November 15, 2018

BIR RULING NO. 1352-18

Sections 24 (D) (1), 188, and 196 of the NIRC
of 1997, as amended

AAA

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Madam :

This refers to your letter dated July 26, 2017, requesting exemption from capital gains (CGT) and documentary stamp taxes (DST) on the Deed of Reconveyance dated January 18, 2000, executed by BBB in favor of CCC.

Background:

As an act of accommodation to BBB, a Deed of Absolute Sale dated October 27, 1994 was executed by CCC married to AAA in favor of BBB, involving a parcel of land identified as Lot 33 Block 33, consisting of Two Hundred Sixty-Four square meters (264 sq. m.), together with its improvements, then covered by Transfer Certificate of Title (TCT) No. 113718 issued by the Register of Deeds of Makati City.

The above-mentioned accommodation refers to the opportunity granted by CCC to BBB to obtain a bank loan to pay the former the full consideration of the real property. BBB was also allowed by CCC to register the said property in the name of BBB in order to effect the approval of the loan from the bank. As a consequence, TCT No. 198499 was issued in the name of BBB by the Register of Deeds of Makati, thereby cancelling TCT No. 113718.

After several years of waiting for BBB to comply with the payment of the monetary consideration of the sale, she failed to obtain a bank loan and remit the consideration to CCC. Thus, on January 18, 2000, BBB executed a Deed of Reconveyance in favor of CCC.

In view of the above circumstances and in accordance with Article 1352 of the New Civil Code, you now seek approval that the Deed of Reconveyance dated January 18, 2000 be exempted from the imposition of CGT and DST because of failure of consideration in the

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original Deed of Sale, thereby rendering the said contract of no force and effect and that the reconveyance is a mere formality to reinstate the previous owner to its rightful state as if no former conveyance was ever made.

In reply, please be informed that the powers and duties [1] of the Bureau of Internal Revenue (BIR) shall comprehend the assessment and collection of all national internal revenue taxes, fees, and charges, and the enforcement of all forfeitures, penalties, and fines connected therewith. Once a taxable document/contract is presented, the BIR shall assess and collect all the national internal revenue taxes connected with such document/contract. It is not within the power of the BIR to determine whether or not the document/contract is valid or not. The determination of whether or not a document/contract is void necessitating the reconveyance to the rightful owner is an issue that is within the jurisdiction of the courts.

Therefore, your allegations that the registration of the instrument by BBB was with the consent of CCC to allow BBB the facility to obtain a bank loan to pay the full purchase price and that she failed to obtain such bank loan and remit the agreed purchase price in the Deed of Absolute Sale dated October 27, 1997, thereby necessitating the execution by BBB of the Deed of Reconveyance dated January 18, 2000 in favor of CCC cannot be given credence. Thus, the herein reconveyance finds no basis in fact and in law to be exempt from CGT and DST imposed by Sections 24 (D) (1), 188, and 196 of the National Internal Revenue Code of 1997, as amended. In Philippine jurisprudence, it is a well-settled rule that "mere allegation is not evidence, and is not equivalent to proof." [2] In the case of ***Spouses Nilo Ramos and Eliadora Ramos vs. Far East Bank and Trust Company***, [3] the Supreme Court states that:

> *"Basic is the rule that mere allegation is not evidence and is not equivalent to proof. Charges based on mere suspicion and speculation likewise cannot be given credence."*

Besides, the Deed of Absolute Sale dated October 17, 1994 executed by CCC in favor of BBB states that:

> *"FOR AND IN CONSIDERATION, of the sum of THREE HUNDRED THOUSAND PESOS (P300,000.00), Philippine Currency, in the hand paid by the BUYER* ***and received by the SELLER*** *and in consideration of BUYER's assumption of the mortgage obligation with the AFP Savings and Loans Association, Inc. in the amount of ONE HUNDRED THOUSAND PESOS (P100,000.00), SELLER does hereby SELL, TRANSFER and CONVEY the above described parcel of land including the house and other improvements standing the same."* (Emphasis and underscoring supplied)

Thus, the said Deed of Reconveyance is subject to the CGT imposed under Section 24

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(D) (1) and to DST imposed under Sections 188 and 196, all of the National Internal Revenue Code of 1997, as amended.

Please be guided accordingly.

Very truly yours,

(SGD.) CAESAR R. DULAY
Commissioner of Internal Revenue

Footnotes

1. Section 2 of the National Internal Revenue Code of 1997, as amended.
2. *Hector C. Villanueva vs. Philippine Daily Inquirer, Inc., et al.*, G.R. No. 164437, May 15, 2009, 588 SCRA 1, 11; *Social Security Commission and Social Security System vs. Teresa G. Favila*, G.R. No. 170195, March 28, 2011, 646 SCRA 462, 477; *ECE Realty and Development, Inc. vs. Rachel G. Mandap*, G.R. No. 196182, September 1, 2014.
3. G.R. No. 193804, February 27, 2013.

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