REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE
Quezon City

Mariano Z. Velarde et al. vs. Court of Appeals, et al., G.R. No. 108346;
BIR Ruling No. 633-2012
#173-2017 4-6-2017

TABANDA LAW OFFICE
ROOMS 5 & 6, 3rd Floor Shoppers Lane,
Gen. Luna Road, Baguio City

Attention : **Atty. Betty Lourdes F. Tabanda**
Counsel

Gentlemen:

This refers to your letter dated July 30, 2016, which was forwarded by the OIC Regional Director, Revenue Region No. 2, Cordillera Administrative Region, Baguio City, requesting on behalf of your client, Mr. Manuel A. Aquino ("Mr. Aquino"), for exemption from the payment of capital gains tax (CGT) and documentary stamp tax (DST) on the reconveyance of nine (9) parcels of land and/or recovery of ownership pursuant to the Decision of the Regional Trial Court (RTC), Branch 60, Baguio City, dated April 13, 2011, which was affirmed by the Court of Appeals, Manila, dated October 22, 2015, and became final and executory on November 20, 2015.

It is represented that Mr. Aquino is the registered owner of a parcel of land located at Irisan, Baguio City, covered by Transfer Certificate of Title (TCT) No. containing an area of One Thousand (1,000) Square Meters, more or less, issued by the Acting Register of Deeds of Baguio City on February 16, 1977; that sometime in May 2004, Mr. Aquino discovered that the title covering the said property was cancelled and replaced by nine (9) TCT's bearing nos. and all in the name of Ms. Gilberta Alma S. Ladia vda. De Ayson ("Ms. Ladia"); that the title of Mr. Aquino was cancelled and transferred to Ms. Ladia by virtue of a Deed of Absolute Sale dated April 14, 2004 purportedly signed by Mr. Aquino in favor of Ms. Ladia; that Mr. Aquino contended that the signatures found above his name, as well as that of his wife in the Deed of Absolute Sale are not their signatures, hence, forged; that Mr. Aquino filed a Complaint for the Annulment of the Deed of Absolute Sale and the Cancellation of the 9 TCTs docketed as Civil Case No 5841-R before the Regional Trial Court (RTC) Branch 60 of Baguio City; that the RTC Branch 60 of Baguio City decided and ruled in favor of Mr. Aquino declaring the Deed of Sale dated April 14, 2004 null and void and ordered the Registry of Deeds of Baguio City for the cancellation of the 9 TCTs; that the Court of Appeals, Manila, affirmed the Decision of the RTC and became final and executory on November 20, 2015; and that in compliance with the Court Decision, Mr. Aquino is now in the process of transferring back the 9 TCT's covering the properties in his name.

In reply, please be informed that the case of *Mariano Z. Velarde et al. vs. Court of Appeals, et al.*, G.R. No. 108346 dated July 11, 2001, the Supreme Court held that "(t)o rescind

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is to declare a contract void at its inception and to put an end to it as though it never was. It is not merely to terminate it and release the parties from further obligations to each other, but to abrogate it from the beginning and restore the parties to their relative positions as if no contract has been made."

Based on the foregoing, the rescission of a contract would not give rise to a taxable event for two reasons: a) the result of rescission is that it is as if there was no sale, transfer or exchange, and hence, no income is realized; and b) the return of the object of the rescinded contract is not for monetary consideration and is merely an acknowledgement or confirmation of the title and ownership of the original owner of the property. The above Court pronouncement finds application in this case. In the Court of Appeal's decision affirming the RTC decision, the former held that "the general rule is that a forged deed is a nullity and conveys no title. A forged deed may be defined as an instrument which purports to have been executed by the person or persons whose signatures appear thereon, but which, in fact was not executed, and the signatures thereon had been merely imitated so as to give them the deceptive appearance of genuineness".

As decided by the RTC Branch 60, Baguio City dated Aril 13, 2011 and as affirmed by the Court of Appeals, Manila dated October 22, 2015, the Register of Deeds of Baguio City was directed to cancel the 9 TCTs. Such directive to cancel necessarily entails the reconveyance or reversion of ownership of the parcels land to the true and lawful owner, Mr. Manuel A. Aquino, and the issuance of new TCTs in his name.

Thus, the reconveyance of the subject parcels of land to Mr. Aquino in accordance with such final and executory judgement of the RTC will not be subject to CGT imposed under Section 24 (D)(1) of the Tax Code of 1997, as amended. Moreover, said reconveyance will not be subject to DST pursuant to Section 196 of the 1997 Tax Code, as amended, but to the DST 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 disclosed that the facts are different, then this ruling shall be considered null and void.

Very truly yours,

CAESAR R. DULAY
Commissioner of Internal Revenue

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