November 19, 2018

BIR RULING NO. 1380-18

Section 101 (A) (2) and Section 196 of the National Internal Revenue Code of 1997, as amended; PD 957, as amended by PD 1216; BIR Ruling No. 119-2013; BIR Ruling No. 489-2012; BIR Ruling No. 412-2012

Atty. Florella Bandala Almarez
OIC-City Legal Officer,
City Legal Office, City of Marikina

Madam :

This refers to your letter dated August 25, 2015, received by this Office on September 18, 2015, requesting exemption from payment of donor's tax and documentary stamp tax on the donation of road lots situated at Suburbia East Subdivision, Parang, Marikina by **EEI REALTY CORPORATION** (hereinafter referred to as the "**DONOR**") in favor of **THE CITY GOVERNMENT OF MARIKINA** (hereinafter referred to as the "**DONEE**").

Documents submitted disclosed that the **DONOR**, with Taxpayer Identification Number (TIN) 000-000-000-000 and with principal office at No. 12, Manggahan St., Bagumbayan, Quezon City, is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines; that it is the developer of Suburbia East Subdivision, Parang, Marikina and is the registered owner of the following real estates:

	TCT No.	*Area (in sq. m.)*
1	428745	1,767
2	428746	379
3	428369	41
4	428699	38
5	428747	4,509
6	428748	3,435
7	428749	2,422

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8	428750	656
9	428751	656
10	428752	1,212
11	428753	1,212
12	428754	1,247
13	428755	1,575
14	428756	1,118
15	428757	576
16	428758	1,368
17	428759	910
18	428760	849
19	428761	855
20	428762	855
21	428763	905
22	428444	5,372
23	499065	792
24	499066	940
25	499067	940
26	499068	939
27	499069	263
28	499070	204
29	499071	689
30	499072	339
31	499073	122
32	499050	1,165
33	499441	370
34	428767	1,088
35	428764	4,183

that on the other hand, the **DONEE**, with principal office at Sta. Elena, Shoe Avenue, Marikina City, is a public corporation created under its original charter, Republic Act No. 8223; that on February 23, 2015, the **DONOR**, represented by its _____, AAA, executed a Deed of Donation in favor of the **DONEE**, represented by the *City Mayor*, Hon. Del R. De Guzman, conveying to the latter the above-real estates; and that the **DONEE** accepted the donation under the conditions set forth as embodied in the same instrument.

In reply, please be informed that Presidential Decree (P.D.) No. 957, as amended by P.D. No. 1216 [1] states that:

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"Section 2. Section 31 of Presidential Decree No. 957 is hereby amended to read as follows:

> *"Sec. 31. Roads, Alleys, Sidewalks and Open Spaces. — The owner as developer of a subdivision shall provide adequate roads, alleys and sidewalks. For subdivision projects one (1) hectare or more, the owner or developer shall reserve thirty percent (30%) of the gross area for open space. Such open space shall have the following standards allocated exclusively for parks, playgrounds and recreational use:*
>
> *a) 9% of gross area for high density or social housing (66 to 100 family lot per gross hectare).*
>
> *b) 7% of gross area for medium-density or economic housing (21 to 65 family lot per gross hectare).*
>
> *c) 3.5% of gross area low-density or open market housing (20 family lots and below per gross hectare).*
>
> *These areas reserved for parks, playgrounds and recreational use shall be non-alienable public lands, and non-buildable. The plans of the subdivision project shall include tree planting on such parts of the subdivision as may be designated by the Authority.*
>
> ***Upon their completion as certified to by the Authority, the roads, alleys, sidewalks and playgrounds shall be donated by the owner or developer to the city or municipality and it shall be mandatory for the local governments to accept** provided, however, that the parks and playgrounds may be donated to the Homeowners Association of the project with the consent of the city or municipality concerned. No portion of the parks and playgrounds donated thereafter shall be converted to any other purpose or purposes."* (Emphasis and Underscoring supplied)

Pursuant to the above-cited provisions, the roads, alleys, sidewalks and playgrounds of a subdivision project have to be donated by the owner/developer to the concerned city or municipality, and it shall be mandatory for the local government to accept the donation. It is noteworthy to mention that in the case of ***The City of Angeles vs. Court of Appeals***, [2] the Supreme Court had the occasion to emphasize the mandatory tenor of Section 31 of PD 957, as amended by PD 1216, relative to the need to make the donation in favor of the city or municipality, in this wise:

> *"**It is clear from the aforequoted amendment that it is no longer optional on the part of the subdivision owner/developer to donate the open space for parks and playgrounds; rather there is now a legal obligation to donate the same.** Although*

there is a proviso that the donation of the parks and playgrounds may be made to the homeowners association of the project with the consent of the city or municipality concerned, nonetheless, the owner/developer is still obligated under the law to donate. Such option does not change the mandatory character of the provision. The donation has to be made regardless of which donee is picked by the owner/developer. The consent requirement before the same can be donated to the homeowners' association emphasizes this point." (Emphasis and Underscoring supplied)

Accordingly, since the Deed of Donation of the road lots and open spaces for adequate facilities described under PD 957, as amended by P.D. No. 1216, was executed by and between the developer, **EEI REALTY CORPORATION**, in favor of **THE CITY GOVERNMENT OF MARIKINA**, which is a political subdivision of the Government, the aforementioned donation is exempt from the payment of donor's tax pursuant to Section 101 (A) (2) of the National Internal Revenue Code of 1997, as amended, which provides that:

"SEC. 101. Exemption of Certain Gifts. — The following gifts or donations shall be exempt from the tax provided for in this Chapter:

xxx xxx xxx

(2) Gifts made to or for the use of the National Government or any entity created by any of its agencies which is not conducted for profit, or to any political subdivision of the said Government;

xxx xxx xxx"

Moreover, Section 185 of Revenue Regulations No. 26, otherwise known as the Revised Documentary Stamp Tax Regulations, implementing Title VII of the National Internal Revenue Code of 1997, as amended, provides that conveyances of realties not in connection with a sale, to trustees or other persons without consideration are not taxable. Accordingly, the Deed of Donation is not subject to the documentary stamp tax prescribed under Section 196 of the National Internal Revenue Code of 1997, as amended, but only to the documentary stamp tax of P15.00 imposed under Section 188 of the same Code.

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

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Footnotes

1. Defining "Open Space" in Residential Subdivisions and Amending Section 31 of Presidential Decree No. 957 Requiring Subdivision Owners to Provide Roads, Alleys, Sidewalks and Reserve Open Space for Parks or Recreational Use.
2. G.R. No. 97882, August 28, 1996.

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