November 3, 2016

BIR RULING NO. 369-16

Section 24 (D) (2); RR 14-00; BIR Ruling No. 040-99; BIR Ruling No. 111-98

AAA

_____

_____

Madam :

This refers to your letter dated May 21, 2015, which was indorsed by the Chief, Legal Division of Revenue Region No. 7, Quezon City dated May 22, 2015, requesting exemption from capital gains tax on the sale of your principal residence pursuant to Section 24 (D) (2) of the Tax Code of 1997, as amended.

From the documents submitted, it appears that:

1. A Deed of Absolute Sale was executed between AAA, as Seller and BBB, as Buyer wherein the condominium unit owned by the Seller, particularly Unit _____ of the Emerald Mansion Condominium Project located at F. Ortigas, Jr. Road, Ortigas Center, Pasig City, was sold to the Buyer.

2. The aforesaid Deed of Absolute Sale bears the date of execution on September 2, 2013 while the date of notarization is September 10, 2013. A Cashier's Check dated August 14, 2013 with Check No. 1020030447 amounting to P_____, with Metrobank as the drawee bank was tendered to AAA. The Capital Gains Tax and Documentary Stamp Tax Returns on the sale transaction were filed with Revenue District Office No. 043-A, East Pasig on October 8, 2013 and the corresponding Certificate Authorizing Registration (CAR) was issued on October 31, 2013.

3. On the other hand, a Deed of Absolute Sale between CCC, as Seller and AAA, as Buyer, wherein the condominium unit owned by the Seller, particularly Unit _____ of the Emerald Mansion Condominium Project

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located at F. Ortigas, Jr. Road, Ortigas Center, Pasig City, was sold to the Buyer.

4. The Deed of Absolute Sale between CCC, as Seller and AAA, as Buyer was executed and notarized on September 2, 2013. A Cashier's Check dated August 30, 2013 with Check No. 6580025735 amounting to P_____, with Metrobank as the drawee bank was tendered to CCC. Subsequently, a CAR on the said sale was issued on December 3, 2013.

5. On February 5, 2014, the revenue officers of RDO No. 43-A, East Pasig City submitted a Memorandum to the Regional Director of Revenue Region No. 7, Quezon City, stating that the docket of the above-mentioned transaction be further evaluated whether it can qualify for exemption under Section 24 (D) (2) of the Tax Code of 1997, as amended, and implemented by Revenue Regulations (RR) No. 13-99, as amended by RR No. 14-2000 on the ground that the Deed of Absolute Sale of the principal residence was notarized on September 10, 2013 while the date of acquiring a new residence was notarized on September 2, 2013.

In reply, please be informed that the sale of a principal residence by a natural person may be exempted from capital gains tax under Section 24 (D) (2) of the Tax Code of 1997, as amended, provided that the requirements under the said law, as implemented by Revenue Regulations (RR) No. 13-99, as amended by RR No. 14-2000, have been complied with.

Revenue Regulations (RR) No. 13-99, as amended by RR No. 14-2000, provides the conditions for the exemption from capital gains tax under Section 24 (D) (2) of the Tax Code of 1997, as amended, on the sale of a principal residence by a natural person:

"SEC. 3. *Conditions for Exemption*. — The general provisions of the Code to the contrary notwithstanding, capital gains presumed to have been realized from the sale, exchange or disposition by a natural person of his Principal Residence shall not be imposed with six percent (6%) capital gains tax, subject to compliance with the following:

(1) Escrow Agreement. — The six percent (6%) capital gains tax otherwise due on the presumed capital gains derived from the sale, exchange or disposition of his Principal Residence shall be deposited in cash or manager's check in interest-bearing account with an Authorized Agent Bank (AAB) under an Escrow Agreement (ANNEX A hereof) between the concerned Revenue District Officer, the Seller/Transferor and the AAB to the effect that the amount so deposited, including its interest yield, shall only be released to such Seller/Transferor upon certification by the said RDO that the

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proceeds of sale or disposition thereof has, in fact, been utilized in the acquisition or construction of the Seller/Transferor's new Principal Residence within eighteen (18) calendar months from date of the said sale or disposition. The date of sale or disposition of a property refers to the date of notarization of the document evidencing the transfer of said property. In general, the term "Escrow" means "A scroll, writing or deed, delivered by the grantor, promisor or obligor into the hands of a third person, to be held by the latter until the happening of a contingency or performance of a condition, and then by him delivered to the grantee, promisee or obligee." (Emphasis supplied)

(2) Capital Gains Tax Return. — The Seller/Transferor shall file, in duplicate, his Capital Gains Tax Return (BIR FORM No. 1706) covering the sale or disposition of his Principal Residence with the concerned Revenue District Office within thirty (30) days from date of its sale or disposition: Provided, however, that the Seller/Transferor shall not be required to pay any capital gains tax during the 18-month period on the sale of his principal residence duly established as such. Provided, further, that for purposes of the capital gains tax otherwise due on the sale, exchange or disposition of the said Principal Residence, the execution of the Escrow Agreement referred to in the immediately preceding Section 3 (1) hereof shall be considered sufficient.

