July 24, 2018

BIR RULING NO. 1104-18

RA 9520; 000-00

Salcedo-Babarin and Babarin Law Office
Capistrano-Yacapin Streets, Cagayan de Oro City

Attention: *AAA*

Gentlemen :

This refers to your letter dated April 6, 2015, requesting for assistance to exempt Oro Housing & Service Cooperative from paying Capital Gains Tax relative to transfer or assignment of the Cooperative's property to its members.

Documents submitted disclosed that Oro Housing & Service Cooperative, with Tax Identification Number 000-000-000-000, is a primary service cooperative duly organized under the laws of the Philippines; that it is registered with the Cooperative Development Authority (CDA) under Registration No. 9520-10000721 dated October 15, 2009; and that the purposes for which it was formed are to engage in the following:

1. To provide members with affordable and decent housing units with functional facilities;

2. To establish cooperative enterprises in the communities;

3. To develop environment-friendly surrounding;

4. To continuously educate leaders and members on cooperative and bayanihan spirit;

5. To develop livelihood that will result to better economic condition of the residents;

6. To advocate and lobby on socialized housing for the poor;

7. To establish linkages with housing resource institution; and

8. To pool the resources of the members by encouraging savings and promoting thrift to stimulate capital formation for housing development activities.

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and that on November 29, 2011, Oro Housing & Service Cooperative obtained a Certificate of Tax Exemption (CTE) No. 00089-11-RR-16-RDO-98 from Revenue Region (RR) No. 16-Cagayan de Oro City as a cooperative entitled to the tax exemptions and incentives provided by Article 61 of Republic Act (RA) No. 9520, as implemented by Section 8 of the Joint Rules and Regulations Implementing Articles 60, 61 and 144 of RA No. 9520, to wit:

1. Exemption from Income tax on income from CDA-registered operations;

2. Exemption from Value-Added Tax on CDA-registered sales or transactions;

3. Exemption from other Percentage tax;

4. Exemption from Donor's tax on donations to duly accredited charitable, research and educational institutions, and reinvestment to socio-economic projects within the area of operation of the cooperative;

5. Exemption from Excise tax for which it is directly liable;

6. Exemption from Documentary stamp tax: *Provided, however*, that the other party to the taxable document/transaction who is not exempt shall be the one directly liable for the tax;

7. Exemption from payment of Annual Registration fee of Five hundred pesos (P500.00); and

8. Exemption from all taxes on transactions with insurance companies and banks, including but not limited to 20% final tax on interest deposits and 7.5% final income tax on interest income derived from a depositary bank under the expanded foreign currency deposit system.

Now, you are requesting for a certification or addendum to the CTE clarifying whether or not transactions between the Cooperative and its members are also exempted from paying capital gains tax.

In reply, please be informed that Sec. 4 (e) of the Joint Rules and Regulations Implementing RA No. 9520, as circularized by Revenue Memorandum Circular (RMC) No. 12-10 dated February 11, 2010, defines multipurpose cooperative, to wit:

> *SECTION 4. Types of Cooperatives. — A cooperative may fall under any of the following types:*
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> xxx xxx xxx

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(e) Service Cooperative — is one which engages in medical and dental care, hospitalization, transportation, insurance, housing, labor, electric light and power, communication, professional and other services;

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Moreover, Article 60 of RA No. 6938, as amended by Section 5 of RA 9520, states that:

ART. 60. Tax Treatment of Cooperative. — Duly registered cooperatives under this Code which do not transact any business with non-members or the general public shall not be subject to any taxes and fees imposed under the internal revenue laws and other tax laws. x x x

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In addition, Section 7 of RA No. 9520 as circularized by the same RMC, provides:

Section 7. TAX EXEMPTIONS OF DULY REGISTERED COOPERATIVES WHICH TRANSACT BUSINESS WITH MEMBERS ONLY. — Duly registered cooperatives dealing/transacting business with members only shall be exempt from paying any taxes and fees, including but not limited to:

a) Capital Gains Tax from sale of shares of stock or sale, exchange or other disposition of real property classified as capital assets;

b) Documentary stamp taxes on transactions of cooperatives dealing with non-members, except transactions with banks and insurance companies, Provided that whenever one party to the taxable document enjoys the exemption from DST, the other party who is not exempt shall be the one directly liable for the tax;

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Based on the foregoing, Oro Housing & Service Cooperative, being a service cooperative engaged in providing its members an affordable and decent housing units with functional facilities, is exempt from taxes as laid down in above mentioned RMC.

Moreover, the transfer in favor of the individual member-beneficiaries of the subdivided property is not subject to either the capital gains tax imposed under Section 24 (D) (1) of the Tax Code of 1997, or the creditable withholding tax imposed under Revenue Regulations No. 2-98, implementing Section 57 (B) of the same Code, considering that the transfer of said property is without any consideration since it is merely a formality to finally effect transfer of the said property to the member-beneficiaries who actually bought the same from the former owner through the Oro Housing & Service Cooperative. In other words, the transfer is without any consideration because the Cooperative is in fact transferring the ownership of the properties which actually belong to the member-beneficiaries.

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Furthermore, the said transfer is not subject to the donor's tax imposed under Section 98 of the Tax Code of 1997, since there is no intention on the part of the association to donate said property to the members considering that the members of the association could not donate properties the ownership of which belongs to the transferees (member-beneficiaries) themselves.

Moreover, under Section 196 of the Tax Code of 1997, the deeds or documents subject to the documentary stamp tax imposed therein are those where the realty sold shall be granted, assigned, transferred or otherwise conveyed to a purchaser or purchasers or to any other person or persons designated by such purchaser or purchasers thereby excluding from its purview the instant case considering that no consideration is involved in said transaction upon which the tax imposed could be based.

However, the notarial acknowledgment to said deed of conveyance is subject to the documentary stamp tax of P15.00 pursuant to Section 188 of the Tax Code of 1997.

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

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