REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

Quezon City

Sec. 24(D)(1) of the Tax Code of 1997, as amended
BIR Ruling No. 460-11
#082-2016
3-4-2016

JOSEPHINE D. BALMADRID
No. 26 Daffodil St., Pilar Village, Las Pinas City

Madam:

This refers to the letter dated February 3, 2015 requesting exemption from capital gains and documentary stamp taxes on the exchange of properties of Armene Asis Balmadrid and Lorna C. Macapagal without monetary consideration.

Documents submitted disclosed that on December 10, 1997, an Absolute Deed of Sale was executed by Marie Paz M. Belen in favor of Armene Asis Balmadrid where parcel of land with an area of 150 sq. m. described as Lot 5-A, of the subd. plan, Psd- being a portion of Lot 5, Blk. 11, (LRC) Pcs L.R.C. Rec. No. covered by Transfer Certificate of Title (TCT) No. was sold to the latter for P ; that TCT No. was cancelled and new title TCT No. was issued to Armene Asis Balmadrid, identified as Lot 5-A, of the subd. plan, Psd- , being a portion of Lot 5, Blk. 11, (LRC) Pcs-18173, L.R.C. Rec. No. ; that on February 8, 2005, a Deed of Absolute Sale was executed by Mylene C. Yano in favor of Lorna C. Macapagal where parcel of land with an area of 150 sq. m. described as Lot 5-B, of the subd. plan, Psd being a portion of Lot 5, Blk. 11, (LRC) Pcs-18173, L.R.C. Rec. No. covered by Transfer Certificate of Title (TCT) No. was sold to the latter for P ; that TCT No. was cancelled and new title TCT No. was issued to Lorna C. Macapagal, identified as Lot 5-B, of the subd. plan, Psd-007601-021269-D, being a portion of Lot 5, Blk. 11, (LRC) Pcs-18173, L.R.C. Rec. No. 4264; that the parties later discovered that Lot 5-A was possessed and occupied by Lorna C. Macapagal and Lot 5-B was occupied by Armene Asis Balmadrid; that in a Geodetic Engineer's Report of Geodetic Engineer Agustin Jay S. Perida, verified that the actual occupant of Lot 5-A is the existing house of Lorna C. Macapagal and the actual occupant of Lot5-B is the existing house of Armene Asis Balmadrid; and that to correct the mistake, the parties agreed that the name in the TCT No. T-29363 in the name of Armene Asis Balmadrid be changed to Lorna C. Macapagal and in the TCT No. T-95763 in the name of Lorna C. Macapagal be changed to Armene Asis Balmadrid.

039500

#082-2016
3-4-2016

In order to correct the foregoing mistake, Armene Asis Balmadrid and Lorna C. Macapagal executed a Deed of Exchange of Real Property dated January 22, 2015 wherein the parties agreed to exchange their respective properties.

In reply, please be informed that Section 24 (D)(1) of the Tax Code of 1997 provides that capital gains presumed to have been realized from the sale, exchange or other disposition of real property located in the Philippines classified as capital assets, including pacto de retro sales and other forms of conditional sales, by individuals, including estates and trust, shall be taxed at the rate of 6% based on the gross selling price or the fair market value as determined in accordance with Section 6(E) of this Code, whichever is higher. (BIR Ruling No. 460-11 dated November 24, 2011)

Exemption from the imposition and payment of CGT and DST is being sought because of the "error" supposedly committed in the registration of the titles.

The submitted Deeds of Absolute Sale clearly identified the properties sold to Armene Asis Balmadrid and Lorna C. Macapagal. Thus there no apparent mistake or errors committed in the registration or titling of the subject properties. In addition, the presence of the signatures of all the parties to the transaction just shows that said executed document was checked for errors. What appears as "mistake" in this case is both parties occupying the lot assigned to the other.

Therefore, both exchanging parties i.e., Armene Asis Balmadrid and Lorna C. Macapagal are subject, separately and distinctly, to the 6% capital gains tax based on the fair market value or zonal value of the properties, whichever is higher, as imposed under Section 24 (D)(1) of the Tax Code of 1997, as amended. (BIR Ruling No. 460-11 dated November 24, 2011)

Moreover, pursuant to Section 196 of the Tax Code of 1997, a conveyance or deed whereby land is assigned or transferred to another is subject to documentary stamp tax based on the consideration contracted to be paid for such realty or on its fair market value or zonal value whichever is higher. (BIR Ruling No. 460-11 dated November 24, 2011)

Your request for exemption from the payment of capital gains tax and documentary stamp tax on the above exchange of real properties is hereby denied for lack of legal basis.

Very truly yours,

KIM S. JACINTO-HENARES
Commissioner of Internal Revenue

039500
MAR 03 2016

K-1-JRC