May 10, 2018

BIR RULING NO. 794-18

Section 27 (A); 27 (D) (5); Section 196;
BIR Ruling Nos. 39-12; 21-12

City Legal Officer
Marikina City Hall, Shoe Avenue,
Brgy. Sta. Elena, Marikina City

Attention: *Atty. Florella Bandala-Almarez*
OIC-City Legal Officer

Madam :

This refers to your letters dated September 21, 2015 and April 18, 2016 requesting for an exemption on capital gains tax and documentary stamp tax on the exchange transaction between the City Government of Marikina and Trusteeship, Inc.

It is represented that due to mistake, the **CITY GOVERNMENT OF MARIKINA** constructed a basketball court and playground within the property of **TRUSTEESHIP, INC.** covered by Transfer Certificate Title Nos. 173666 (750 square meters), 173667 (589 square meters), and 173668 (1,011 square meters); that on January 15, 2008, the **CITY GOVERNMENT OF MARIKINA** and **TRUSTEESHIP, INC.** executed a "Deed of Exchange of Real Property" wherein **TRUSTEESHIP, INC.** exchanged the above mentioned properties with the property owned by the **CITY GOVERNMENT OF MARIKINA** covered by Transfer Certificate of Title No. 273227; that on April 18, 2008, the City Council of Marikina, in Resolution No. 084, resolved that the property of the city government with an equivalent area be exchanged with the property owned by **TRUSTEESHIP, INC.**; and that the transaction is without monetary consideration and only serves to rectify the aforementioned error.

In reply, please be informed that the "Deed of Exchange of Real Property" dated January 15, 2008 was effected not to correct a mistake or inadvertent error attending the titling of the subject properties necessitating the exchange by or reconveyance to the rightful owner thereof but is more for the convenience of the parties. *(BIR Ruling No. 39-12 dated February 1, 2012)* Thus, it shall be treated as any other sale of real property subject to capital gains tax imposed under Section 27 (D) (5) of the 1997 Tax Code, as amended, or to the expanded withholding tax under Section 2.57.2 of Revenue Regulations No. 2-98, as amended in relation to Section 27 (A) of the same code, depending on the classification of the property whether the properties exchanged are

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capital assets or ordinary assets of the parties. The Deed of Exchange shall also be subject to the documentary stamp tax imposed under Section 196 of the same Code, based on the gross selling price or fair market value as determined in accordance with Section 6 (E) of the 1997 Tax Code, whichever is higher. *(BIR Ruling No. 021-12 dated January 11, 2012)*

There is neither an apparent nor inadvertent error committed in the titling to justify the exchange of properties considering that the subdivided lots were aptly distributed to both parties according to their Agreement. *(BIR Ruling No. 39-12 dated February 1, 2012)* Thus, the request for exemption from imposition of capital and documentary stamp taxes is being denied for lack of legal basis.

Please be guided accordingly.

Very truly yours,

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

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