January 21, 2020

BIR RULING NO. OT-008-20

Secs. 248 (A); 249 (A) (B); 204 (A) (B); BIR Ruling No. 042-01; BIR Ruling No. 065-00; BIR Ruling No. 124-99

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Sir :

This refers to your letter dated October 10, 2018 addressed to the Regional Director of Revenue Region No. 7, Quezon City, which was indorsed to this Office on December 12, 2018 and was received on December 21, 2018, requesting for a waiver or reduction of the interest penalties in the capital gains tax due on the transfer of property to your name, particularly Unit 2308-B2.

From the documents submitted, it appears that on May 21, 1996, you executed a Contract to Sell with Golden Dragon Real Estate Corporation (GDREC), whereby the latter agreed to sell a condominium unit in your favor at the Wack-Wack Twin Towers Condominium at Mandaluyong City, specifically Unit 2308-B2. Upon completion of payment, GDREC failed to process the transfer of the title in your favor, including the payment of the tax due on the aforesaid sale.

Consequently, you filed a complaint with the Housing and Land Use Regulatory Board (HLURB) on April 27, 2001 (Case No. REM-042701-11484) after knowing that GDREC mortgaged the said condominium unit to Pilipinas Bank (now Bank of the Philippine Islands-BPI).

The case was finally resolved by the Supreme Court on January 16, 2017. However, the title was released by BPI only on July 27, 2018 due to the difficulty encountered by the Court Sheriff and BPI in locating GDREC and its officers.

In reply, please be informed that under Sections 248 (A) (1) and (3) and 249, both of the Tax Code of 1997, as amended, the imposition of the surcharge for failure to file return

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and pay the tax due thereon and interest on delinquency is mandatory. Strong reasons of policy support a strict observance of the rule regarding the payment of tax. The laws imposing penalties for delinquencies are clearly intended to hasten tax payments or punish evasions or neglect of duty in respect thereof. If delays in tax payments are to be condoned for light reasons, the law imposing penalties for delinquencies would be rendered nugatory and the maintenance of the government and its multifarious activities would be as precarious as taxpayers are willing or unwilling to pay their obligations to the state on time *(Philex Mining Corporation vs. Commissioner of Internal Revenue, Court of Appeals, and The Court of Tax Appeals, G.R. No. 125704, August 28, 1998, citing Jamora v. Meer, 7 Phil. 22)*. This is justified because the intention of the law is precisely to discourage delay in the payment of taxes due to the State and, in this sense, the surcharge and interest charged are not penal but compensatory in nature. They are compensation to the State for the delay in payment of the tax and for the concomitant use by the taxpayer of the funds that rightfully should be in the government's hands. *(Castro vs. Collector of Internal Revenue, 6 SCRA 886)*

Moreover, under Section 204 (B) of the Tax Code of 1997, as amended, the Commissioner may abate or cancel tax liability only in two (2) cases, *viz.*: (a) the tax or any portion thereof appears to be unjustly or excessively assessed; or (b) the administration and collection costs involved do not justify the collection of the amount due. It has also been held that a voluntary relinquishment of a part of a tax lawfully assessed upon and due from a solvent person or corporation is not permitted by law. *(16 Op. Atty. Gen. [U.S.] 249)*

Thus, in the matter of abatement of penalties, the Commissioner of Internal Revenue should not act from motives merely out of compassion or charity, but should consider the pecuniary interest of the government, justice and equity and public policy. Good faith alone may not be sufficient to avoid the 25% surcharge which is designated to ensure timely compliance with the law. *(Lim vs. Posadas, 47 Phil. 460)*

It is compensation to the State for the delay in the payment or for the concomitant use of the funds by the taxpayer beyond the date he is supposed to have paid them to the State. *(Castro vs. Col., etc. Resolution on Motion for Reconsideration, G.R. No. L-12174, Dec. 1962)*

In view of the foregoing, this Office regrets to deny your request for the waiver or condonation of the surcharges and interests due on the above-mentioned sale of condominium unit inasmuch as the same does not fall under the grounds within which the Commissioner can grant abatement. *(BIR Ruling Nos. 042-01 dated September 20, 2001; 065-00 dated December 27, 2000; and 124-99 dated August 17, 1999)*

Very truly yours,

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