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

RA 7279; Sections 32 (B) (7) (b) & 196, of the Tax Code of 1997, as amended
BIR Ruling No. 190-16
#125-2017
3-22-2017

SAMAHANG PINAGBUKLOD NG BARANGAY KALIGAYAHAN, INC.
Tawid Sapa 2 Phase 2
Brgy. Kaligayahan, Novaliches, Quezon City

Attention : **NAPOLEON O. GABAD**
President

Gentlemen:

This refers to your letter dated July 14, 2015 requesting tax exemption from the payment of Capital Gains Tax for the sale of the government-owned properties to members[1] of Samahang Pinagbuklod ng Brgy. Kaligayahan, Inc. (SAPIKA), in accordance with the Republic Act No. 7279, otherwise known as the Urban Development and Housing Act of 1992.

Document submitted disclosed that on December 14, 2000[2], a Memorandum of Agreement (MOA) was entered into by and between the Quezon City Government and SAPIKA for the acquisition of Lot 871[3] Tala Estate comprising of Nineteen Thousand Eighty Eight square meters (.) under the Community Mortgage Program (CMP).

On May 28, 2002, Ordinance No. SP 1160, S-2002 was ordained by approving the subdivision plan of Tawid Sapa II Phase II, a Socialized Housing Project (BP Blg. 220) with Three Hundred Ninety Two (392) lots under CMP, containing an area of . covered by Transfer Certificate of Title (TCT) No. of the Registry of Deeds for Quezon City, owned by the Quezon City Government, located at Lot 871, Barangay Kaligayahan, Quezon City.

[1] See Annex (Partial List of Beneficiaries)
[2] Notarized dated December 18, 2000
[3] Quezon city council passed Ordinance No. SP.-892, S-98 which was approved by Hon. City Mayor Ismael A. Mathay, Jr. segregating lot 871 and converting the same for socialized housing purposes

On May 6, 2003, Resolution No. SP-2067, S-2003[4] was adopted authorizing the City Mayor to enter into a MOA with SAPIKA for direct Sale instead of CMP; and that on August 8, 2003[5], a MOA was entered into by and between the Quezon City Government and SAPIKA for the acquisition of Lot 871 Tala Estate comprising of 19,088 sq. m. at the agreed selling price of One Thousand Five Hundred Pesos (P1,500.00) per square meter.

In reply, please be informed that Sections 2 and 4 of Republic Act (RA) No. 7279, otherwise known as the Urban Development and Housing Act of 1992 provide as follows:

> *Sec. 2. Declaration of State Policy and Program Objectives. — It shall be the policy of the State to undertake, in cooperation with the private sector, a comprehensive and continuing Urban Development and Housing Program, hereinafter referred to as the Program, which shall:*
>
> *(f) Improve the capability of local government units in undertaking urban development and housing programs and projects.*
>
> *xxx xxx xxx*
>
> *Sec. 4. Coverage. — The Program shall cover all lands in urban and urbanizable areas, including existing areas for priority development sites, and in other areas that may be identified by the local government units as suitable for socialized housing.*

Moreover, as an instrumentality of the government which acts for the purpose of accomplishing government policies and objectives and extending essential services to the people, the LGU is exercising 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 and since 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 and to improve the capability of local government units in undertaking urban development and housing programs and projects, the distribution or transfer of the lots to the beneficiaries of socialized housing project of SAPIKA is exempt from capital gains tax. The City Government of Quezon, which is tasked to implement the distribution of the housing units, shall not be subject to capital gains tax, for it is only performing a mandated governmental function of providing shelter to the members of SAPIKA. (BIR Ruling 190-2016 dated May 16, 2016)

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[4] A RESOLUTION AUTHORIZING HIS HONOR, CITY MAYOR FELICIANO R. BELMONTE, JR., TO ENTER INTO A MEMORANDUM OF AGREEMENT WITH THE SAMAHANG PINAGBUKLOD NG BARANGAY KALIGAYAN, QUEZON CITY (SAPIKA HOA), FOR THE DIRECT SALE OF SEVERAL PARCELS OF LAND WITH A TOTAL AREA OF NINETEEN THOUSAND EIGHTY EIGHT SQUARE METERS (19,088 SQ.M.) SITUATED IN SITIO TAWID SAPA II BARANGAY KALIGAYAHAN, QUEZON CITY

[5] Notarized dated August 25, 2015

#125-2017
3-22-2017

On the other hand, the distribution or transfer of the lots to the beneficiaries of socialized housing project of SAPIKA is subject to the documentary stamp tax (DST) imposed under Section 196 of the Tax Code of 1997, as amended, in accordance with Revenue Regulations No. 11-97, as amended by Revenue Regulations No. 17-2001. The DST herein imposed, however, shall be based on the actual consideration considering that one of the contracting parties is the Government pursuant to Revenue Memorandum Order No. 41-91 and Section 196 of the Tax Code of 1997. (BIR Ruling 190-2016 dated May 16, 2016)

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