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

Bureau of Internal Revenue Ruling

Sec. 24 (D)(1), Sec. 32 (B)(4), NIRC of 1997, as amended; Sec. 63, Revenue Regulations (RR) No. 02-40; RR No. 9-2012		#026-2018

Date: January 18, 2018

Person to Contact: Chief, Law Division
Tel. Nos. 926-55-36 / 927-09-63

R.P. NOGALES LAW OFFICE
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Attention: **ATTY. ROGELIO P. NOGALES**

Gentlemen:

This refers to your letters dated September 28, 2015, October 28, 2015, and November 03, 2015, inquiring whether or not the damages awarded by the Court in the case of Patricia Salamat Villareal, et. al., vs. Eliseo Sevilla, et. al., docketed as Civil Case No. , by reason of murder, is classified as taxable income on the part of the heirs of the late Jose K. Villareal, and requesting exemption from payment of capital gains tax and documentary stamp tax on the transfer of real property based on the decision of the Court in the case of Patricia S. Villareal, et. al., vs. Sps. Eliseo and Erna Sevilla, et. al., docketed as Civil Case No. a complaint for Annulment of Sale in Fraud of Creditors with Damages.

Based on the documents submitted, it is shown that an action for damages arising from crime, docketed as Civil Case No. , was instituted by Patricia Salamat Villareal and her minor children (Plaintiffs), against Eliseo Sevilla, Erna Sevilla y Abrico, alias Cindy, John Peter, and Richard Does, (Defendants) who are alleged to have been responsible for the murder of Jose K. Villareal, husband of Patricia Salamat Villareal. After due hearing, judgment was rendered on April 2, 1990 by the Regional Trial Court (RTC) of Makati City, Branch 132, ordering the Defendants, jointly and severally, to pay Plaintiffs:

(1) by way of indemnity for the death of the victim;
(2) for actual damages;
(3) as consequential damages representing loss of the victim's earning capacity;
(4) for moral damages;
(5) as exemplary damages;
(6) for attorney's fees;
(7) Interest on all the foregoing amounts at the rate of six percent (6%) per annum; and
(8) the cost of the suit.

In a separate case docketed as Civil Case No. , a complaint for Annulment of Sale in Fraud of Creditors with Damages was filed by Patricia S. Villareal and her minor children, Tricia and Claire Hope S. Villareal (Plaintiffs) against Spouses Eliseo and Erna Sevilla, Teresita Sevilla Bonifacio, Teresita C. Marbibi, Jean Rigby Castellano, Maria Catalina Castro, Marisol Castro, Central Market Savings and Loan Association, Inc., and the Register of Deeds of Makati, Metro Manila. This case stemmed from a judgment by default rendered by the Regional Trial Court of Makati, Branch 132. on April 02, 1990, in Civil Case No. awarding civil damages in the amount of (Php) in favor of the Plaintiffs. This action was filed by the Plaintiffs (judgment creditors) against the judgment debtors Erna and Eliseo Sevilla and other defendants to whom the Sevillas allegedly sold their properties in fraud of the judgment creditors. After due hearing, judgement was rendered in favor of the Plaintiffs and against the Defendants, declaring, among others:

(1) The Deed of Absolute Sale executed by Spouses Eliseo and Erna Sevilla, through their attorney-in-fact Teresita Sevilla Bonifacio, in favor of Jean Rigby Castellano and Maria Catalina Castro dated July 11, 1990. . . . . is hereby declared as null and void for being a sale in fraud of the judgment creditors in Civil Case No. before Branch 132 of this Court.

The Register of Deeds of Makati is hereby ordered to cancel immediately Transfer Certificate of Title No. in the names of Jean Rigby Castellano and Maria Catalina Castro, and all Transfer Certificates of Title that may emanate and proceed from the same, restoring TCT No. in the names of spouses Eliseo and Erna Sevilla.

(2) The Register of Deeds of Makati is likewise ordered to annotate in the TCT No. the Writ of Levy and Execution dated March 17, 1987 issued by Branch 132 in Civil Case No. .

Based on this Decision and on the Certificate of Sale dated September 22, 2014, you stated in your letter dated October 28, 2015 that capital gains tax and documentary stamp tax were computed by the Revenue District Office No. 053B, Muntinlupa City, on the transfer of real property in favor of the Plaintiffs. Hence, this request.

