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

Sec. 24(D)(1), NIRC; RR 9-2012		# 117-2017 3-10-2017

Person to Contact: Chief, Legal and Legislative Division
Tel. Nos. 926-55-36/ 927-09-63

LAND BANK OF THE PHILIPPINES
Landbank Plaza
1598 M.H. del Pilar corner Dr. J. Quintos Sts., Malate, Manila

Attention : **MARGARITA C. LAUREANO**
Officer-In-Charge
Special Assets Department

Gentlemen:

This refers to your letter dated November 22, 2016, requesting exemption from payment of capital gains tax and documentary stamp tax on Agrarian Reform Fund-Real and Other Properties Acquired (ARF-ROPAs) of the Land Bank of the Philippines (LBP) which were acquired through legal proceedings or foreclosure as settlement for the uncollected ARF-funded loans of farmer-borrowers. The LBP is a trustee of the ARF, responsible for its administration and control (including disposal) pursuant to Presidential Decree No. 462 dated May 17, 1974.

It is represented that the status of Transfer Certificates of Title (TCTs) of ARF-ROPAs of the LBP are as follows:

1) Still in the name of the former owners, but annotated with Mortgage and Certificate of Sale (COS) both in favor of the LBP;
2) Still in the name of the former owners, annotated with Mortgage in favor of the LBP, the COS was executed but not annotated in the TCT;
3) Consolidated in the name of the LBP.

that the proceeds from disposal of ARF-ROPAs, including income earned are for the account of the ARF and to be remitted to the National Government; and that you are in the process of consolidating the titles of ARF-ROPAs in the name of the Republic of the Philippines.

In this regard you are requesting for Tax Exemption Certificate or Ruling for the said ARF-ROPAs that will be presented to various BIR Field Offices and Registry of Deeds concerned.

In reply, please be informed that Section 24 (D) (1) of the Tax Code of 1997, as amended, on the other hand provides:

> *"SEC. 24. Income Tax Rates. —*
>
> *xxx xxx xxx*
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> *(D) Capital Gains from Sale of Real Property. —*
> *(1) In General. — The provisions of Section 39(B) notwithstanding, a final tax of six percent (6%) based on the gross selling price or current fair market value as determined in accordance with Section 6(E) of this Code, whichever is higher, is hereby imposed upon 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 trusts: . . . ."*

Moreover, Section 2 of Revenue Regulations No. 9-2012[1], provides:

> *Section 2. Taxability of Owner's/Mortgagor's Failure to Redeem his Foreclosed/Auctioned Off Property/ies within the Applicable Statutory Redemption Period. - 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 16-2005, as amended; and the Documentary Stamp Tax (DST) imposed under Section 196 of the Tax Code shall become due.*
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> *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 the 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 Bureau on or before January 15 of the following year.*

[1] Implementing Sections 24(D) (1), 57, 106 and 196 of the National Internal Revenue Code of 1997 on non-redemption of properties sold during involuntary sales.

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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 day 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 and 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 unredeemed foreclosed properties sold during involuntary sales, regardless of the type of the proceedings, are subject to CGT/CWT/VAT, as the case may be, and DST. The tax due thereon shall be computed based on whichever is higher of the consideration (bid price of the highest bidder) of the fair market value or the zonal value as determined in accordance in Section 6(E) of the Tax Code, as amended. Then again, there is no "highest bid price" in situation where the LBP purchases the property for want of bidder in the public auction. The tax base may then be based on the bid price in the auction sale or the fair market value or the zonal value of the forfeited property as determined in accordance with Section 6(E) of the Tax Code, whichever is higher.

While the applicable taxes due on the sale of the real property are for the account of the delinquent real property owner, it is the highest bidder/buyer as the statutory seller of the delinquent property which shall file the necessary tax return and pay the applicable taxes due thereon. Thus, LBP cannot invoke the tax exemption of the ARF or LBP, if any, because the taxes due on a foreclosure sale or forfeiture of property are levied on the delinquent property owner, and not on ARF or LBP.

In addition, Section 27(C) of the Tax Code of 1997, as amended, provides that the provisions of existing special or general laws to the contrary notwithstanding, all corporations, agencies or instrumentalities owned or controlled by the Government, except the Government Service and Insurance System (GSIS), the Social Security System (SSS), the Philippine Health Insurance Corporation (PHIC), the local water districts (LWD) and the Philippine Charity Sweepstakes Office (PCSO), shall pay the tax at the rate of 32% upon their taxable income.

It should be remembered that laws and statutes granting tax exemptions are strictly construed against the taxpayer. Exemptions are never presumed and the burden is upon the taxpayer to establish his right to exemption beyond reasonable doubt[2]. In

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[2] Dimaampao, Japar B., Tax Principles and Remedies, Second Edition (2005)

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the case of Mactan Cebu International Airport Authority v. Marcos[3], the Supreme Court held:

> *"Accordingly, tax statutes must be construed strictly against the government and liberally in favor of the taxpayer. But since taxes are what we pay for civilized society, or are the lifeblood of the nation, the law frowns against exemptions from taxation and statutes granting the exemptions are thus construed strictissimi juris against the taxpayer and liberally in favor of the taxing authority. A claim of exemption from tax payments must be clearly shown and based on language in the law too plain to be mistaken. Elsewise stated, taxation is the rule, exemption therefrom is the exception."*

IN VIEW OF THE FOREGOING, this Office regrets to deny your request for exemption from payment of capital gains tax and documentary stamp tax on real properties forfeited by the LBP on ARF-ROPAs for lack of legal basis.

Lastly, as to Real Property Tax exemption, this Office is in no position to rule on the matter, the same being under the jurisdiction of the Local Government Unit concerned.

Very truly yours,

CAESAR R. DULAY
Commissioner of Internal Revenue

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[3] G.R. No. 120082, 11 September 1996, 261 SCRA 667