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

Sec 27(C); 173; 196 NIRC
RA 1161; RA 8282
#266-2016
6-22-2016

SOCIAL SECURITY SYSTEM
East Avenue, Diliman
Quezon City

Attention: **Ma. Luz C. Generoso**
Head, Lending and Asset Management Division

This refers to your letter dated March 27, 2012 requesting confirmation on the tax exemption of the Social Security System (SSS), particularly exemption from capital gains tax and documentary stamp tax on the sale by SSS of its acquired real properties.

In reply, please be informed that under Section 27 (D)(5) of the 1997 Tax Code, it is provided that in case of sale, exchange or disposition of lands and/or buildings owned by a corporation, which are not actually used in its business and are treated as capital assets, a final tax of six percent (6%) is imposed on the gain presumed to have been realized on the said transaction, based on the gross selling price or fair market value as determined in accordance with Section 6 (E) of the Tax Code of 1997, whichever is higher, of such lands and/or buildings. On the other hand, Section 22 [Z] of the same Code provides that when the lands and/or buildings subject to sale, exchange or disposition are actually used in the business of a corporation and are classified as ordinary assets, the transaction is subject to ordinary income, and not capital gains tax, which includes any gain from the sale or exchange of property which is not a capital asset as defined in Section 39 (A) (1) of the same Code. It must be noted, however, that the kind of tax mentioned in both cases is an income tax, the burden of which rests upon the seller and not the buyer, in this case, the SSS.

Relative thereto, it is worth mentioning that Republic Act (RA) No. 1161, otherwise known as the *"Social Security Law"*, as amended by RA 8282, provides for the tax exemption of SSS from all taxes, to wit:

> *"SEC. 16. Exemption from Tax, Legal Process and Lien. -- All laws to the contrary notwithstanding, the SSS and all its assets and properties, all contributions collected and all accruals thereto and income or investment earnings therefrom as well as all supplies, equipment, papers or documents shall be exempt from any tax, assessment, fee, charge, or customs or import duty; and all benefit payments made by the SSS shall likewise be exempt from all kinds of taxes, fees or charges, and shall not liable to attachments, garnishments, levy or seizure by or under any legal or equitable process whatsoever, either before or after receipt by the person or persons entitled thereto, except to pay any debt of the member to the SSS. No tax measure of whatever*

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nature enacted shall apply to the SSS, unless it expressly revokes the declared policy of the State in Section 2 hereof granting tax-exemption to the SSS. Any tax assessment imposed against the SSS shall be null and void."

Furthermore, Section 27 (C) of the 1997 Tax Code, as amended, also provides for the exemption of SSS from income tax as follows:

> *"(C) Government-owned or -Controlled Corporations, Agencies or Instrumentalities. — The provisions of existing special or general laws to the contrary notwithstanding, all corporations, agencies or instrumentalities owned or controlled by the Government, except the Government Service Insurance System (GSIS), the Social Security System (SSS), the Philippine Health Insurance Corporation (PHIC), and the Philippine Charity Sweepstakes Office (PCSO), shall pay such rate of tax upon their taxable income as are imposed by this Section upon corporations or associations engaged in a similar business, industry, or activity."*

Based from the foregoing provisions, SSS is not liable to pay such rate of tax as imposed on other domestic corporations, including the payment of the capital gains tax. Accordingly, SSS cannot be made to pay the capital gains tax on the transfer of its acquired real properties in favor of its buyers.

However, Section 196 in relation to Section 173 of the Tax Code of 1997, as amended, provides that there shall be levied, collected and paid for, and in respect of the transaction so had or accomplished, the documentary stamp tax imposed under Section 196 of the Tax Code of 1997, by the person making, signing, issuing, accepting or transferring the real property wherever the document is made, signed, issued, accepted or transferred where the property is situated in the Philippines: Provided, that whenever one party to the taxable document enjoys exemption from the tax, the other party thereto who is not exempt shall be the one directly liable for the tax. In view thereof, the buyers of SSS are the ones liable for the payment of the documentary stamp tax due on the transfer of the acquired real 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,

KIM S. JACINTO -HENARES
Commissioner of Internal Revenue

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