November 15, 2018

BIR RULING NO. 1323-18

Sec. 2 (r) of Revenue Bulletin No. 01-03; BIR Ruling No. 201-2015

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Sir :

This refers to your letter dated July 29, 2016, seeking reconsideration of the Decision of Revenue District Officer (RDO) Florante R. Aninag, Revenue District Office No. 44, Taguig/Pateros, denying the request of BBB for exemption on capital gains tax (CGT), pursuant to Section 24 (D) (2) of the National Internal Revenue Code of 1997, as amended.

Background:

On October 23, 2014, BBB sold his house in Taguig City. As a requirement for exemption from the payment of CGT since he intended to use the proceeds of the sale to build a new residential house being newly married, he entered into an Escrow Agreement on November 20, 2014 with then RDO Rodolfo G. Mendoza, Revenue District Office No. 44, Taguig/Pateros, and with Metropolitan Bank and Trust Company (MetroBank) as escrow agent with Escrow Deposit in the amount of Php_____. On the same date, a Supplemental Escrow Agreement was executed between BBB and MetroBank. On November 26, 2014, BBB and his wife CCC, executed a Letter of Intent to Apply for Tax Exemption and Certification of Principal, Postal and Property Address.

BBB and spouse was able to find a lot to their liking in Antipolo City, which was paid in full on April 16, 2016. Immediately, the plans, designs, and specifications of the new house were drawn up and submitted to the City Engineer's Office for the building permit. On May 2, 2016, BBB and his wife executed a Sworn Statement declaring under oath that the proceeds from the sale of the old principal address was utilized for the purchase of a new property lot and in the construction of the new principal address which is in progress. An undertaking that the proceeds of the sale shall be fully utilized in the procurement of the necessary materials and pay for the labor costs and other expenses for the construction was

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also included in the Sworn Statement.

However, RDO Florante R. Aninag denied the application for exemption from payment of CGT filed by BBB due to violation of Section 24 (D) (2) of the National Internal Revenue Code of 1997, as amended. Thus, the entire Escrow Deposit including interest yield thereon was forfeited in favor of the Bureau of Internal Revenue to cover partial payment of deficiency CGT in the amount of Php_____.

On March 16, 2017, a Preliminary Assessment Notice with Details of Discrepancies was issued against BBB. Hence, a letter dated April 11, 2017, was sent to the Regional Director of Revenue Region No. 8, Makati City, requesting to hold off and defer any action pertaining to the said assessment.

In reply, please be informed that requests for rulings on issues covered by an on-going assessment or audit by the Revenue District Offices of the Bureau is a "No Ruling Area" under Section 2 (r) of Revenue Bulletin (RB) No. 01-03. Therefore, this Office is not allowed to dispense a ruling or render an opinion on the transaction under consideration. Section 2 (r) of Revenue Bulletin 01-03 provides:

> *"SECTION 2. List of No-Ruling Areas. — The following shall hereby be construed and identified as "No-Ruling Areas":*
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> xxx xxx xxx
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> *r) Issue/s or transactions involving directly or indirectly the same taxpayer/s which is/are the subject of an investigation, on-going audit, administrative protest, claim for refund or issuance of tax credit certificate, collection proceedings, or a judicial appeal subject to Section 3 hereunder. Accordingly, the taxpayer must submit and include the following statement in the request for ruling: 'The issue/s or transaction subject of the request is not under investigation, on-going audit, administrative protest, claim for refund or issuance of a tax credit certificate, collection proceedings, or a judicial appeal of the taxpayer/s involved.'"*

In view of the fact that there is already an assessment issued by Revenue District Office No. 44, Taguig/Pateros, this Office declines to issue a ruling on the issue raised.

Please be guided accordingly.

Very truly yours,

(SGD.) CAESAR R. DULAY

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Commissioner of Internal Revenue