May 18, 2021

BIR RULING NO. OT-165-21

Revenue Memorandum Order No. 15-2003;
000-00

AAA

Madam :

This refers to your letter dated January 22, 2021, requesting for a ruling reversing the Memorandum issued by the Revenue Region No. 17-Butuan City dated January 11, 2021 which contains the following pronouncement:

> *"This Office believes that there is a valid revocation of the Special Power of Attorney given to AAA. The revocation was authenticated by an Apostille in Florida, USA and as such, it can be used here in the Philippines since our country is a member of Apostille Convention.*
>
> xxx xxx xxx
>
> *It is the legal opinion of this Office that the 3 sets of Absolute Deed of Sale x x x, are considered null and void for lack of authority of AAA to represent BBB. Along this line, this Office, would recommend not to honor any transaction relative to these 3 sets of Deed of Sale. On the other hand, the Deed of Sale dated May 26, 2020 may be accepted and honored by the BIR since the authority of AAA was not yet revoked."*

Based on the documents submitted, the case owes its genesis to the Special Power of Attorney executed by BBB (BBB) authorizing AAA (AAA) to, among other things, cause the preparation and signing on the Deed of Absolute Sale/Deed of Donation, or to dispose by way of Sale/Donation BBB's paraphernal/exclusive properties located at Tandag City, Surigao del Sur; and sign, execute, deliver and process whatever documents/instruments necessary to carry into effect the transfer of ownership of BBB's properties from her name to that of the Buyer's/Donee's thereof.

By virtue of the said SPA, four Deeds of Absolute Sale were executed bearing the following dates: May 26, 2020; May 29, 2020 and September 7, 2020. Subsequently, AAA went to process the issuance of an electronic Certificate Authorizing Registration (eCAR)

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with the Revenue District Office No. 106-Tandag City.

Unknown to AAA, BBB executed a revocation of Special Power of Attorney with Irrevocable Instructions to Convey Documents to CCC which was presented to OIC Revenue District Officer Lisa Tomaneng to stop the processing of the eCAR.

OIC Revenue District Officer Tomaneng requested for a legal opinion from the Revenue Region on the validity of sale of parcels of land which was made by AAA. The Legal Division then issued the Subject Memorandum.

Hence this letter for reconsideration.

In reply, please be informed that the guidelines in the processing and issuance of the Certificate Authorizing Registration (CAR) is well-grounded in Revenue Memorandum Order (RMO) No. 15-2003, *"Policies, Guidelines and Procedures in Processing and Monitoring of One-Time Transactions (ONETT) and the issuance of Certificates Authorizing Registration (CARs) Covering Transactions Subject to Final Capital Gains Tax on Sale of Real Properties Considered as Capital Assets as well as Capital Gains Tax on the Net Capital Gain on Sale, Transfer or Assignment of Stocks Not Traded on the Stock Exchange(s), Expanded Withholding Tax on Sale of Real Properties Considered as Ordinary Assets, Donor's Tax, Estate Tax and Other Taxes including Documentary Stamp Tax Related to the Sale/Transfer of Properties"* dated May 8, 2003.

The Bureau cannot turn blind on the principle that [t]ax laws are civil in nature. [1] In the case of *Farida Yap Bitte, et al. vs. Spouses Fred and Rosa Jonas* [2] the Supreme Court, speaking through Justice Jose Catral Mendoza, had the occasion to deliberate the legal consequences of a revoked agency insofar as third party is concerned, *viz.*:

