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

Bureau of Internal Revenue Ruling

P.D. No. 1529: Secs. 24 (D)(1) and 196, NIRC of 1997, as amended	#456-2017	Person to Contact: Chief, Law Division Tel. Nos. 926-55-36 / 927-09-63

Date: September 25, 2017

NATIONAL POWER CORPORATION
BIR Road corner Quezon Avenue,
Diliman, Quezon City

Attention: MA. GLADYS CRUZ-STA. RITA
President and CEO

Gentlemen:

This refers to your letter dated September 14, 2016 requesting for a BIR ruling exempting the Deed of Reconveyance executed by the National Power Corporation (NPC) in favor of Corazon V. Agoncillo from the payment of Capital Gains Tax (CGT) and Documentary Stamp Tax (DST). Such Deed of Reconveyance was executed due to the alleged erroneous entries made by the Register of Deeds (RD) transferring to NPC certain portions of parcels of land that were not included in the Deed of Absolute Sale dated August 13, 1988, executed by and between NPC and Corazon V. Agoncillo.

Background:

1. On August 13, 1988, a Deed of Absolute Sale was executed by and between NPC and Corazon V. Agoncillo represented by her Atty-In-Fact, Sixto Marella, Jr., over certain parcels of land located in Barrio Dacanlao, Municipality of Calaca, Province of Batangas, with a total area of One Hundred Thirty-Four Thousand Five Hundred Thirteen (134,513) square meters, as follows:

   a. Lot No. 3 (whole portion) with an area of 3,022 square meters as well as Lot 1-a (25,189 sq.m.), Lot 1-b (22,453 sq. m.), Lot 1-d (5,521 sq. m.), and Lot 1-f (1,710 sq. m.), all under Subdivision Plan PSD- Said lots are covered by Transfer Certificate of Title (TCT) No.

   b. Lot No. 2 (whole portion) with an area of 57,349 square meters as well as Lot No 4-a (19,269 sq. m.) under Subdivision Plan covered by TCT No

2. Pursuant to the aforesaid Deed of Absolute Sale, NPC was issued TCT No. , which cancelled TCT NO. over Lot 3 and Lot 1 with an area of 3,022 sq. m. and 255,736 sq. m., respectively. Likewise, NPC was issued TCT No , which cancelled TCT No. over Lot 2 and Lot 4 with an area of 57,349 sq. m. and 30,927 sq. m., respectively.

3. The parties to the Deed of Absolute Sale acknowledged that while TCT No. was properly issued for Lot 3 based on the area purchased by NPC, the area indicated therein for Lot 1 comprises the entire 255,736 sq. m. instead of a mere 54,873 sq. m. (Lots 1-a, 1-b, 1-d, and 1-f only) as shown in the Deed of Absolute Sale. Similarly, while TCT NO. was properly issued for Lot 2 based on the area purchased by NPC, the area indicated therein for Lot 4 comprises the entire 30,927 sq. m. instead of only 19,269 sq. m. (Lot 4-a only) as shown in the Deed of Absolute Sale.

4. Subsequently, a letter dated October 20, 2015 was then received by the NPC from Romeo Agoncilio Dinglasan, signing as Atty-In-Fact for the landowner/s requesting for the correction of the erroneous entries in TCT Nos. and

5. NPC through its Office of the Legal Counsel verified the allegations as mentioned in the above-said letter with the Register of Deeds (RD) in Nasugbu, Batangas in the presence of the Heirs of Corazon V. Agoncillo and was able to confirm the erroneous entries by the RD taking into account the existing TCTs and the Deed of Absolute Sale.

6. Thus, the Heirs of Agoncillo requested the immediate correction or reconveyance from NPC of the lots which were not purchased by NPC but were included in the titles issued to NPC.

7. NPC agreed to execute a Deed of Reconveyance for the above-mentioned portions of parcels of land not included in the Deed of Absolute Sale and to re- convey the same to Corazon V. Agoncillo, the latter being the rightful owner of the said lots.

8. Upon prior consultation with the RD, Nasugbu Batangas, a Deed of Reconveyance was executed by NPC re-conveying or returning to Corazon V. Agoncillo Lots 1-c, 1-e, 1-g of Subdivision Plan Lot 4-b of Subdivision Plan and Lot 5 of Plan Psu- previously covered by TCT No. which was cancelled by TCT No. in NPC's name and TCT which was cancelled by TCT also in NPC's name, respectively. Hence, this request.

In reply, please be informed that Section 2 of Presidential Decree (P.D.) No. 1529[1] partly provides:

> *"Sec. 2. Nature of registration proceedings; jurisdiction of courts. - Judicial proceedings for the registration of lands throughout the Philippines shall be in rem, and shall be based on the generally accepted principles underlying the Torrens System.*
>
> *Courts of First Instance shall have exclusive jurisdiction over all applications for original registration of title to lands, including improvements and interests therein, and over all petitions filed after original registration of title, with power to hear and determine all questions arising upon such applications or petitions. . . ."*

Pursuant to the above provisions, the Regional Trial Court (formerly Court of First Instance) has the authority to act, not only on applications for original registration of title to land, but also on all petitions filed after the original registration of title. Thus, it has the authority and power to hear and determine all questions arising from such applications or petitions.

