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

RA No. 7279; RA7160
BIR Ruling No. 476-13; BIR Ruling No. 201-14
097-2017
3-1-2017

URBAN SETTLEMENTS OFFICE
Room 569, 5th Floor, Manila City Hall Building
Arroceros St., Ermita, Manila

Attention : **VICTORIA S. CLAVEL**
City Government Department Head III

Gentlemen:

This refers to your letter dated August 10, 2015, requesting for a ruling that the involuntary sale thru expropriation by the Heirs of Aurelio and Trinidad Restua to the City of Manila intended for the latter's socialized housing program is exempted from payment of capital gains tax and other fees allowed under Republic Act (R.A.) No. 7279, otherwise known as the Urban Development and Housing Act of 1992.

Documents submitted disclosed that the following landowners (hereinafter collectively referred to as "Heirs of Aurelio and Trinidad Restua" are the absolute registered owners of these parcels of land covered by the corresponding Transfer Certificates of Title (TCT), to wit:

	Landowners	TCT No.	Tax Declaration No.	Lot No.	Area (sq. m.)
1	Leonardo C. Dalmacio[1], Teresita C. Dalmacio-Sombra[2] and Adolfo C. Dalmacio, Jr.[3]			8-F	148.69
2	Paula D. Carlos			8-E	148.69
3	Manuel R. Dalmacio			8-G	148.69
4	Ester Del Moral[4], Editha D. Del Moral, Mary Ann D. Del Moral and Marcelino B. Del Moral			8-H	148.69

[1] married to Perla Valiente
[2] married to Wilfredo Sombra
[3] married to Flerinda Filoteo
[4] married to Marvin Austria

5	Purificacion Dela Cruz-Dalmacio , Carlito Dalmacio[5], Edgardo Dalmacio[6] and Nelia C. Dalmacio	233724		8-I	148.69
6	Antonio R. Dalmacio	233725		8-J	148.69
7	Conrado Restua Dalmacio[7]	233726		8-K	148.69
8	Reynaldo Restua Dalmacio (Nova Catabona)	233727		8-L	148.69
9	Elena R. Dalmacio	233728		8-M	148.69
10	Susana D. San Juan	233729		8-N	148.69
11	Cristina D. Amagna	233730		8-O	148.70
12	Esperanza Restua Diaz	245005		8-A	408.88
13	Eligia Restua Hermosura[8]	245006		8-B	408.88
14	Natalia Restua Bernardo[9]	245008		8-D	408.87
15	Gracita B. Albacea[10]	290827		8-C	408.87
				Total Area	3,271.10

all issued by the Registry of Deeds for the City of Manila; that the City of Manila issued Ordinance No. 8020[11] dated March 12, 2001, authorizing the City Mayor to acquire Lot No. 8, Block No. 1011, situated in Estero De Pandacan, Brgy. 843, Pandacan, Manila, District VI, owned by the late Spouses Aurelio Restua and Clara Restua, for resale to qualified and bona fide tenants/occupants thereat, under the land-for-the-landless program of the City of Manila; and that on January 20, 2009, Branch 22 of the Regional Trial Court of Manila granted the Expropriation of the said property and determined just compensation therefore at P7,172 per square meter or a total of P23,460,329.20.

In reply, please be informed that the involuntary transfers of real properties, including expropriation sale, are subject to applicable taxes, depending on whether the subject properties are classified as capital assets or ordinary assets. *(BIR Ruling No. 476-13 dated December 18, 2013)*

However, Section 19 of R.A. No. 7160 provides the basis for the exercise of the power of eminent domain of local government, which provides that:

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[5] married to Lolita Tagario
[6] married to Alicia Espenilin
[7] married to Salud Mallares
[8] married to Leon Hermosura
[9] married to Alfredo Bernardo
[10] married to Arellano C. Albacea
[11] An Ordinance Authorizing his Honor, Mayor Jose L. Atienza, Jr., to acquire Lot No. 8, Block No. 1011, consisting of 3,271.10 square meters, more or less, situated in Estero De Pandacan, Barangay 843, Pandacan, Manila, District VI, owned by the late Spouses Aurelio Restua and Clara Restua, for resale, at cost, or on installment basis, for period not exceeding twenty (20) years, to qualified and bona fide tenants/occupants thereat, under the land-for-the-landless program of the City of Manila and for other purposes.

"SECTION 19. Eminent Domain. — A local government unit may, through its chief executive and acting pursuant to an ordinance, exercise the power of eminent domain for public use, or purpose or welfare for the benefit of the poor and the landless, upon payment of just compensation, pursuant to the provisions of the Constitution and pertinent laws: Provided, however, That the power of eminent domain may not be exercised unless a valid and definite offer has been previously made to the owner, and such offer was not accepted: Provided, further, That the local government unit may immediately take possession of the property upon the filing of the expropriation proceedings and upon making a deposit with the proper court of at least fifteen percent (15%) of the fair market value of the property based on the current tax declaration of the property to be expropriated: Provided, finally, That, the amount to be paid for the expropriated property shall be determined by the proper court, based on the fair market value at the time of the taking of the property."

As an instrumentality of the government, a local government unit, which acts for the purpose of accomplishing government policies and objectives and extending essential services to the people, performs governmental and not proprietary functions. *(Peoples' Homesite and Housing Corporation vs. Court of Industrial Relations, 150 SCRA 296, 310 [1987])* Thus, in line with the foregoing, it is a declared State policy as laid down in Republic Act No. 7279, otherwise known as the "Urban Development and Housing Act of 1992", to provide decent and affordable housing to the underprivileged and homeless citizens. *(BIR Ruling No. 201-14 dated June 17, 2014)*

Also, the pertinent portion of Section 20 of R.A. No. 7279, reads:

"Sec. 20. Incentives for the Private Sector Participating in Socialized Housing. — To encourage greater private sector participation in socialized housing and further reduce the cost of housing units for the benefit of the underprivileged and homeless, the following incentives shall be extended to the private sector:

xxx xxx xxx

"(d) Exemption from the payment of the following:

(1) . . .

(2) Capital gains tax on raw lands used for the project;

xxx xxx xxx"

Pursuant to the aforementioned provisions, the conveyance of the parcels of land covered by TCT Nos. and pursuant to the Expropriation Orders by herein landowners, Heirs of Aurelio and Trinidad Restua, in favor of the City of Manila for use in its socialized housing project is exempt from capital gains tax.

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Upon application for exemption, a lien on the titles of the land shall be annotated by the Register of Deeds having jurisdiction over the properties, to the effect that the same is to be applied or is being applied to socialized housing project pursuant to R.A. 7279. *(BIR Ruling No. 201-14 dated June 17, 2014)*

However, the sale is subject to the documentary stamp tax imposed under Section 196 of the Tax Code of 1997 based on the actual consideration of the property transferred, considering that one of the contracting parties is the Government. *(BIR Ruling No. 201-14 dated June 17, 2014)*

Please note that the exemption granted under R.A. 7279 is without prejudice to the right of the Government to collect the proper amount of estate tax to the legal heirs pursuant to Section 84 of the Tax Code, as amended.

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,

CAESAR R. DULAY
Commissioner of Internal Revenue

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