October 19, 2016

BIR RULING NO. 357-16

Cecil S. Alba
Secretary General
Housing and Urban Development Coordinating Council
9th Floor, Banco De Oro Plaza
Paseo De Roxas, Makati City

Dear Madam :

This refers to your letter dated February 11, 2015 requesting that the Bureau of Internal Revenue indorse the draft Executive Order providing for the transfer of a BIR-acquired asset located in Lianga, Surigao del Sur to the National Housing Authority (NHA).

A perusal of the draft Executive Order reveals that it mandates this Bureau to transfer the property to the NHA. It fails to mention, however, how the transfer should be effected. It was further stated in your letter that the transfer is without any monetary consideration.

In reply, please be informed that the Executive Order (EO) No. 292, dated July 25, 1987, otherwise known as the "Administrative Code of 1987" requires that disposition of real property belonging to the government must be authorized by law and conveyed by the proper official. Section 48, Chapter 12 of EO No. 292 reads:

> Sec. 48. *Official Authorized to Convey Real Property.* — Whenever real property of the Government is authorized by law to be conveyed, the deed of conveyance shall be executed in behalf of the government by the following:
>
> (1) For property belonging to and titled in the name of the Republic of the Philippines, by the President, unless the authority therefor is expressly vested by law in another officer.
>
> (2) For property belonging to the Republic of the Philippines but titled in the name of any political subdivision or of any corporate agency or instrumentality, by the executive head of the agency or instrumentality.

As the subject property was acquired by the Bureau through forfeiture proceedings under the National Internal Revenue Code of 1997, as amended (NIRC), its disposition

Copyright 2020 CD Technologies Asia, Inc.

should also be governed by the same law. Section 216 of the NIRC states:

> *Sec. 216. Resale of Real Estate Taken for Taxes.* — The Commissioner shall have charge of any real estate obtained by the Government of the Philippines in payment or satisfaction of taxes, penalties or costs arising under this Code or in compromise or adjustment of any claim therefor, and said Commissioner may, upon the giving of not less than twenty (20) days notice, sell and dispose of the same at public auction or with the prior approval of the Secretary of Finance, dispose of the same at private sale. In either case, the proceeds of the sale shall be deposited with the National Treasury, and an accounting of the same shall be rendered to the Chairman of the Commission on Audit.

The above provision requires that any real property obtained by the government in payment of taxes should be disposed through sale. As the subject real property was acquired by the Bureau through forfeiture for nonpayment of taxes, the same may only be disposed through sale.

For this reason, we regret to inform you that we cannot indorse the draft Executive Order.

It is nonetheless proposed that should the NHA consider purchasing the abovementioned forfeited property measuring Two Hundred Fifty Three Thousand Nine Hundred Seventy One square meters (253,971 sq.m.) located at Brgy. Diatagon, Lianga, Surigao del Sur, the consideration recommended by the Bureau's Collection Service is the total amount of _____ Pesos (P_____) based on a _____ Pesos (P_____) per square meter zonal valuation, effective April 10, 2015, considering that the same is higher than the fair market value of _____ Pesos (P_____) which is at _____ Pesos (P_____) per square meter according to the Provincial Assessor.

Thank you.

Very truly yours,

(SGD.) CAESAR R. DULAY
Commissioner of Internal Revenue

Copyright 2020 CD Technologies Asia, Inc.