REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE
Quezon City

Sections 24 (D) (1) and 196 of the National Internal Revenue Code of 1997, as amended;
BIR Ruling No. 456-17; and
BIR Ruling No. 372-16.
[illegible]

Date: AUG 0 2 2021

AMBROSIO & PARTNERS LAW OFFICE
1318-E Reza Bldg., Quezon Ave., South Triangle
113 Quezon City, Metro Manila, Philippines

Attention: **ATTY. BENITO F. AMBROSIO**
Counsel for Alfredo B. Garcia and Norma G. Garcia

Sir:

This refers to your letter dated August 29, 2019, filed in behalf of Mr. Alfredo B. Garcia and Mrs. Norma Garcia-Acosta, requesting for confirmation of your opinion that the transfer of properties by and between the abovenamed parties, since it is one without consideration or cause, is not subject to Capital Gains Tax (CGT) imposed under Section 24 (D) (1) of the National Internal Revenue Code ("Tax Code") of 1997, as amended, and to Documentary Stamp Tax (DST) imposed under Section 196 of the same Tax Code.

It is represented that Mr. Alfredo B. Garcia and Mrs. Norma Garcia-Acosta are the registered co-owners of a parcel of land, particularly a residential lot with improvements thereon, covered by Transfer Certificate of Title (TCT) No. containing an area of three hundred three square meters.

It is further represented that on July 19, 2018, the above co-owners executed a *Partition Agreement*, wherein they divided equally the property into two lots having an area of one hundred fifty one square meters and fifty decimeters (151.50) each. Consequently, TCT Nos. and covering the subdivided lots were issued to Mr. Garcia and Mrs. Garcia-Acosta. Unfortunately, upon noticing that the titles issued to them were inadvertently interchanged, as caused by the mistake in the *Partition Agreement*, Mr. Garcia and Mrs. Garcia-Acosta executed a *Deed of Exchange* on May 8, 2019 in order to rectify the error. On May 22, 2019, Mr. Garcia and Mrs. Garcia-Acosta also executed a *Joint Affidavit* stating, among others, the error and inadvertence that had occurred in the execution of the *Partition Agreement* and that they both agree to exchange the subject lots with each other.

You now request for the confirmation of your opinion that since the "swap" or exchange of properties has no consideration involved, and the parties did not gain from such exchange, there can be no basis for which capital gains tax and documentary stamp tax may be assessed and imposed. In support of your request, you submitted/attached the following documents:

1. Photocopy of Transfer Certificate of Title (TCT) No.
2. Tax Declaration of Real Property No.
3. Partition Agreement dated July 19, 2018
4. Plan of Subdivision Survey and Technical Description
5. Transfer Certificate of Title (TCT) No.
6. Transfer Certificate of Title (TCT) No.
7. Deed of Exchange dated May 8, 2019
8. Joint Affidavit dated May 22, 2019

In reply, please be informed that Section 24 (D) (1) of the Tax Code, as amended, provides:

> "(D) Capital Gains from Sale of Real Property. —
>
> (1) In General. — The provisions of Section 39(B) notwithstanding, a final tax of six percent (6%) based on the gross selling price or current fair market value as determined in accordance with Section 6(E) of this Code, whichever is higher, is hereby imposed upon capital gains presumed to have been realized from the sale, exchange, or other disposition of real property located in the Philippines, classified as capital assets, including pacto de retro sales and other forms of conditional sales, by individuals, including estates and trusts: Provided, That the tax liability, if any, on gains from sales or other dispositions of real property to the government or any of its political subdivisions or agencies or to government-owned or controlled corporations shall be determined either under Section 24 (A) or under this Subsection, at the option of the taxpayer."

In the case of Salud vs. Commissioner of Internal Revenue,[1] the Court of Tax Appeals had the occasion to rule that the Tax Code, as amended, does not define nor qualify the phrase "other disposition." It is clear, plain and therefore must be applied without attempted or strained interpretation. It shall be construed in its plain and simple meaning. "Disposition" means an act of disposing; transferring to the care or possession of another; the parting with, alienation of, or giving up property.[2]

Applying the above ruling of the Court, it is therefore clear that the phrase "other disposition" includes within its purview all kinds of dispositions of real property under Section 24 (D) (1) of the Tax Code, as amended, unless specifically excluded therefrom or subject to another tax treatment pursuant to different provisions of the Tax Code, as amended. Thus, the Deed of Exchange executed by the NPC in favor of Mr. Alfredo B. Garcia and Mrs. Norma Garcia-Acosta, in the absence of a specific law excluding it from the coverage of Section 24 (D) (1) of the Tax Code, as amended, is deemed included within the purview of the said provision. Therefore, it shall be subject to the capital gains tax imposed therein.

Also, the reconveyance being a disposition of real property under Section 24 (D) (1) of the Tax Code, as amended, is likewise subject to the documentary stamp taxes imposed under Section 188 and Section 196 of the Tax Code, as amended.

As repeatedly held by the Supreme Court, "laws granting exemption from tax are construed *strictissimi juris* against the taxpayer and liberally in favor of the taxing power. Taxation is the rule and exemption is the exception. The law does not look with favor on tax

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[1] *CTA EB Case No. 412 dated April 30, 2009.*
[2] *Black's Law Dictionary, 6th Edition.*

exemptions and that he who would seek to be thus privileged must justify it by words too plain to be mistaken and too categorical to be misinterpreted."[3]

Please be guided accordingly.

Very truly yours,

CAESAR R. DULAY
Commissioner of Internal Revenue
044307

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K-1-FR-19-1526

[3] *Sea-Land Service, Inc. vs. Court of Appeals and Commissioner of Internal Revenue, G.R. No. 122605, April 30, 2001.*