March 27, 2018

BIR RULING NO. 538-18

Section 30, Tax Code; Rev. Regs. No. 2;
RMC 007-12; BIR Ruling Nos. 121-91,
33-97, 023-10, 160-11, DA-048-06; VAT
Ruling No. 021-98

Quiason Makalintal Barot Torres Ibarra Sison & Damaso
21st Floor, Robinsons-Equitable Tower
4 ADB Avenue corner Poveda Street
1605 Ortigas Center, Pasig City

Attention: *AAA*

Gentlemen :

This refers to your letter dated May 25, 2017 requesting on behalf of your client **CRIBS FOUNDATION, INC. (CRIBS)** for confirmation of your opinion that the sale by CRIBS to LAMCC Five Dragons Corp. (LAMCC) of two (2) parcels of land with improvements on which CRIBS was previously located is exempt from income tax and value-added tax under the Tax Code of 1997, as amended (Tax Code).

Documents show that CRIBS (formerly: C.R.I.B.S. PHILIPPINES, INC.) is a corporation duly organized and existing under the laws of the Philippines, with address at No. 30 Major Dizon Street, Industrial Valley, Marikina City. It is a non-stock, non-profit corporation registered with the Securities and Exchange Commission (SEC), under Registration No. 86344, on May 24, 1979 with the vision of serving as "a safe and loving home and environment for each child free from any form of violence or abuse." It is registered, licensed and accredited by the Department of Social Welfare and Development as a residential and community-based social work agency implementing residential care and services for the abandoned, neglected, surrendered and sexually abused girls and as a child placing agency implementing foster care services for abandoned, neglected and surrendered children. CRIBS is accredited by the Philippine Council for NGO Certification, Inc. (PCNC) under Certificate of Registration No. 099-2016 dated November 9, 2016 in accordance with Bureau of Internal Revenue Regulations No. 13-98.

On the other hand, LAMCC is a corporation duly organized and existing under the laws of the Philippines, with address at No. 2 President Quezon Avenue corner President

Copyright 2020 CD Technologies Asia, Inc.

Laurel St., Industrial Valley, Marikina City. It is registered with the SEC, under Registration No. CS201617640, on August 5, 2016.

CRIBS was the absolute and registered owner of two (2) parcels of land with an area of Four Hundred Eighty (480) square meters each ("the Properties") covered by Transfer Certificates of Title (TCT) Nos. 187237 and 187238, and Tax Declaration Nos. E-0015-041918 and E-0015-041900, respectively situated at Lot 7 Block 5 and Lot 8 Block 5, Calumpang, Marikina, Rizal. On the properties were located two (2) facilities covered by Tax Declaration Nos. E-0015-095801 and E-0015-206603, respectively: the Receiving Home and the New Beginnings. The Receiving Home provides 24-hour alternative home environment for abandoned, neglected, and surrendered children aged days old to 1-1/2 years old while the New Beginnings provides 24-hour residential care and treatment for girl-survivors of sexual abuse aged 7-18 years old through the provision of a nurturing and therapeutic environment for healing and recovery.

On August 7, 2015, CRIBS entered into a contract of deed of sale for the purchase of parcels of land with a total cost of PhP_____, duly approved by the Board of Trustees on June 10, 2015.

On November 10, 2016, CRIBS accepted LAMCC's Offer to Purchase its land, with all the improvements, for a total purchase price of PhP_____. LAMCC paid for a down payment totaling PhP_____ upon acceptance of the Offer. The Deed of Absolute Sale and the remaining balance will be paid in 12 months, on or before November 1, 2017. The amount will be used by the Foundation to transfer to a much bigger place to accommodate more beneficiaries. CRIBS has used the proceeds of the sale to construct a new facility to house the abandoned and abused children.

In reply, please be informed as follows:

The sale by CRIBS of its property is subject to income tax.

The last paragraph of Section 30 of the Tax Code clearly subjects to tax the income of whatever kind and character derived, by any organization otherwise exempt under the same section, from any of its properties or activities conducted for profit, regardless of the disposition made of such income.

Section 30 of the Tax Code of 1997, as amended provides:

> *"SEC. 30. Exemptions from Tax on Corporations. — The following organizations shall not be taxed under this Title in respect to income received by them as such:*
>
> XXX XXX XXX
>
> *(E) Nonstock corporation or association organized and operated*

Copyright 2020 CD Technologies Asia, Inc.

exclusively for religious, charitable, scientific, athletic, or cultural purposes, or for the rehabilitation of veterans, no part of its net income or assets shall belong to or inure to the benefit of any member, organizer, officer or any specific person;

xxx xxx xxx

(G) Civic league or organization not organized for profit but operated exclusively for the promotion of social welfare;

xxx xxx xxx

***Notwithstanding, the provisions in the preceding paragraphs, the income of whatever kind and character of the foregoing organizations from any of their properties, real or personal**, or from any of their activities conducted for profit regardless of the disposition made of such income, **shall be subject to tax imposed under this Code**." (Emphasis supplied.)*

