REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

Quezon City

Section 109(P), NIRC	Revenue Regulations No. 16-05	#476-2017

Person to Contact: Chief, Law Division
Tel Nos. 926-5536/927-09-63

Date: October 12, 2017

A.M. SISON, JR. & PARTNERS
Suite Ayala Avenue, 1226 Makati City
Philippines

Attention: **Atty. Antonio L. Cardiño**

Gentlemen:

This refers to your letter dated August 3, 2016 requesting reconsideration of *BIR Ruling No. 409-2015* dated December 14, 2015, on the portion thereof in which it was ruled that the sale by **Coca-Cola Bottlers Philippines, Inc. Retirement Plan** (the "Retirement Plan") in favor of the Social Security System (SSS), of the former's 16.72% undivided share in a parcel of land covered by Transfer Certificate of Title (TCT) No. 41276, is subject to value added tax (VAT).

The pertinent portion of the aforesaid Ruling is quoted below, to wit:

> "However, a retirement fund or pension trust is only entitled to exemption from income tax under Section 60(B) of the 1997 Tax Code, as amended. Hence, it may still be subject to other applicable taxes imposed under other provisions of the same Code. It is noted, based on the Tax Declaration No. which was issued by the City Assessor of Taguig City, that the subject property's actual use is for commercial purpose. Accordingly, the sale of the Retirement Fund to SSS of the former's 16.72% undivided share, interest and participation in the subject parcel of land is subject to VAT pursuant to Section 106 of the 1997 Tax Code, as amended."

It is argued that the sale of the subject lot in favor of the SSS should not have been subjected to VAT on the basis that said property was not held primarily for sale to customers or held for lease in the ordinary course of trade or business. It is also claimed that the subject property is not being used in business or trade as the seller is not engaged in real estate business or any other businesses other than its main function or objective which is to collect contribution from Coca-Cola Bottlers Philippines, Inc. (now, Coca-Cola Femsa Philippines, Inc.) and its affiliates, and invest the same to fund the payment of benefits to employees.

In support of the claim that the subject property is not being used in business or trade, an undated Certification issued by the Revenue District Office (RDO) No. 44, Taguig/Pateros was submitted certifying that, based on the ocular inspection done by said Office, the real property covered by TCT No. has no existing improvement, nor is it used in business, as of January 27, 2017.

After a careful re-study of this case, this Office rules that the sale by the Retirement Plan in favor of the SSS, of the former's 16.72% undivided share in a parcel of land covered by TCT No. is not subject to VAT.

Section 109 (P) of the 1997 Tax Code, as amended, provides, to wit:

> "Section 109- Exempt Transactions.
>
> (1) Subject to the provisions of Subsection (2) hereof, the following transactions shall be exempt from the value-added tax.
>
> (P) Sale of real properties not primarily held for sale to customers or held for lease in the ordinary course of trade or business xxx"

Relative thereto, Section 4.109-1 of Revenue Regulations (RR) No. 16-05, as amended by RR No. 04-2007, provides:

> "SEC. 4.109-1. VAT-Exempt Transactions. —
>
> xxx xxx xxx.
>
> (B) Exempt transactions. — Subject to the provisions of Sec. 4.109-2 hereof, the following transactions shall be exempt from VAT:
>
> (p) The following sales of real properties are exempt from VAT, namely:
>
> (1) Sale of real properties not primarily held for sale to customers or held for lease in the ordinary course of trade or business.
>
> However, even if the real property is not primarily held for sale to customers or held for lease in the ordinary course of trade or business but the same is used in the trade or business of the seller, the sale thereof shall be subject to VAT being a transaction incidental to the taxpayer's main business."

Clearly, the sale of a real property, which is not held primarily for sale to customers or held for lease in the ordinary course of trade or business, or used in the trade or business of the seller, shall not be subject to VAT. Thus, while it is true that a retirement fund or pension trust is only entitled to exemption from income tax under Section 60(B) of the 1997 Tax Code, as amended, and that it may still be subject to other applicable taxes imposed under other provisions of the same Code, the sale by the Retirement Fund of the subject lot in favor of the SSS is not subject to VAT for the reason that the Retirement Fund is not engaged in the real estate business and said property was not held primarily for sale to customers or held for lease in the ordinary course of trade or business, or used in the trade or business of the seller.

Accordingly, *BIR Ruling No. 409-2015* dated December 14, 2015 is hereby modified to exempt the sale by the Retirement Plan in favor of the SSS, of the former's 16.72% undivided share in a parcel of land covered by TCT No. from VAT.

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 as null and void.

Very truly yours,

CAESAR R. DULAY
Commissioner of Internal Revenue

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