December 16, 2016

BIR RULING NO. 438-16

RA 7279; BIR Ruling No. 005-11; BIR Ruling No. 367-11

Neill Property Homeowners' Association, Inc.
Upper Banlat, Brgy. Tandang Sora, Quezon City

Attention: *AAA*

Gentlemen :

This refers to your letter dated January 21, 2015, requesting tax exemption from the payment of Capital Gains Tax and other taxes on the substitution of members in accordance with the Republic Act No. 7279, otherwise known as the Urban Development and Housing Act of 1992.

Documents submitted disclose that NEILL PROPERTY HOMEOWNERS' ASSOCIATION, INC. with Taxpayer's Identification No. 000-000-000-000, is the registered owner of the parcels of land located at Brgy. Upper Banlat, Quezon City and covered by the following Transfer Certificates of Title (TCT), to wit:

TCT NO.	BLOCK NO.	LOT NO.	AREA SQ.M.
N-181860	1	2	100
N-181884	1	8	50
N-181862	1	9	50
N-181887	1	10	48
N-181951	2	1	100
N-181920	2	10	50

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N-181958	2	12	66
N-181928	3	1	100
N-181898	4	11	52
N-181922	5	5	100
N-181941	6	6	57
N-181896	8	9	50
N-181926	9	6	50
N-181945	9	11	50
N-181866	9	14	50

all issued by the Registry of Deeds for Quezon City; that the aforesaid lots were acquired through a loan under the Community Mortgage Program (CMP) of the Social Housing Finance Corporation (SHFC); that the aforesaid lot was acquired through a loan under the Community Mortgage Program (CMP) of the Social Housing Finance Corporation (SHFC); that said project was taken-out/paid on January 16, 1992, in the total amount of Php_____; that the SHFC issued a Partial Release of Real Estate Mortgage constituted on the above-described TCTs; that on March 29, 2012, the Bureau of Internal Revenue (BIR) issued BIR Ruling No. 233-2012 to NEILL PROPERTY HOMEOWNERS' ASSOCIATION, INC. exempting the transfer of the above mentioned properties which was previously purchased under a Community Mortgage Program (CMP) with the SHFC; to the specified individual beneficiaries from the payment of capital gains tax imposed under Section 27 (D) (5) of the Tax Code of 1997, as amended, or the creditable withholding tax imposed under Revenue Regulations No. 2-98, as amended, implementing Section 57 (B), donor's tax imposed under Section 99 and documentary stamp tax imposed under Section 196 of the same Code; that from the individual beneficiaries previously submitted, there were members who defaulted their payment to the SHFC, thus the following persons, were approved by the SHFC as substitute:

	NAME AND BENEFICIARIES		TCT NO.	BLK NO.	LOT NO.	AREA SQ.M.
	SUBSTITUTED	SUBSTITUTE				
1	BBB	CCC	N-181860	1	2	100
2	DDD	EEE	N-181884	1	8	50

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3	FFF	GGG	N-181862	1	9	50
4	HHH	III	N-181887	1	10	48
5	JJJ	KKK	N-181951	2	1	100
6	LLL	MMM	N-181920	2	10	50
7	NNN	OOO	N-181958	2	12	66
8	PPP	QQQ	N-181928	3	1	100
9	RRR	SSS	N-181898	4	11	52
10	TTT	UUU	N-181922	5	5	100
11	VVV	WWW	N-181941	6	6	57
12	XXX	YYY	N-181896	8	9	50
13	ZZZ	AAAA	N-181926	9	6	50
14	BBBB	CCCC	N-181945	9	11	50
15	DDDD	EEEE	N-181866	9	14	50

that in the respective Certifications of Substitution issued by the SHFC, the SHFC certifies that they have conducted the review and evaluation of the substitution effected by the community association and have found that the said substitution is in order and complies with the requirements of substitution under existing CMP guidelines and that they are now in the process of transferring the purchased properties to their names by virtue of Certification of Substitution duly issued by SHFC.

In support of your request, you have completely submitted on August 11, 2015 the following documents:

1) Written application for exemption filed with the Law Division;

2) Certified true copies of the TCTs;

3) Certification from the SHFC that the property was acquired through CMP;

4) Certified true copy of the Articles of Incorporation of the Community

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Association;

5) Certified true copy of the Masterlist of Qualified Beneficiaries duly certified by the SHFC;

6) Certification issued by SHFC on the approval of the substitution;

7) Partial Release of Real Estate Mortgage;

8) BIR Certificate of Registration;

9) *Other pertinent documents.*

In reply, please be informed that the transfer in favor of your individual member-beneficiaries of the said subdivided properties and those herein named substitutes who by virtue of certification of substitution as duly approved by the SHFC are deemed subrogated to the rights and obligations of the members-beneficiaries substituted and are bound by exactly the same conditions, as those which bound the latter, is not subject to either the capital gains tax imposed under Section 27 (D) (5) of the Tax Code of 1997, as amended, or the creditable withholding tax imposed under Revenue Regulations No. 2-98, as amended, implementing Section 57 (B) of the same Code, considering that the said transfer is merely a formality to finally effect the transfer of the said properties to your member-beneficiaries who actually bought the same from the former owner through your Association. In other words, the association is in fact transferring the ownership of the property to its member-beneficiaries who actually own the same.

Furthermore, the said transfer is not subject to the donor's tax imposed under Section 99 of the Tax Code of 1997, since there is no donative intent or intention on your part to donate the said properties to each member-beneficiary, considering that you could not donate such properties the ownership of which belong to the donees (member-beneficiaries) themselves. *(BIR Ruling No. 005-11 dated January 19, 2011 and BIR Ruling No. 367-11 dated October 5, 2011)*

It is noted that under Section 196 of the Tax Code of 1997, the deeds or documents subject to the documentary stamp tax imposed therein are those where the realty sold shall be granted, assigned, transferred, or otherwise conveyed to a purchaser or purchasers or to any other person or persons designated by such purchaser or purchasers, thereby excluding from its purview the instant case considering that the supposed purchaser is actually the owner thereof.

Accordingly, the transfer of titles of the said properties in favor of your member-beneficiaries is not subject to the documentary stamp tax imposed under Section

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196 of the Tax Code of 1997. However, the notarial acknowledgment to said deed of conveyance is subject to the documentary stamp tax of P15.00 pursuant to Section 188 of the Tax Code of 1997. *(BIR Ruling No. 005-11 dated January 19, 2011 and BIR Ruling No. 367-11 dated October 5, 2011)*

It is, however, understood that the respective Certificates Authorizing Registration (CAR) shall only be issued after the submission of the requirements provided under RMO 15-2003 and after it is established upon proper verification by the Revenue District Officer (RDO) concerned that, considering the rules on valuation of real property, the actual selling price per sale transaction of the house and lot packages in this case does not really exceed P450,000.00 and P180,000.00 for lot only. Thus, sale of a house and lot or lot only above the maximum amount shall be subject to the corresponding internal revenue taxes. *(BIR Ruling No. 005-11 dated January 19, 2011 and BIR Ruling No. 367-11 dated October 5, 2011)*

This amends BIR Ruling No. 233-2012 dated March 29, 2012, in so far as the above mentioned member-beneficiaries and the corresponding properties are concerned.

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,

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

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