"The following shall be submitted with the Capital Gains Tax Return herein required to be filed:

(a) Proof of payment of the documentary stamp tax imposed under Sec. 196 of the Tax Code of 1997 on the deed of sale or conveyance of the said "Principal Residence;"

(b) A sworn statement from the Barangay Chairman that the taxpayer's Principal Residence is located within the jurisdiction of that Barangay and that the same has been his residence immediately prior to the date of its sale or disposition: Provided, however, that if the taxpayer's Principal Residence sold or disposed is a condominium unit, in lieu of the said Barangay Chairman, the certification shall be issued by the Building Administrator of the Condominium building;

(c) A duplicate original copy of the Deed of Conveyance of his Principal Residence;

(d) A certified xerox copy of the Transfer Certificate of Title (TCT) or Condominium Certificate of Title (CCT), in case of a condominium unit, covering the Principal Residence sold or disposed;

(e) A certified xerox copy of the latest Tax Declaration covering the said Principal Residence (land and improvement); and

(f) If the building or improvement thereon has been constructed on or after

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the year 1990, the Building Permit or Occupancy Permit issued by the concerned city or municipality, showing the amount of the construction cost thereof."

xxx xxx xxx

Suppletorily, Article 1315 of the New Civil Code, provides, *viz.*:

"Art. 1315. Contracts are perfected by mere consent, and from that moment the parties are bound not only to the fulfilment of what has been expressly stipulated but also to all the consequences which, according to their nature, may be in keeping with good faith, usage and law."

Furthermore, in the case of *Philippine American Life Insurance Co. v. Pineda, G.R. No. 54216 dated July 19, 1989*, the Supreme Court ruled that:

"Of equal importance is the well-settled rule that the contract between the parties is the law binding on both of them and for so many times, this court has consistently issued pronouncements upholding the validity and effectivity of contracts. Where there is nothing in the contract which is contrary to law, good morals, good customs, public policy or public order the validity of the contract must be sustained. Likewise, contracts which are the private laws of the contracting parties should be fulfilled according to the literal sense of their stipulations, if their terms are clear and leave no room for doubt as to the intention of the contracting parties, for contracts are obligatory, no matter in what form they may be, whenever the essential requisites for their validity are present (*Phoenix Assurance Co., Ltd. vs. United States Lines*, 22 SCRA 675, *Phil. American General Insurance Co., Inc. vs. Mutuc*, 61 SCRA 22.)"

From the afore-quoted provisions of the New Civil Code on Contracts and jurisprudence applicable in the instant case, it is clear that contracts are perfected and become valid and effective by mere consent. In the instant case, the consent of both parties was manifested upon the date of execution of the Deed of Absolute Sale and thereupon became effective and valid and not on the date of its notarization.

Documents submitted show that the Deed of Absolute Sale covering the sale of your principal residence was executed on September 2, 2013 and was notarized on September 10, 2013. On the other hand, the date of acquisition of your new principal residence was executed and notarized on September 2, 2013. Thus, it appears that acquisition of your new residence precedes the sale of your residence.

However, other documents such as the copy of the Cashier's Check shows that you received the payment for the sale of your principal residence on August 14, 2013, and that the CAR was issued for the said sale on October 31, 2013, which if compared to the Cashier's Check you paid to acquire your new residence (August 31, 2013) and date of

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issuance of CAR (December 3, 2013), will show that the date of sale of the principal residence was actually made prior to the purchase of a new residence. Thus, the documentary evidences negate what the date of notarization showing that the sale of the principal residence was made after acquiring a new residence and therefore, qualify for the exemption provided in Section 24 (D) (2) of the Tax Code of 1997, as amended, and implemented by RR No. 13-99, as amended by RR 14-2000. *(BIR Ruling No. 111-98 dated July 8, 1998)*

Premises and documents being considered, your application for tax exemption is hereby granted.

Accordingly, the sale of your condominium unit, particularly Unit _____ of the Emerald Mansion Condominium Project located at F. Ortigas, Jr. Road, Ortigas Center, Pasig City, is not subject to capital gains tax. *(BIR Ruling No. 040-99 dated March 30, 1999)*

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 as represented are different, then this ruling shall be considered null and void.

Very truly yours,

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

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