REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

Date: February 23, 2012

REVENUE MEMORANDUM CIRCULAR NO. 7-2012

Subject: Circularization of BIR Ruling No. 023-10 dated August 4, 2010 on the Capital Gains Tax and Documentary Stamp Tax liability of a non-stock non-profit organization on its disposition of real property.

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To: All Internal Revenue Officials and Employees Concerned

For the information and guidance of all internal revenue officials and employees concerned, quoted hereunder is the relevant portion of *BIR Ruling No. 023-10 dated August 4, 2010*, concerning the Capital Gains Tax (CGT) and Documentary Stamp Tax (DST) liability of *non-stock non-profit organization* on its real property disposition:

"*xxx xxx xxx*

It appears that MIDFI is a non-stock, non-profit corporation and a legal opinion is sought whether or not it is exempt from paying capital gains tax.

In reply thereto, please be informed as follows:

The last paragraph of Section 30 (then Section 26) 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.

Specifically, the Tax Code provides as follows:

"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 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 properties, real or personal, or from any of the 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 (then Section 26) of the Tax Code, particularly, does not leave any room for interpretation; the income from any of the organization's properties is subject to tax under the Tax Code, regardless of the disposition made of such income. (BIR Ruling No. DA-(C-058)206-09)

Paragraphs (e), (g) and (h) of Section 26 [now par. (E) and (G) of Section 30] of the Tax Code should be read together with the last paragraph of the same Section since statutes must be construed as a whole. In fact, a cardinal rule of statutory construction is that legislative intent must be ascertained from a consideration of the statute as a whole, and not of an isolated part or a particular provision alone (Aboitiz Shipping Corporation, et al. vs. City of Cebu, et al., 13 SCRA 449). Accordingly, the last paragraph of Section 30 (then Section 26) of the Tax Code, as well as the whole section should be understood and interpreted in connection and jointly with all the other provisions of the same law, and in the light of the preceding and subsequent provisions, giving a meaning to each word or expression in said Section 30 (Chartered Bank vs. Imperial, 48 Phil. 931).

Moreover, 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. In other words, the sale by MIDFI of its real property shall be subject to the corresponding income tax imposed under the Tax Code of 1997.

Such being the case, this Office hereby rules that the sale by Mary Immaculate Development Foundation, Inc. (MIDFI) of its real property 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 of 1997,

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 Absolute Sale of said real property shall be subject to documentary stamp tax imposed under Section 196 of the Tax Code of 1997." (Underscoring provided)

All revenue officials and employees are enjoined to give this Circular as wide publicity as possible. Accordingly, all employees, engaged in the processing and review of One-Time Transactions (ONETT), are enjoined to assess the appropriate CGT and DST, if warranted, on these kinds of transactions.

(Original Signed)
KIM S. JACINTO-HENARES
Commissioner of Internal Revenue

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