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

Sec.24(D)(1), 27(D)(5), 57 & 106 Tax Code
BIR Ruling No. 252-13
0205-2019
MAR 06 2019

MR. ORLANDO R. RAVANERA
Chairman
Cooperative Development Authority
827 Aurora Blvd., Service Road
Brgy. Immaculate Conception, Cubao, Quezon City

Dear Mr. Ravanera:

This refers to your letter dated December 5, 2017 requesting for a ruling on whether the Cooperative Development Authority (CDA) is exempt from payment of capital gains tax (CGT), documentary stamp tax (DST), real property tax (RPT), and transfer tax.

As represented, with the passage of RA 6938, the cooperative lending program of the then government agencies like the Bureau of Agricultural Cooperative Development (BACOD) and the Regional Development Assistance Offices (RCDAOs) under the Department of Agriculture was transferred to the CDA. From the funds of the foregoing agencies, CDA granted loans to cooperatives. Cooperatives availing of said loans executed mortgages in the favor of the CDA. However, pursuant to Executive Order (E.O.) No. 138 issued in 1999, the granting of loans was stopped. Nonetheless, the CDA continuously received loan repayments, yet some debtor cooperatives failed to pay their loans. Per record of the CDA, thirty-five (35) cooperatives had executed a real estate mortgage in favor of CDA.

In order to recover from the loans, the CDA initiated foreclosure proceedings on the real estate mortgages.

Following the guidelines for procedure in the extra-judicial foreclosure of mortgage issued by the Supreme Court for the year 2014 to date, the agency has been able to foreclose properties for three (3) cooperatives, to wit:

1. Concepcion Federation of MPC, Inc. - The property is situated in the Municipality of Concepcion, Province of Tarlac with three (3) TCT's, containing an area of Seven Hundred and Eighty (780) sq. m., One Thousand Seven Hundred and Eight (1,708) sq. m. and Four Hundred Fifty-Four (454) sq. m. more or less respectively.

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2. Cooperative Union of the Philippines - The property is situated in Dist. of Diliman, Q.C., containing an area of One Thousand Twenty-Five (1,025) sq. m. more or less.

3. Valley Green Multipurpose Cooperative - The property is situated in Barrio of Upi, Municipality of Gamu, Province of Isabela, containing an area of Seven Hundred Nineteen (719) sq. meters more or less.

The Certificate of Sale of the above mentioned cooperatives has been issued. The period of redemption of the above-described properties had already expired in year 2016 or from the date of registration of these instruments. Thereafter, the Final Deed of Sale will be issued to CDA upon payment of the capital gains tax, documentary stamp tax, real property tax, transfer tax, etc.

In reply, please be informed that although Republic Act (RA) No. 6938 provides that CDA shall be the government agency in-charge of registration and regulations of cooperatives, the CDA, its creation, powers, functions and responsibilities are guided by RA No. 6939. However, nowhere in RA No. 6939 (the "CDA Charter") is there a provision exempting CDA from payment of taxes. Such being the case, Revenue Regulations (RR) No. 9-2012 shall apply like any other extra-judicial foreclosures which do not fall within the purview of RR No. 4-99 (extra-judicial foreclosure sale initiated by banks, finance and insurance companies). Section 2 of RR No. 9-2012 provides in part:

> "Section 2. Taxability of Owner's/Mortgagor's Failure to Redeem his Foreclosed/Auctioned Off Property within the Applicable Statutory Redemption Period. —
>
> In case of non-redemption of properties sold during involuntary sales, **regardless of the type of** proceedings and **personality of mortgagees/selling persons or entities**, the capital gains tax (CGT) imposed under Sections 24(D)(1) and 27(D)(5) of the Tax Code in relation to Section 57 of the Tax Code and RR 2-98, as amended, if the property is a capital asset; or the Creditable Withholding Tax (CWT) imposed under Section 57 and RR 2-98, as amended, if the property is an ordinary asset; the value added tax (VAT) imposed under Section 106 of the Tax Code and RR 16-05, as amended; and the documentary stamp tax (DST) imposed under Section 196 of the Tax Code shall become due."

Applying RR No. 9-2012, the buyer of the property who is deemed to have withheld the CGT, if the property is a capital asset, shall file the CGT return and remit the said tax to the Bureau of Internal Revenue (BIR) within thirty (30) days from expiration of the applicable statutory redemption period. However, if the property is an ordinary asset, the buyer who is deemed to have withheld the Creditable Withholding Tax (CWT) due from the sale shall file the CWT return and remit the said tax to the BIR within ten (10) days following the end of the month after expiration of the applicable statutory redemption period.

If the property sold through involuntary sale is under the circumstances which warrant the imposition of VAT, the said tax must be paid to the BIR by the VAT-registered owner/mortgagor on or before the 20th or 25th day, whichever is applicable, of the month following the month when the right of redemption prescribes.

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The DST return shall be filed and the said tax paid to the BIR within five (5) days after the close of the month after the lapse of the applicable statutory redemption period.

The CGT/CWT/VAT & DST shall be based on whichever is higher of the consideration (bid price of the highest bidder) or the fair market value or the zonal value as determined in accordance with Section 6(E) of the Tax Code, as amended.

As represented, no redemption was made by the owners of the auctioned properties, hence, ownership over such real properties shall be transferred in the name of CDA.

IN VIEW OF THE FOREGOING, CDA is liable to pay the CGT/CWT/VAT and DST in order for the properties to be transferred in its name.

In case there is no bid price i.e., want of bidder in the auction, or the highest bid is insufficient to satisfy CDA's claim, the claim of the CDA against the concerned cooperatives should be considered as the selling or bid price. Thus, for purposes of computing the applicable taxes due thereon, the tax base shall be whichever is the highest of the total claim of the CDA, the fair market value or the zonal value as determined in accordance with Section 6 (E) of the 1997 Tax Code, as amended.

Finally, this Office declines to rule on the issue of real property taxes since it is beyond its jurisdiction to pass upon matters relating to taxes outside the scope of the Tax Code of 1997, as amended.

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,

CAESAR R. DULAY
Commissioner of Internal Revenue

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