> *"Basic is the rule that the revocation of an agency becomes operative, as to the agent, from the time it is made known to him. Third parties dealing bona fide with one who has been accredited to them as an agent, however, are not affected by the revocation of the agency, unless notified of such revocation. This refers to the doctrine of apparent authority. Under the said doctrine, acts and contracts of the agent within the apparent scope of the authority conferred on him, although no actual authority to do such acts or has been beforehand withdrawn, revoked or terminated, bind the principal. Thus, as to a third person, apparent authority, when present, trumps restrictions that the principal has privately imposed on the agent. The relevant appearance is that the principal has conferred authority on an agent. An actor may continue to possess apparent authority although the principal has terminated the actor's actual authority or the agency relationship between them. This is so because a third party may reasonably believe that the actor continues to act as an agent and within the scope of actual authority on the basis of manifestations previously made by the principal. Such a manifestation, once made, remains operative until the third party has notice of circumstances that make it*

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unreasonable to believe that the actor continues to have actual authority. Hence, apparent authority may survive the termination of actual authority or of an agency relationship.

To persons who relied in good faith on the appearance of authority, no prejudice must be had by virtue of such reliance on what appeared to them as perfectly in accordance with the observable authority of an agent. It must not be disturbed unless it can be shown that they had been notified or became aware of the termination of the agency. Stated differently, a third party cannot be bound by a revocation unless he had notice or knowledge of such revocation.

The notice or knowledge may be actual or implied. In either case, there is no apparent authority to speak of and all contracts entered into by the former agent with a third person cannot bind the principal. The reason behind this is that a third person cannot feign ignorance of facts which should have put him on guard and which he had a means of knowing.

Apparent authority ends when it is no longer reasonable for the third party with whom an agent deals to believe that the agent continues to act with actual authority.

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Under Article 1924 of the New Civil Code, "an agency is revoked if the principal directly manages the business entrusted to the agent, dealing directly with third persons." Logic dictates that when a principal disregards or bypasses the agent and directly deals with such person in an incompatible or exclusionary manner, said third person is deemed to have knowledge of the revocation of the agency. They are expected to know circumstances that should have put them on guard as to the continuing authority of that agent. The mere fact of the principal dealing directly with the third person, after the latter had dealt with an agent, should be enough to excite the third person's inquiring mind on the continuation of his authority.

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It is a basic axiom in civil law embodied in our Civil Code that no one may contract in the name of another without being authorized by the latter, or unless he has by law a right to represent him. A contract entered into in the name of another by one who has no authority or legal representation, or who has acted beyond his powers, shall be unenforceable, unless it is ratified, expressly or impliedly, by the person on whose behalf it has been executed, before it is revoked by the other contracting party. Considering that the sale was executed by an agent whose authority, be it actual or apparent, had been revoked, the transaction is unenforceable pursuant to Articles 1317 and 1403(1) of the Civil Code which read:

Article 1317. No one may contract in the name of another without being

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authorized by the latter, or unless he has by law a right to represent him.

A contract entered into in the name of another by one who has no authority or legal representation, or who has acted beyond his powers, shall be unenforceable, unless it is ratified, expressly or impliedly, by the person on whose behalf it has been executed, before it is revoked by the other contracting party. (1259a)

Article 1403. The following contracts are unenforceable, unless they are ratified:

(1) Those entered into the name of another person by one who has been given no authority or legal representation, or who has acted beyond his powers;

xxx xxx xxx"

In this case, the actual notice of revocation of agency executed by no less than the principal, BBB renders AAA's power of attorney inoperative insofar as this Bureau is concerned. The unenforceability of AAA's power of attorney constitutes a want on the mandatory requirements provided under RMO No. 15-2003 which warrants this Bureau to refrain from issuing the said CARs on the subject deeds of sale.

In the same vein, the apparent issue clouding the resolution of the controversy lies upon a determination which this Bureau is not accorded by law to take cognizance of. The concerned parties should submit their grievances to the appropriate Courts for proper adjudication.

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.

Very truly yours,

(SGD.) CAESAR R. DULAY
Commissioner of Internal Revenue

Footnotes

1. *Commissioner of Internal Revenue vs. Azucena T. Reyes*, G.R. No. 159694 dated January 27, 2006.
2. G.R. No. 212256 dated December 9, 2015.

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