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[1] Amending and Codifying the Laws Relative to Registration of Property and for Other Purposes

Thus, any change or amendment on the land titles or in the ownership of such properties should be done by seeking judicial relief since the properties are titled and registered in the names of the respective owners. The determination of whether or not mistake or inadvertent error attended the titling of the subject properties necessitating the exchange by or reconveyance to the rightful owner thereof is an issue that is within the jurisdiction of the courts.

This was confirmed by the Registry of Deeds, Nasugbu, Batangas, in the letter of Atty. Abraham N. Vermudez, addressed to your VP-Legal Counsel, Mr. Melchor P. Ridulme, denying your request for a Certification or Sworn Statement confirming the erroneous entries made by the RD, to wit:

> *"Relative thereto, the undersigned regrets to inform you that this Office cannot issue the Certification or Sworn Statement being requested in view of Sec. 108 of P.D. No. 1529 as follows:*
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>> *'Sec. 108. Amendment and alteration of certificates. No erasure, alteration, or amendment shall be made upon the registration book after the entry of a certificate of title or of a memorandum thereon and the attestation of the same by Register of Deeds, except by order of the proper Court of First Instance. A registered owner of other person having an interest in registered property, or, in proper cases, the Register of Deeds with the approval of the Commissioner of Land Registration, may apply by petition to the court upon the ground that the registered interests of any description, whether vested, contingent, expectant or inchoate appearing on the certificate, have terminated and ceased; or that new interest not appearing upon the certificate have arisen or been created; or that an omission or error was made in entering a certificate or any memorandum thereon, or, on any duplicate certificate; or that the same or any person on the certificate has been changed; or that the registered owner has married, or, if registered as married, that the marriage has been terminated and no right or interests of heirs or creditors will thereby be affected; or that a corporation which owned registered land and has been dissolved has not convened the same within three years after its dissolution; or upon any other reasonable ground; and the court may hear and determine the petition after notice to all parties in interest, and may order the entry or cancellation of a new certificate, the entry or cancellation of a memorandum upon a certificate, or grant any other relief upon such terms and conditions, requiring security or bond if necessary, as it may consider proper; Provided, however, That this section shall not be construed to give the court authority to reopen the judgment or decree of registration, and that nothing shall be done or ordered by the court which shall impair the title or other interest of a purchaser holding a certificate for value and in good faith, or his heirs and assigns, without his or their written consent. Where the owner's duplicate certificate is not presented, a similar petition may be filed as provided in the preceding section.*
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>> *All petitions or motions filed under this Section as well as under any other provision of this Decree after original registration shall be filed and entitled in the original case in which the decree or registration was entered.'*

In view of the foregoing, you are therefore advised to file the necessary Petition to the Court upon the ground that an error was made in the registration of the Transfer Certificates of Title (TCTs) issued to NPC."

Therefore, your allegation of erroneous entries made by the RD without presenting any court order that a mistake or inadvertent error attended the titling of the subject properties necessitating the reconveyance to the rightful owner, cannot be given credence. Thus, the herein reconveyance of properties without monetary consideration finds no basis in fact and in law to be exempt from CGT and DST imposed by Sections 24 (D) and 196 of the National Internal Revenue Code of 1997, as amended. In Philippine jurisprudence, it is a well-settled rule that "mere allegation is not evidence, and is not equivalent to proof."[2] In the case of ***Spouses Nilo Ramos and Eliadora Ramos vs. Far East Bank and Trust Company***[3], the Supreme Court states that:

"Basic is the rule that mere allegation is not evidence and is not equivalent to proof. Charges based on mere suspicion and speculation likewise cannot be given credence."

Moreover, Section 24(D)(1) of the National Internal Revenue Code of 1997, as amended, states that:

"(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."* (Emphasis supplied)

In the case of *Salud vs. Commissioner of Internal Revenue*[4], the Court of Tax Appeals had the occasion to rule that the National Internal Revenue Code of 1997, 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[5].

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 National Internal Revenue Code of 1997, as amended, unless specifically excluded therefrom or subject to another tax treatment pursuant to different provisions of the National Internal Revenue Code of 1997, as amended. Thus, the Deed of Reconveyance executed by the NPC in favor of Corazon V. Agoncillo, in the absence of a specific law excluding it from the coverage of Section 24 (D) (1) of the National Internal Revenue Code of

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[2] Hector C. Villanueva vs. Philippine Daily Inquirer, Inc., et al., G.R. No. 164437, May 15, 2009, 588 SCRA 1, 11; Social Security Commission and Social Security System vs. Teresa G. Favila, G.R. No. 170195, March 28, 2011, 646 SCRA 462, 477; ECE Realty and Development, Inc. vs. Rachel G. Mandap, G.R. No. 196182, September 1, 2014

[3] G.R. No. 193804, February 27, 2013

[4] CTA EB Case No. 412 dated April 30, 2009

[5] Black's Law Dictionary, 6th Edition

1997, 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) of the National Internal Revenue Code of 1997, as amended, is likewise subject to the documentary stamp taxes imposed in Section 188 and Section 196 of the National Internal Revenue Code of 1997, 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 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."*[6]

Please be guided accordingly.

Very truly yours,

CAESAR R. DULAY
Commissioner of Internal Revenue

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K-I-LMAT

CELIA C. KING
Deputy Commissioner
Resource Management Group
Officer-In-Charge

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