J&M's audited financial statement as non-current asset with the account title "Investment Property" and has not been used in the ordinary course of trade or business, it is our considered view that the subject property described above is classified as capital asset.

Thus, the sale of the subject property, being a capital asset, is subject only to CGT under Section 27 (D)(5) of the Tax Code of 1997, as amended, and DST under Section 196 of the same Code, and shall not be subject to CWT and VAT.

This ruling is being issued on the basis of the foregoing facts as represented. However, if upon investigation, it will be disclosed that the facts are different, then this ruling shall be considered null and void.

For your strict compliance.

Very truly yours,

ROMEO D. LUMAGUI, JR.
Commissioner of Internal Revenue

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