November 21, 2016

BIR RULING NO. 393-16

Section 66, RA No. 6657; BIR Ruling No. 009-16

AAA

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Madam :

This refers to your letter dated December 01, 2015 requesting exemption from the payment of capital gains tax (CGT) and documentary stamp tax (DST) on the Deed of Assignment executed by you in favor of BBB over a parcel of land with an area of Five Thousand Three Hundred Sixty One (5,361) square meters conveyed as disturbance compensation under Republic Act (RA) 3844, as amended by RA 6389.

Based on the documents submitted, it shows that AAA is the registered owner of a parcel of land, particularly described as follows:

TCT No. T-38155

> *"A parcel of land (Lot 1, Blk. 18 of the cons. subd. plan LRC Rcs-6076, being a portion of cons. of Lots 3112, to 3117 Sta. Maria de Pandi Est. LRC Rec. No. 8503), situated in the Mun. of Bustos, Prov. of Bul. . . . containing an area of FIVE THOUSAND THREE HUNDRED SIXTY ONE (5,361) SQ. METERS, more or less. . . ."*

that a Deed of Assignment dated August 25, 2009 was executed by AAA, assigning, transferring, and conveying, to BBB, the above-described parcel of land in full payment and complete satisfaction of the latter's right as tenant to receive disturbance compensation; that on October 01, 2009, the Department of Agrarian Reform issued a Certification manifesting no objection to the registration to the above-mentioned Deed of Assignment; and that on March 02, 2010, the Department of Agrarian Reform issued another Certification stating that BBB is the registered tenant over a parcel of land covered by TCT No. T-38155 containing an area of Five Thousand Three Hundred Sixty One (5,361) square meters, more or less.

In reply, please be informed that transfer of real property by way of Disturbance

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Compensation is exempt from capital gains tax and documentary stamp tax pursuant to Section 66 of RA No. 6657 otherwise known as the "Comprehensive Agrarian Reform Law of 1988" which provides, *viz.*:

> *"Sec. 66. Exemption from Taxes and Fees of Land Transfers. — Transactions under this Act involving a transfer of ownership, whether from natural or juridical persons, shall be exempted from taxes arising from capital gains. These transactions shall also be exempted from the payment of registration fees, and all other taxes and fees for the conveyance or transfer thereof. Provided, that all arrearages in real property taxes, without penalty or interest, shall be deductible from the compensation to which the owner may be entitled."*

Moreover, Section 36 (1) of RA 3844, as amended by Section 7 of RA 6389, allows disturbance compensation to the tenant as a result of extinguishment of tenancy relationship by reason of the reclassification or conversion of the agricultural land into non-agricultural land, to wit:

> *"Sec. 36. Possession of Landholding; Exceptions. — Notwithstanding any agreement as to the period or future surrender, of the land, an agricultural lessee shall continue in the enjoyment and possession of his landholding, except when his dispossession has been authorized by the Court in a judgment that is final and executory if after due hearing it is shown that:*
>
> > *"(1) The landholding is declared by the department head upon recommendation of the National Planning Commission to be suited for residential, commercial, industrial or some other urban purposes: Provided, That the agricultural lessee shall be entitled to disturbance compensation equivalent to five times the average of the gross harvests on his landholding during the last five preceding calendar years;"*

Only Section 35 of RA 3844 was expressly repealed by RA 6657. Hence, disturbance compensation given to a tenant pursuant to Section 36 of RA 3844, as amended by RA 6389, is still considered one of the transactions contemplated under Section 66 of RA 6657.

However, the documents submitted failed to prove that the disturbance compensation received by BBB was a result of extinguishment of tenancy relationship because of the reclassification or conversion of the agricultural land into residential, commercial, industrial or some other urban purposes, pursuant to Section 36 of RA 3844, as amended by RA 6389. Also, the lot covered by TCT No. T-38155, with an area of Five Thousand Three Hundred Sixty One (5,361) square meters, is not covered by the Comprehensive Agrarian Reform Program (CARP) by virtue of its being less than five (5) hectares. Such being the case, the transfer of the subject parcel of land in favor of BBB is not within the ambit of RA No. 6657 and, thus, subject to the capital gains tax and documentary stamp tax.

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Please be guided accordingly.

Very truly yours,

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

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