November 15, 2018

BIR RULING NO. 1360-18

Sec. 24 (D) (1) Tax Code; RR No. 26

AAA

_____

_____

Madam :

This refers to your letter dated October 25, 2011 requesting exemption from the payment of the capital gains tax (CGT) and documentary stamp tax (DST) on the transfer of a parcel of land in your name based on a Compromise Agreement duly approved by the Regional Trial Court (RTC) of Bacoor, Branch 19.

Based on the documents submitted, it is shown that BBB and AAA (the "parties") got married on October 11, 1999, without executing any pre-nuptial agreement regarding their property regime, thus, their properties are governed by the system of absolute community of property in accordance with the provision of Article 75 [1] of the Family Code of the Philippines; that the parties have mutually agreed to dissolve the absolute community of property regime between them pursuant to Article 99 paragraph 4, [2] in relation to Article 134 [3] of the Family Code; that accordingly, the parties executed a Compromise Agreement dated June 15, 2006 dividing their properties between themselves, in which a parcel of land, with an area of Three Hundred Seventy Three (373) square meters, covered by Transfer Certificate of Title (TCT) No. T-58780 of the Registry of Deeds for San Pablo City, was assigned, among others, to AAA; that the aforesaid Compromise Agreement was duly approved by the RTC of Bacoor, Branch 19, pursuant to its Order issued on February 22, 2007; that consequently, the marriage of the parties was subsequently declared null and void by RTC of Dasmariñas, Cavite, Branch 90, in its Decision issued on August 13, 2009 which became final and executory on December 18, 2009.

In reply, please be informed that the transfer of the title of the subject parcel of land to AAA is not subject to capital gains tax, as such transfer is equivalent to a conveyance but without monetary consideration, made in accordance with the RTC's Order approving the parties' Compromise Agreement for the liquidation and distribution of their community property. Likewise, the said transfer is not subject to documentary stamp tax considering that there is no monetary consideration involved pursuant to Revenue Regulations (RR) No. 26, otherwise known as, the Revised Documentary Stamp

Copyright 2020 CD Technologies Asia, Inc.

Tax Regulations.

Furthermore, no donation had taken place when former spouses, as in this case, adjudicated to themselves separately the properties which belong to their community property. The parties merely segregated and adjudicated for their own individual and separate ownership the properties which, from the celebration of their marriage, rightfully belong to them equally. In the instant case, since the parties merely appropriated to themselves their respective shares in the community properties, such appropriation of the properties covered by the Compromise Agreement is not subject to donor's tax as there is no donative intent in this case.

This ruling is being issued on the basis of the foregoing facts as represented. However, if upon investigation, it will be disclosed that 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. 75. The future spouses may, in the marriage settlements, agree upon the regime of absolute community, conjugal partnership of gains, complete separation of property, or any other regime. In the absence of a marriage settlement, or when the regime agreed upon is void, the system of absolute community of property as established in this Code shall govern.
2. Art. 99. The absolute community terminates:

   xxx xxx xxx

   (4) In case of judicial separation of property during the marriage under Articles 134 to 138.

   xxx xxx xxx
3. Art. 134. In the absence of an express declaration in the marriage settlements, the separation of property between spouses during the marriage shall not take place except by judicial order. Such judicial separation of property may either be voluntary or for sufficient cause.

Copyright 2020 CD Technologies Asia, Inc.