December 9, 2019

BIR RULING NO. 778-19

Sections 34 (H) (2), 101 (A) (3), NIRC of 1997, as amended; BIR Ruling No. 52-2011

Kapunan Garcia & Castillo Law Offices
Units 301 to 306, 32nd and 5th Building
32nd Street corner 5th Avenue, Bonifacio
Global City, Taguig

Attention: *AAA*
BBB
CCC

Gentlemen :

This refers to your letter dated 1 August 2012 on behalf of your client, **DDD**, requesting for confirmation of your opinion as follows:

1. That the donation made by DDD to the Helena Z. Benitez Heritage Foundation, Inc. is exempt from the payment of donor's tax pursuant to Section 101 (A) (2) of the National Internal Revenue Code of 1997, as amended; and

2. That DDD is entitled to fully deduct against its gross income the amount donated to Helena Z. Benitez Heritage Foundation, Inc. as set forth in Section 34 (H) (2) (C) of the Tax Code of 1997 pursuant to Section 34 (H) (1) of the National Internal Revenue Code of 1997, as amended.

It is represented that DDD with Taxpayer's Identification No. 000-000-000-000, is the owner in fee simple of parcels of land situated at Cubao, Quezon City, and in Naic and Imus, Cavite; that Helena Z. Benitez Heritage Foundation, Inc. (the "Heritage Foundation"), with Taxpayer's Identification No. 000-000-000-000, is a non-stock, non-profit corporation duly registered as donee institution by virtue of Certificate of Registration No. 061-2011 issued on August 18, 2011; that on July 5, 2012, three (3) Deeds of Donation was executed by and between DDD as Donor and Heritage Foundation as Donee, whereby the former donated to the latter the following properties:

1. Parcels of land situated at Cubao, Quezon City, covered by Transfer

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Certificates of Title Nos. 364143, 364144, 364150/T-132396, 364148/T-11761, 364146/T-11759 and 364149/T-11762 of the Register of Deeds of Quezon City. However, copies of Transfer Certificates of Title Nos. 364148/T-11761, 364146/T-11759 and 364149/T-11762 cannot be located and the petition for the issuance of new owner's duplicates, which was docketed as LRC Case No. 33388, is currently pending.

2. Parcels of land situated at Naic, Cavite, covered by Transfer Certificates of Title Nos. T-210464 and T-1099910 of the Register of Deeds of Naic, Cavite, copies of which cannot be located despite diligent efforts to locate the same.

3. Parcels of land situated at Imus, Cavite, covered by Transfer Certificates of Title Nos. T-651077, T-270550, T-379540, T-379576, T-651088, T-651087, T-379387, T-379621, T-397728, T-379550 and T-397730 of the Register of Deeds of Imus, Cavite, copies of which cannot be located despite diligent efforts to locate the same.

In support of its request, **Kapunan, Garcia & Castillo Law Offices** has completely submitted on September 28, 2012 the following documents:

1. Deed of Donation and Acceptance between DDD and Heritage Foundation covering the Quezon City properties;

2. Deed of Donation and Acceptance between DDD and Heritage Foundation covering the Naic, Cavite properties;

3. Deed of Donation and Acceptance between DDD and Heritage Foundation covering the Imus, Cavite properties;

4. Donor's tax return;

5. Certificate of Registration issued by the BIR (certifying that the Heritage Foundation is duly Accredited with the PCNC);

6. Certified True Copy of Heritage Foundation's SEC Certificate of Incorporation;

7. Certified True Copy of Heritage Foundation's Articles of Incorporation;

8. Certified True Copy of Heritage Foundation's By-Laws;

9. Petition for Issuance of New Owner's Duplicate Transfer Certificate of Title in LRC Case No. Q-32785;

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10. Order dated 26 March 2012 in LRC Case No. Q-32785;

11. Certificate of Finality in LRC Case No. Q-32785;

12. Petition for Issuance of New Owner's Duplicate Transfer Certificate of Title in LRC Case No. Q-33388;

13. Certified True Copy of the Transfer Certificate of Title of the above-mentioned properties & with its corresponding Tax Declarations; and

