November 19, 2018

BIR RULING NO. 1383-18

Sections 204 (C), 248 (A) (1) & (3) & Section 249, 1997 Tax Code; RR Nos. 13-2001; BIR Ruling No. 319-13

Filidian Rural Bank of Antipolo
6 Sen. Lorenzo Sumulong Memorial Circle
Barangay Dalig, Antipolo City

Attention: *AAA*

_____

Gentlemen :

This refers to your letter dated January 25, 2017 regarding your request for refund of penalties paid by **FILIDIAN RURAL BANK OF ANTIPOLO, INC.** ("**Filidian**," for brevity).

The facts, as culled from the records and as represented, are as follows:

1. Filidian is a banking institution with registered business address at No. 6, Circumferential Road (now Sen. Lorenzo Sumulong Memorial Circle), Antipolo City.

2. BBB obtained a loan from Filidian in the amount of P_____, the payment of which was secured by a real estate mortgage over a real property covered by Transfer Certificate of Title (TCT) No. 279056, with an area of 1,036 square meters located at Zapote and Longos, Bacoor, Cavite. She failed to settle the loan, and on March 17, 2009, a foreclosure sale for the above property was held at the Hall of Justice of Bacoor, Cavite where Filidian was declared the highest bidder for the total amount of P_____. The corresponding Certificate of Sale was issued on March 19, 2009 and registered with the Registry of Deeds on March 26, 2009.

3. On March 24, 2010, a civil action for judicial redemption was filed by CCC and DDD against Filidian, which complaint was raffled to the Regional Trial Court-Branch 89, Bacoor, Cavite and docketed as Civil Case No. BSC 2010-26. The plaintiffs CCC/DDD alleged that on

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October 13, 2009, they had entered into a sale of right to redeem with BBB, whereby the latter had sold all her rights and interests over the said property, including the right to redeem the same from the Filidian, in favor of the former.

4. On March 24, 2010, the court issued a Temporary Restraining Order (TRO), ordering therein respondent Filidian to cease and desist from consolidating the title to the subject property. On May 20, 2010, the same court gave due course to the prayer of plaintiffs CCC/DDD for the issuance of a Writ of Preliminary Injunction and thus, ordered Filidian to observe the *status quo* and to cease and desist from consolidating in the latter's name the title over the said property.

5. On March 7, 2011, the civil case was eventually dismissed, with the court directing the Register of Deeds for the Province of Cavite to cancel the liens annotated on TCT No. 279056 upon payment of the corresponding fees.

6. On April 11, 2011, Filidian paid the basic CGT and DST assessed in the amounts of Php_____ and Php_____, respectively. In a letter dated April 13, 2011, Filidian sought the cancellation of the civil penalties imposed for late payment of the CGT and DST due on the transaction. This was however denied for lack of merit by Revenue Region No. 9, San Pablo City through a Memorandum dated June 27, 2011 citing therein Revenue Memorandum Circular No. 58-2008 in relation to Revenue Regulations (RR) No. 04-99.

7. On July 8, 2011 and August 1, 2011, Filidian paid, under protest, the following amounts, as herein below shown:

Type	ROR No.	Date	Amount (Php)
DST — *Interest*	03624598	July 8, 2011	_____
CGT — *Interest*	03624599	July 8, 2011	_____
DST — *Surcharge*	03627789	August 1, 2011	_____
CGT — *Surcharge*	03687790	August 1, 2011	_____
Total			_____

8. On September 12, 2011, Revenue Region No. 9, San Pablo City, received a letter from Filidian dated August 21, 2011, in effect, appealing the denial of its request for cancellation/waiver of surcharge and interest. The letter also stated their request for the refund of the surcharges, interest and penalties paid, as enumerated above, with a further request for issuance of definitive ruling as to when the one-year

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period of redemption starts.

9. In response to the request, Revenue Region No. 9, San Pablo City, thru a letter dated November 16, 2011, rendered an opinion that the request for abatement/cancellation may be partially granted. In the same letter, Filidian was informed that it is only the Commissioner of Internal Revenue who has the exclusive authority to abate or cancel any internal revenue tax, interest and/or penalties imposed in relation thereto. Finally, Filidian was informed that the request for a ruling as to when the one-year period of redemption starts shall be forwarded to the BIR National Office for resolution and final disposition.

10. In response to the request for a ruling, BIR Ruling No. 319-2013 dated August 16, 2013 which clarified that "the right to redeem should be made before the registration of the Certificate of Foreclosure Sale with the applicable Register of Deeds or within three (3) months after foreclosure, whichever is earlier. This three-month redemption period shall be reckoned from the date of approval by the executive judge of the certificate of sale because it was only then that there was 'sale' to speak of which could be taxed" was issued.

11. On October 3, 2013, Filidian filed a letter dated October 1, 2013 before the Office of the Commissioner of Internal Revenue (OCIR), in effect seeking the approval of its claim for refund of the amounts paid representing the assessed surcharge, interest and penalties. On October 17, 2013, the case docket was referred to Revenue Region No. 9, San Pablo City.

12. In a letter dated October 29, 2013, Filidian was requested to furnish copies of the proof of payment of the surcharges, penalties and interest with a view to facilitate the processing the claim for refund. In response, Filidian submitted photocopy of Capital Gains Tax and Documentary Stamp Tax Returns filed with photocopy of Revenue Official Receipts for taxes paid including the surcharges, interest and penalties.

