October 22, 2018

BIR RULING NO. 1279-18

Section 84, Tax Code; RA 9480; BIR Ruling No. DA-251-99

Villa Judan & Cruz
Unit 605 Richville Corporate Tower
1107 Alabang-Zapote Road
Madrigal Business Park
Ayala Alabang, Muntinlupa City 1780

Attention: *AAA*

Gentlemen :

This refers to your letter dated September 7, 2015 requesting for a legal opinion on whether renunciation of inheritance from the ESTATE OF BBB by the decedent's surviving spouse and children is subject to donor's tax pursuant to Section 98 of the Tax Code of 1997, as amended.

Documents show that BBB, with residence at _____, died intestate on December 29, 2014.

He is survived by his spouse, CCC, two (2) legitimate children, DDD and EEE, and two (2) siblings, FFF and GGG.

CCC together with EEE, and DDD executed a Deed of Repudiation of the Estate of BBB before the Philippine Consulate General in New York on March 20, 2015 and April 6, 2015, respectively.

At the time of his death, BBB owned and possessed 1/3 share in two (2) real properties situated in Gen. Mascardo St., Caloocan City and covered by Transfer Certificates of Title Nos. 001-2015001039 and 001-20150010 with an area of 122 and 258 sq.m., more or less.

In reply, please be informed that Article 777 of the New Civil Code (NCC) of the Philippines, as amended, provides that the rights to succession are transmitted from the moment of death of the decedent. However, the heirs have a right to either accept or repudiate the inheritance. Such is a voluntary and free act. [1]

Upon BBB's death on December 29, 2014, the right to accept or repudiate the

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inheritance from BBB was transmitted to his legal heirs. By executing a "Deed of Repudiation of the Estate of BBB," BBB's spouse, son and daughter exercised their respective rights to the inheritance. In doing so, it is as if CCC, DDD and EEE were never the heirs of the late BBB in respect to TCT Nos. 001-2015001039 and 001-20150010 since the law clearly provides that the effect of acceptance or repudiation shall always retroact to the moment of death of the decedent. [2] When the surviving spouse and legitimate children repudiated their respective shares in the inheritance, they did not donate the property which had never become theirs. Accordingly, the repudiation is not subject to donor's tax imposed under Section 98 of the Tax Code of 1997, as amended.

Pursuant to Articles 1018 and 1019 of the NCC, as amended, renunciation or repudiation gives rise to accretion and the share of the one who renounces his part in the inheritance shall accrue to that of his co-heirs in the same proportion that he inherits. Thus, when BBB's wife and children executed the Deed of Repudiation, accretion had effectively taken place in favor of the other heirs, FFF and GGG such that the renounced inheritance is added or incorporated to the shares of BBB's siblings. Consequently, the corresponding estate tax computed in accordance with the schedule provided for under Section 84 of the same Tax Code, shall be imposed upon the transfer of the net estate to FFF and GGG.

This ruling is being issued on the basis of the foregoing facts as represented. However, if upon investigation, it will be ascertained 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

Footnotes

1. Art. 1041, NCC.
2. Art. 1042, NCC.

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