14. Sworn Affidavit certifying that DDD is not engaged in any business wherefrom she derives any business income.

In reply, please be informed that Section 101 (A) (3) of the Tax Code of 1997, as amended, provides:

> *"SEC. 101. Exemption of Certain Gifts. — The following gifts or donations shall be exempt from the tax provided for in this Chapter:*
>
> *(A) In the Case of Gifts Made by a Resident. —*
>
> xxx xxx xxx
>
> *(3) Gifts in favor of an educational and/or charitable, religious, cultural or social welfare corporation, institution,* ***accredited non-governmental organization****, trust or philanthropic, organization or research institution or organization: Provided, however, that not more than thirty percent (30%) of said gifts shall be used by such donee for administrative purposes. . . ."*

Since Heritage Foundation is an accredited donee institution, the aforementioned donation is exempt from the payment of the donor's tax pursuant to above-cited provision, subject to the condition that not more than 30% of said gift shall be used by the donee for administration purposes. *(BIR Ruling No. 052-11 dated February 25, 2011)*

Moreover, the aforesaid Deed of Donation is not subject to the documentary stamp tax prescribed under Section 196 of the Tax Code, as amended, but only to the documentary stamp tax of P15.00 imposed under Section 188 of the Tax Code of 1997, as amended.

As to the deductibility of the donation, Section 34 (H) (2) (C) of the Tax Code of 1997 provides that donations to an accredited non-government organization (NGO) shall be deductible in full from the taxable business income of the donor. Thus:

> *SEC. 34. Deductions from Gross Income. — Except for taxpayers earning compensation income arising from personal services rendered under an employer-employee relationship where no deductions shall be allowed under this Section other than under subsection (M) hereof, in computing taxable income*

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subject to income tax under Sections 24 (A); 25 (A); 26; 27 (A), (B) and (C); and 28 (A) (1), there shall be allowed the following deductions from gross income;

xxx xxx xxx

(H) Charitable and Other Contributions. —

(2) Contributions Deductible in Full. — Notwithstanding the provisions of the preceding subparagraph, donations to the following institutions or entities shall be deductible in full;

xxx xxx xxx

(c) Donations to Accredited Nongovernment Organizations. — the term 'nongovernment organization' means a non profit domestic corporation:

(1) Organized and operated exclusively for scientific, research, educational, character-building and youth and sports development, health, social welfare, cultural or charitable purposes, or a combination thereof, no part of the net income of which inures to the benefit of any private individual;

(2) Which, not later than the 15th day of the third month after the close of the accredited nongovernment organizations taxable year in which contributions are received, makes utilization directly for the active conduct of the activities constituting the purpose or function for which it is organized and operated, unless an extended period is granted by the Secretary of Finance in accordance with the rules and regulations to be promulgated, upon recommendation of the Commissioner;

(3) The level of administrative expense of which shall, on an annual basis, conform with the rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner, but in no case to exceed thirty percent (30%) of the total expenses; and

(4) The assets of which, in the even of dissolution, would be distributed to another nonprofit domestic corporation organized for similar purpose or purposes, or to the state for public purpose, or would be distributed by a court to another organization to be used in such manner as in the judgment of said court shall best accomplish the general purpose for which the dissolved organization was organized.

Based on the above-quoted provision, donation shall be allowed as a deduction from the donor's gross income which refers to those income derived from the conduct of trade or business. In addition, for purposes of full deductibility from the taxable business income of the donor, the donee should be accredited by Philippine Council for NGO Certification (PCNC) as a donee institution.

In the sworn affidavit submitted by DDD, she certifies that:

"x x x I hereby declare and attest that I am currently not engaged in any business wherefrom I derive any business income"

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From the foregoing, since DDD is not engaged in business wherefrom she derives business income, there is no basis to claim as deduction the value of donation from her taxable income. Thus, this Office cannot grant the request for the deductibility of the value of the donated properties.

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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