The above-quoted provision is literal in its language and plain and categorical in its meaning. The last paragraph of Section 30 of the Tax Code, particularly, does not leave any room for interpretation. It states two instances in order that the sale will be subject to income tax: that the income from the sale is derived from (1) any property or (2) any activity conducted for profit. It is a basic rule of statutory construction that "or" as used in a statute is a disjunctive article indicating an alternative. It often connects a series of words or prepositions indicating choice of either. When "or" is used the various members of the sentence are to be taken separately. (BIR Ruling No. 023-10 dated August 2, 2010 citing BIR Ruling No. DA-(C-058) 206-09 dated April 22, 2009)

Section 30 of Revenue Regulations No. 2, as amended, provides, among others, that the income of such tax-exempt corporation which is considered as income from its properties, real or personal, includes profits from the sale of property. (BIR Ruling Nos. 023-10 dated August 4, 2010 and DA-(C-058) 206-09 dated April 22, 2009)

The issue that proceeds/income from the sale of properties is exempt from tax having been derived from a single and isolated transaction in furtherance of the purposes for which the entity exempt under Section 30 of the Tax Code was organized, has been settled in BIR Ruling No. DA-048-06 dated February 15, 2006 citing BIR Ruling No. 121-91 dated June 25, 1991, to wit:

"*In view of the above Supreme Court decision, this Office ruled in BIR Ruling No. 121-91 dated June 25, 1991 that the excess of the selling price over the acquisition cost of the property (i.e., the profit/income) to be sold by the Society of Divine Word and used exclusively for religious purposes shall be subject to income tax/capital gains tax.*

The same BIR Ruling No. 121-91 expressly revoked BIR Ruling No. 569-88 dated November 29, 1988. On the other hand, BIR Ruling No. 569-88 expressly

revoked BIR Ruling Nos. 65-80, 66-80, 67-80 and 165-84. Other BIR Rulings, DOJ Opinion, and the Manila Polo Club (CTA Case No. 298 decided on August 31, 1959) and Xavier School, Inc. (CTA Case No. 1682 decided on October 8, 1969) cases exempted from income tax the gain derived from the sale of property based on an "isolated transaction" and using the proceeds thereof to purchase another property for a new site in furtherance of the purposes for which the respective organizations in the said cases were established, are subordinate to the Supreme Court case of Lladoc vs. Commissioner of Internal Revenue (L-19201) decided on June 16, 1965.

xxx xxx xxx"

To assure stability in legal relations and avoid confusion, the judiciary has to speak with one voice. Logically and rightly, it does so with finality through the highest judicial organ, the Supreme Court. What it says is definite and authoritative, binding on those who occupy the lower ranks in the judicial hierarchy (*Conde vs. Intermediate Appellate Court*, G.R. No. 70443, September, Second Division, Gutierrez, Jr., J.). Accordingly, CTA Case No. 5626, March 12, 1999 which you invoke must heed to *Lladoc vs. CIR* case.

The BIR Rulings that you cited (BIR Ruling Nos. DA-101-98 dated March 20, 1998, DA-171-98 dated April 24, 1998, DA-522-98 dated December 2, 1998, DA-172-99 dated March 19, 1999, DA-329-99 dated May 31, 1999, DA-517-99 dated September 6, 1999, DA-175-00 dated March 24, 2000, DA-204-00 dated April 4, 2000, DA-162-01 dated September 17, 2001, DA-202-01 dated October 19, 2001) have been superseded by the aforementioned BIR Ruling No. DA-048-06 dated February 15, 2006.

In view of the foregoing, this office hereby rules that the sale by CRIBS to LAMCC of its two (2) parcels of land with improvements thereon is subject to capital gains tax based on the gross selling price or current fair market value as determined in accordance with Section 6 (E) of the Tax Code, whichever is higher, of such land and/or buildings pursuant to Section 27 (D) (5) of the same Code (Section 4 (c) (i), Revenue Regulations No. 7-2003). Moreover, the Deed of Sale of said real properties shall be subject to documentary stamp tax imposed under Section 196 of the same Code. (BIR Ruling Nos. 023-10 and DA-(C-015) 071-10 dated May 21, 2010; Revenue Memorandum Circular No. 007-12 dated February 23, 2012)

The sale by CRIBS of its property is exempt from value-added tax.

Section 109 (1) (P) of the Tax Code and Sec. 4.103-1 (B) (s) of Revenue Regulations No. 7-95 provides that the sale of real properties not primarily held for sale to customers or held for lease in the ordinary course of trade or business . . . shall be exempt from value-added tax.

Considering that the above-mentioned properties are held as capital assets, and not

Copyright 2020 CD Technologies Asia, Inc.

primarily held for sale to customers or held for lease in the ordinary course of trade or business, the sale thereof by CRIBS to LLAMC shall be exempt from value-added tax. (VAT Ruling No. 021-98 dated August 5, 1998 and BIR Ruling No. 33-97 dated April 1, 1997)

This ruling is being issued on the basis of the foregoing facts as represented. However, if upon investigation, it will be ascertained 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

Copyright 2020 CD Technologies Asia, Inc.