In reply, please be informed that Section 32 (B) (4) of the National Internal Revenue Code (NIRC) of 1997, as amended, provides that:

"SEC. 32. Gross Income. – xxx xxx xxx

(B) Exclusions from Gross Income. - The following items shall not be included in gross income and shall be exempt from taxation under this Title:

xxx xxx xxx

(4) *Compensation for Injuries or Sickness. - amounts received, through Accident or Health Insurance or under Workmen's Compensation Acts, as compensation for personal injuries or sickness,* ***plus the amounts of any damages received, whether by suit or agreement, on account of such injuries or sickness.***" (Emphasis supplied)

In relation thereto, Section 63 of Revenue Regulations (RR) No. 02-40 provides that:

"SECTION 63. Amounts Received as Compensation for Injuries or Sickness. - The amounts received by an insured or his estate or beneficiaries

*through accident or health insurance or under workmen's compensation acts as compensation for personal injuries or sickness are excluded from the gross income of the insured, his estate, and other beneficiaries. **Any damages recovered by suit or agreement on account of such injuries or sickness are similarly excluded from the gross income of the individual injured or sick, if living, or of his estate or other beneficiaries entitled to receive such damages, if dead.**"* (Emphasis supplied)

Applying the above provisions, compensatory damages, actual damages, moral damages, exemplary damages, attorney's fees, and the cost of the suit, received by the Plaintiffs on account of the death of Jose K. Villareal are excluded from gross income.

However, consequential damages representing loss of the victim's earning capacity are not excluded from gross income. Such damages are merely replacement of income which would have been subjected to tax if earned. Thus, the amount of [redacted] awarded as consequential damages representing loss of the victim's earning capacity is subject to income tax on the part of the heirs of the late Jose K. Villareal.

As to the taxability of the transfer of the real property in satisfaction of the Court's award for damages, Section 24 (D) (1) of the NIRC of 1997, as amended, provides that:

"SEC. 24. Income Tax Rates. – xxx xxx xxx

(D) Capital Gains from Sale of Real Property. -

*(1) In General. - The provisions of Section 39(B) notwithstanding, a final tax of six percent (6%) based on the gross selling price or current fair market value as determined in accordance with Section 6(E) of this Code, whichever is higher, is hereby imposed upon capital gains presumed to have been realized from the sale, exchange, or **other disposition of real property** located in the Philippines, classified as capital assets, including pacto de retro sales and other forms of conditional sales, by individuals, including estates and trusts: Provided, That the tax liability, if any, on gains from sales or other dispositions of real property to the government or any of its political subdivisions or agencies or to government-owned or controlled corporations shall be determined either under Section 24 (A) or under this Subsection, at the option of the taxpayer."* (Emphasis supplied)

In the case of *Salud vs. Commissioner of Internal Revenue*[1], the Court of Tax Appeals had the occasion to rule that the NIRC of 1997, as amended, does not define nor qualify the phrase "other disposition". It is clear, plain and therefore must be applied without attempted or strained interpretation. It shall be construed in its plain and simple meaning. "Disposition" means an act of disposing; transferring to the care or possession of another; the parting with, alienation of, or giving up property[2].

Applying the above ruling of the Court, it is therefore clear that the phrase "other disposition" includes within its purview all kinds of dispositions of real property under Section 24 (D) (1) of the NIRC of 1997, as amended, unless specifically excluded therefrom or subject to another tax treatment pursuant to different provisions of the NIRC of 1997, as amended. Considering, however, that the transfer of the subject property is for the satisfaction of the Court's award for damages in favor of the Plaintiffs, the taxability of the said transfer must be qualified. The current fair market value of the property, determined in accordance with Section 6(E) of the NIRC of 1997, as amended, which corresponds to the award of compensatory, actual, moral, and exemplary damages, attorney's fees, and the cost of the suit is exempt from Capital Gains Tax (CGT) and Documentary Stamp Tax (DST).

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[1] CTA EB Case No. 412 dated April 30, 2009
[2] Black's Law Dictionary, 6th Edition

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On the other hand, the current fair market value of the property corresponding to the amount of consequential damages representing loss of the victim's earning capacity including legal interest of six percent (6%) is subject to CGT and DST. The 6% legal interest shall be reckoned from the last day of filing the CGT and DST in accordance with Section 2 of RR No. 9-2012, dated May 31, 2012.

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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