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

Section 101 (A)(2) of the Tax Code of 1997;
BIR Ruling No. 174-13; BIR Ruling No. 232-12; BIR Ruling No. 499-11
#067-2018
1-25-2018

DAVAO CITY WATER DISTRICT
Km. 5, Jose P. Laurel Avenue, Bajada,
Davao City 8000

Attention : **Mr. Edwin V. Regalado, MPA**
Acting General Manager

Gentlemen:

This refers to your letter dated January 8, 2013, requesting for the issuance of a Certificate of Tax Exemption of donor's tax relative to the Deed of Donation made by **Alsons Development and Investment Corporation (ALDEVINCO)** to **Davao City Water District (DCWD)** pursuant to Section 101 (A)(2) of the Tax Code of 1997, as amended.

Documents submitted show that ALDEVINCO (hereinafter referred to as "Donor") with Taxpayer's Identification No. (TIN) , is a corporation organized and existing under Philippine laws and represented by its Executive Vice President, Ms. Rosvida A. Dominguez, who was duly authorized by the Board of Directors of the corporation to execute the Deed of Donation; that the donee, DCWD is a local water district created and organized by virtue of Presidential Decree No. 198, as amended; that it is a government-owned or controlled corporation with original charter pursuant to the ruling in the case entitled *Davao City Water District, et al, v. CSC, et al, GR No. 92237-38 dated September 13, 1991*; that the donor is the developer of Davao Molave homes - a socialized housing project in Barangay Indangan, Buhangin District, Davao City on which the property donated is located; that the donor is the registered owner of a parcel of land covered by Transfer Certificate of Title (TCT) No. T-306104 issued by the Register of Deeds, City of Davao, more particularly described and bounded as follows:

1. *A parcel of land of the consolidation and subdivision project (Lot Block of the consolidation and subdivision plan Pcs- being apportion of Lots , Psd- Psd-, Psd- Psd- situated at Barangay Indangan, City of Davao, containing an area of TWO HUNDRED FIFTY (250) SQUARE METERS, more or less.*

that a Deed of Donation was executed on August 2, 2012 whereby ALDEVINCO donated the aforementioned property in favor of DCWD represented by its Acting General Manager, Mr. Edwin V. Regalado; that the property donated shall be utilized exclusively for the donee's water expansion projects; and that the donee accepted the donation under the conditions set forth as embodied in the Deed of Donation.

In reply, please be informed that Section 101 (A)(2) of the Tax Code of 1997, as amended, provides:

> "*SEC. 101. Exemption of Certain Gifts.- The following gifts or donations shall be exempt from the tax provided for in this chapter:*
>
> *(A) In the Case of Gifts Made by a Resident.-*
>
> *xxx xxx xxx*
>
> *(2) Gifts made to or for the use of the National Government or any entity created by any of its agencies which is not conducted for profit, or to any political subdivision of the said Government; and*
>
> *xxx xxx xxx.*"

According to the above, donations made for the use of the National Government or any entity created by any of its agencies which is not conducted for profit or to any political subdivision of the said Government shall be exempt from the donor's tax. Considering that the donation of a parcel of land was made by ALDEVINCO in favor of DCWD, a government-owned or controlled entity not organized for profit, said donation is exempt from donor's tax. *(BIR Ruling No. 174-13 dated May 17, 2013)*

Moreover, the aforesaid Deed of Donation is not subject to documentary stamp tax under Section 196 of the Tax Code of 1997, as amended, but only to the documentary stamp tax of P15.00 on certification under Section 188 of the same Code. *(BIR Ruling No. 232-2012 dated March 29, 2012)*

The donation is, however, subject to value-added tax (VAT) since the donor is a vat-registered real estate developer and the donated properties are deemed ordinary assets.

In *BIR Ruling No. 499-2011 dated December 15, 2011*, this Office ruled that:

> "If the donor is a Value-Added Tax (VAT) registered person and the donation is an ordinary asset, the donation is subject to VAT pursuant to Section 4.106-7 of Revenue Regulations (RR) No. 16-2005, the same being considered a transaction deemed sale, but the input VAT attributed to the VAT portion of the cost of the donation should be deducted from accumulated input VAT of the donor. If the donor is not a VAT registered person, the donation is exempt from VAT."

If the same properties acquired by gift are subsequently conveyed by way of sale or exchange, the sale will be subject to corporate income tax on the gain realized which is determined by deducting from the gross selling price the historical cost or the adjusted basis thereof, as it would be in the hands of the donor, pursuant to Section 27 in relation to Section 101, both of the Tax Code of 1997, as amended, and consequently to the creditable expanded withholding tax under Section 2.57.2 of RR No. 2-98, as amended. If DCWD donates the same properties donated to it to a non-exempt donee, it shall be liable for donor's tax pursuant to Section 98 of the Tax Code of 1997, as amended.

It is understood that this ruling is never intended and shall not be construed as giving authority to the Register of Deeds of Davao City to effect transfer of the land titles in the name of the donee without the necessary certificate of authority to register issued by this Bureau. In this regard, this ruling shall be presented to the Revenue District Office No. 132-East, Davao City in order for the latter to issue the Certificate Authorizing Registration (CAR). The CAR shall only be issued after the submission of the requirements provided under RMO 15-2003.

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,

CAESAR R. DULAY
Commissioner of Internal Revenue

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