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

Section 24 (D) (1) of NIRC 1997, as amended		#319-2018

Person to Contact: Chief, Law Division
Tel. Nos. 926-55-36/ 927-09-63

Date: March 6, 2018

HON. MARK A. VILLAR
SECRETARY
Department of Public Works and Highways
Manila

Dear Secretary Villar,

This refers to the letter of former Secretary Rogelio L. Singson dated 09 March 2012 requesting a legal opinion on the basis for computation of the capital gains tax (CGT) to be paid by the owners of the parcel of land acquired by the Department of Public Works and Highways for the Construction of McArthur North Diversion Road (Paniqui Bypass), Paniqui, Tarlac Project in 1977.

Documents submitted disclosed that pursuant to Article 1 of R.A. No. 917 or the Philippines Highway Act, the Department of Public Works and Highways (DPWH) has authority to select, locate, designate highways, acquire and use of right-of-way (ROW) and to construct, reconstruct and maintain the same; that pursuant to the provisions of Special Order no. 80, series of 2007, the DPWH Secretary has authorized the creation of Infrastructure Right-Of-Way (IROW) Committees to effect the proper evaluation, management, and settlement of ROW claims in which the property is located which are necessary for the Construction of McArthur North Diversion Road (Paniqui Bypass), Paniqui, Tarlac Project (**"the Project"** for brevity), which was executed in 1977; that the Project traversed the parcel of land co-owned by spouses Jose M. Labutong and Luz R. Paragas and Winston M. Labutong of Paniqui, Tarlac and which property was necessarily acquired by the DPWH; that the property to be acquired by the DPWH for the Project is covered by Transfer Certificate of Title (TCT) No. with an area of 14,462 sq.m. located in Paniqui, Tarlac; that the consideration or just compensation for the property is and 50/100 pesos ( ); that DPWH Region III IROW Committee Eminent Domain Parcel Resolution No. dated 11 April 2011 has resolved that the acquisition of the property is necessary for the construction of the Project and ratified the acquisition by purchase; that the co-owners/sellers of the property had filed a claim for payment of just compensation and to which an initial allocation of

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was previously released under SAA No. dated November 25, 2011 as partial payment; that it is represented that BIR RDO No. 17-B (Paniqui, Tarlac) is demanding payment of CGT based on zonal value instead of the selling price; and that you are requesting for legal opinion on the appropriate basis for the computation of the capital gains tax on the expropriation of the subject real property.

In reply, please be informed that this Office on several occasions ruled that involuntary transfers of real properties, including expropriation sale, are subject to applicable taxes, depending on whether the subject properties are classified as capital assets or ordinary assets.

Section 24(D)(1) of the Tax Code of 1997, as amended, states:

> "(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;" (Underscoring supplied)

In relation with the above-quote provision is Revenue Memorandum Order (RMO) No. 41-91 dated November 11, 1991 which provides that:

> "In all cases involving sale, exchange, or any disposition of real property, the tax base for documentary stamp tax purposes shall be the same as the tax base used in the computation of the capital gains tax which means, gross selling price, fair market value, or zonal value of the real property, whichever is higher, **except in the following instances, where actual consideration appearing in the Deed of Sale shall be an acceptable tax base in the computation of not only the capital gains tax but also of the documentary stamp tax**, viz:
> 1. …xxx

x x x

> 5. When the State or any of its instrumentalities in the exercise of its power of eminent domain, acquires through expropriation proceedings, private real property for public use upon payment of "just compensation" to the owner. Both capital gains tax and documentary stamp tax shall be computed based on said "just compensation" as actual consideration." (Emphasis supplied)

The subject property is a parcel of land described as partly sugarland and residential which may be deemed to be a capital asset co-owned by spouses Jose M. Labutong and Luz R. Paragas and Winston M. Labutong. This property was subjected to expropriation by the DPWH for the construction of its project in 1977, hence, the sale/transfer of the said property shall be subject to capital gains and documentary stamp taxes computed based on the actual consideration or "just compensation" stated in the Deed of Sale, for expropriation done through negotiated sale, or in the document pertaining to the expropriation if taking of property was made through an expropriation proceedings.

Furthermore, pursuant to Section 2.57.1(A)(7) of RR No. 2-98, as amended, provides:

> "In case of disposition of real property classified as capital asset by individuals to the government or any of its political subdivisions or agencies or to the government-owned or controlled corporations, the tax to be imposed shall be determined either under Section 24(A) of the Code for the normal rate of income tax for individual citizens or residents or under Section 24(D)(1) of the Code for the final tax on the presumed capital gains of the Code at six percent (6%), at the option of the taxpayer-seller."

Section 24(D)(1) of the Tax Code of 1997, as amended, clearly gives the transferor of real property to a government agency or political subdivision the option to either compute his tax liability based on Section 24(A) or under Section 24(D) of the same Tax Code. Since the DPWH is a government agency, this option is available to the co-owners of the subject real property.

The first option, which is to compute the tax liability under Section 24(A) of the Tax Code, requires the transferors to declare in their annual income tax return the income earned from the transfer of real property. The tax due is computed in accordance with the tax rates provided in Section 24(A). The 6% tax withheld by the DPWH shall be credited against his tax liabilities determined at the close of the taxable year when the expropriation took place.

Under the second alternative, a capital gains tax of six percent (6%) is imposed pursuant to Section 24(D)(1). The tax base is the actual consideration

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appearing on the Agreement as per Revenue Memorandum Order (RMO) No. 41-91. Under this option, DPWH is required to withhold the six percent (6%) final tax as mandated by Section 2.57.1 (A)(7) of RR 2-98, as amended.

Finally, this ruling shall serve as sufficient basis for the BIR to issue the Certificates Authorizing Registration and Tax Clearance Certificates, for the transfer of the subject property in connection with the implementation of the Project, provided that the concerned parties submit the respective documents of acquisitions effecting the said transfers to the concerned RDO for evaluation and for the proper assessment of taxes pursuant to the foregoing.

This ruling is being issued on the basis of the foregoing facts as represented. However, if upon investigation, it will be ascertained that the facts are different, then this ruling shall be considered null and void.

Very truly yours,

CAESAR R. DULAY
Commissioner of Internal Revenue
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