September 5, 2018

BIR RULING NO. 1163-18

Sec. 24 (D) (1) NIRC; RR Nos. 9-2012 & 7-2003

Rosana P. San Vicente
Chief, Accounts Receivable Monitoring Division
BIR NOB, Quezon City

Madam :

This refers to your memorandum dated February 17, 2017 requesting for legal opinion as to whether a real property seized from a delinquent taxpayer for satisfaction of taxpayer's liability, if sold thru public action by the Bureau of Internal Revenue, is subject to capital gains tax imposed pursuant to Section 24 (D) (1) of the Tax Code of 1997.

It is represented that on April 29, 2014, the property of AAA with Transfer Certificate Title (TCT) No. 817308 which was seized by your Office as a consequence of the enforcement of the summary remedies available to the Bureau, relative to AAA's delinquent tax arrears, was sold thru public auction to BBB, the highest bidder, for _____ Pesos (P_____). The Certificate of Sale was accordingly issued to BBB on May 7, 2014 who paid the corresponding documentary stamp after the lapse of the one-year redemption period. He has applied for the Certificate Authorizing Registration (CAR) but he was advised to pay the capital gains tax before a CAR could be issued in his favor hence, he requested for assistance from your Office in the processing of the required CAR.

In reply, Sections 3 (g) and 4 of Revenue Regulations (RR) No. 7-2003 dated February 11, 2003 provides:

> *"**SECTION 3(g), RR 7-2003**. Treatment of real property subject of involuntary transfer. — In the case of involuntary transfers of real properties, including expropriation or foreclosure sale, the involuntariness of such sale shall have no effect on the classification of such real property in the hands of the involuntary seller, either as capital asset or ordinary asset, as the case may be."*

> *"**SECTION 4, RR 7-2003**. APPLICABLE TAXES ON SALE, EXCHANGE OR OTHER DISPOSITION OF REAL PROPERTY. — Gains/Income derived from sale, exchange, or other disposition of real properties shall, unless otherwise exempt, be subject to applicable taxes imposed under the Code, depending on whether the*

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subject properties are classified as capital assets or ordinary assets."

In relation thereto, Section 2 of Revenue Regulations (RR) No. 9-2012, dated May 31, 2012, reads as follows:

> *"In case of non-redemption of properties sold during involuntary sales, regardless of the type of proceedings and personality of mortgagees/selling persons or entities, the capital gains tax (CGT) imposed under Sections 24(D)(1) and 27(D)(5) of the Tax Code in relation to Section 57 of the Tax Code and RR 2-98, as amended, if the property is a capital asset; or the Creditable Withholding Tax (CWT) imposed under Section 57 and RR 2-98, as amended, if the property is an ordinary asset; the value added tax (VAT) imposed under Section 106 of the Tax Code and RR 16-05, as amended; and the documentary stamp tax (DST) imposed under Section 196 of the Tax Code shall become due.*
>
> *The buyer of the subject property, who is deemed to have withheld the CGT or CWT due from the sale, shall then file the CGT return and remit the said tax to the Bureau within thirty (30) days from expiration of the applicable statutory redemption period; or file the CWT return and remit the said tax to the Bureau within ten (10) days following the end of the month after expiration of the applicable statutory redemption period, provided that, for taxes withheld in December, the CWT return shall be filed and the taxes remitted to the Bureau on or before January 15 of the following year.*
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> *If the property sold through involuntary sale is under the circumstances which warrant the imposition of VAT, the said tax must be paid to the Bureau by the VAT-registered owner/mortgagor on or before the 20th or 25th day, whichever is applicable, of the month following the month when the right of redemption prescribes.*
>
> *The DST return shall be filed and the said tax paid to the Bureau within five (5) days after the close of the month after the lapse of the applicable statutory redemption period.*
>
> *The CGT/CWT/VAT & DST shall be based on whichever is higher of the consideration (bid price of the highest bidder) or the fair market value or the zonal value as determined in accordance with Section 6(E) of the Tax Code."*

Based on the foregoing, the sale of the seized property of AAA by the Bureau of Internal Revenue thru public auction is subject to capital gains tax imposed under Section 24 (D) (1) of the Tax Code of 1997, as amended.

Please be guided accordingly.

Very truly yours,

(SGD.) CAESAR R. DULAY

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