13. Revenue Region (RR) No. 9, San Pablo City, in a letter dated August 18, 2014 signed by then Regional Director Jose N. Tan, invoked the presumption of correctness of tax assessments made in good faith by tax examiners and reiterated that the surcharge, interest and penalties imposed against Filidian for late payment of CGT and DST may only be abated or cancelled by the OCIR. It further opined that the filing of an action to enforce the taxpayer's right to redeem the property or even a TRO issued by a court cannot suspend the running of the statutory period to redeem the property hence the imposition of civil penalties

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against Filidian for late payment of capital gains tax and documentary stamp tax was proper. Since the surcharge, interest and penalties imposed and collected cannot be considered "*penalties imposed/collected without authority*" pursuant to Sections 204 (C) & 229 of the 1997 Tax Code, as amended, the claim for refund was denied with finality by RR No. 9.

14. In response to the denial of the claim for refund, in a letter dated October 1, 2014, you requested for reconsideration and raised the principle of *solutio indebiti* before the Office of then Commissioner Kim S. Jacinto-Henares which forwarded the same to the Office of the Deputy Commissioner for Operations Group for appropriate/necessary action. The request was then forwarded to the Assessment Group and finally to the Law and Legislative Division under the Legal Group which interpreted and informed that the request is actually a request for abatement of interest, surcharge and penalties covered by Revenue Regulations (RR) No. 13-2001. You were then asked to comply and follow the abatement process provided under the said Regulations.

15. It is your position however, as informed in your letter dated January 25, 2017, that the abatement process under RR No. 13-2011 may not be applicable and that what is actually being requested is for the refund or reimbursement of the interests and surcharges that was paid under protest on July 8, 2011 and August 1, 2011, and not abatement or cancellation or exemption from payment.

16. Hence, the forwarding of the docket/records of the case for resolution by RR No. 9-San Pablo City with recommendation for denial of the claim for refund with finality.

In reply thereto, please be informed that under Sections 248 (A) (1) and (3) and 249, both of the Tax Code of 1997, the imposition of the surcharge and interest on delinquency is mandatory. Strong reasons of policy support a strict observance of the rule regarding the payment of tax. The laws imposing penalties for delinquencies are clearly intended to hasten tax payments or punish evasions or neglect of duty in respect thereof. If delays in tax payments are to be condoned for light reasons, the law imposing penalties for delinquencies would be rendered nugatory and the maintenance of the government and its multifarious activities would be as precarious as taxpayers are willing or unwilling to pay their obligations to the state on time (*Jamora vs. Meer*, 74 Phil. 22).

The facts show that there was no intention on the part of Filidian not to file the corresponding returns and pay the taxes thereon as there were a valid TRO and a Writ of Preliminary Injunction issued by the court ordering Filidian to cease and desist from consolidating the title of the subject property. While this Office agrees with the opinion of Revenue Region No. 9, San Pablo City, that the TRO and the Writ of Preliminary

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Injunction do not suspend the running of the prescriptive period to redeem a foreclosed property, the same may be regarded as valid grounds for the abatement or cancellation of the penalties pursuant to Revenue Regulations (RR) No. 13-2001 *(Implementing Section 204 (B), in Relation to Section 290 of the Tax Code of 1997, Regarding Abatement or Cancellation of Internal Revenue Tax Liabilities)* which provides for the instances when the penalties and/or interest imposed on the taxpayer may be abated or cancelled. Section 2 of said Regulations provides that when a taxpayer fails to file the return and pay the correct tax on time due to circumstances beyond his control, the surcharge and the compromise penalty, but not the interest, thereon may be abated. Clearly, Filidian's failure to file the returns and pay the appropriate tax due on the transfer of the subject property was due to a circumstance beyond its control, that is, the TRO and Writ of Preliminary Injunction issued by the court.

That said, the remedy of abatement, while available, cannot be imposed upon those who refuse to avail of the same despite advice. It is noted that since the surcharges, interest and penalties have already been paid, Filidian is adamant with respect to their claim for refund and the same has been reiterated by them in not than just one occasion.

For a claim of a refund to prosper however, Section 204 (C) provided, *viz.*:

> "**SEC. 204 (C), 1997 Tax Code.** Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes. — The Commissioner may —
>
> xxx xxx xxx
>
> (C) Credit or refund taxes erroneously or illegally received or ***penalties imposed without authority***." (emphasis supplied)

As aptly put by RR No. 9, the basic issue in the claim for refund is whether the surcharge, interest and penalties were imposed without authority, and, thus, wrongfully collected. As stated above, the filing of an action to enforce the taxpayer's right to redeem the property or even a TRO issued by a court cannot suspend the running of the statutory period to redeem the property hence the imposition of civil penalties (against Filidian) for late payment of capital gains tax and documentary stamp tax was proper.

In view thereof, since the surcharge, interest and penalties imposed and collected, cannot be considered "*penalties imposed without authority*" pursuant to Section 204 (C) of the 1997 Tax Code, as amended, this Office is of the opinion that the denial of the claim for refund is also proper and should be treated with finality.

Please be guided accordingly.

Very truly yours,

(SGD.) CAESAR R. DULAY

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