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

Proclamation No. 50; Section 21(E)& 196 of the Tax Code of 1977		#069-2018 1-25-2018

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

CARMENCITA I. MORRE
20-B Avocado Street
Mambaling, Cebu City

Madam:

This refers to your letter dated July 28, 2016 duly endorsed by Revenue Region No. 13-Cebu City requesting for tax exemption on the sale of land between Republic of the Philippines and Carmencita Morre pursuant to Section 35 of Proclamation No. 50.

Documents submitted that the Republic of the Philippines is the registered owner of a parcel of land, identified as Lot , of the subdivision plan Psd- , being a portion of Lot (LRC) Psd- , L.R.C. Record No. covered by Transfer Certificate of Title (TCT) No. issued by the Registry of Deeds for Cebu City. The aforesaid property is situated at Avocado St., Basak, San Nicolas, Cebu City with an area of square meters (sq.m.), more or less. On May 16, 1996, the Republic of the Philippines, through the Board of Liquidator, and Carmencita I. Morre executed a Deed of Absolute Sale whereby the owner transferred and conveyed the above mentioned property for Pesos (P).

In reply, please be informed that under Section 35 of Proclamation No. 50[1], provides that:

> *"SEC. 35. Exemption from Taxes, Fees, and Other Charges. — The provisions of any law to the contrary notwithstanding, the Trust as well as the corporations and assets held by it, shall be exempt from all taxes, fees, charges, imposts, and assessments arising from or occasioned by the passing of title over such corporations or assets from the government institutions to the Trust and/or from the Trust to a private acquisitor or buyer imposed by the National Government or any subdivision thereof including but not limited to stock transfer taxes, capital gains taxes, documentary stamps tax, registration fees and the like: Provided, that in case the said government institutions acquired the said assets by foreclosure, the non-payment of similar taxes, charges, imposts, and assessments shall not be a bar to the consolidation of title in the foreclosing institutions and the subsequent passing of title to the Trust or the corporations held by the Trust.*

[1] December 8, 1986

> *The sale or transfer of such corporations or assets shall not be enjoined or hindered by the existence of any liens by way of taxes, charges or other assessments in favor of the government at the time of sale or transfer: Provided, that the proceeds from such sale or transfer shall be subject to a tax lien and first be applied to satisfy such obligations secured by such liens."*

However, on December 17, 1986, then Pres. Corazon C. Aquino issued Executive Order (EO) No. 93 which withdrew all tax and duty exemptions granted to private entities effective March 10, 1987.

Inasmuch as EO 93 withdrew tax exemptions provided under Proclamation No. 50, hence, Section 21(E) of the 1977 Tax Code, as amended, shall apply in this instance. The said Section provides that in the case of 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 condition sales by individuals, including estates and trusts, a final tax of six percent (5%) based on the gross selling price or current fair market value as determined in accordance with Section 6(E) of the Tax Code, whichever is higher, is imposed upon capital gains presumed to have been realized therefrom. It must be noted that the capital gains tax mentioned under the aforementioned provision is an income tax, the burden of which rests upon the seller which, in this case, is the Board of Liquidator.

It is noteworthy to mention that Board of Liquidator is subject to the capital gains tax of 5% imposed on its capital gains presumed to have been realized from the sale of the said parcel of land in spite of its being a government agency. This is in accordance with Sec. 28(b)(8)(B) of the Tax Code of 1977 which provides that only the income derived by the government agency from the exercise of its essential governmental function shall be excluded from its gross income.

Furthermore, the Deed of Absolute Sale is subject to the documentary stamp tax based on the actual consideration of the property sold pursuant to Sec. 196 of the Tax Code of 1977, as amended.

In view of the foregoing, this Office regrets to deny your request for tax exemption for lack of legal basis.

Very truly yours,

Caesar Dulay

CAESAR R. DULAY
Commissioner of Internal Revenue

012804

K-1