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

Sec. 24(D)(1), Tax Code of 1997, as amended
BIR Ruling No. 130-2013
CT-129-2021
NOV 15

ATTY. CELINE AROKIASWAMY
Attorney-in-Fact
National Labor Union

Brgy. Kaligayanan, Quezon City

Madam:

This refers to your letter seeking for exemption on taxes and penalties relative to the properties awarded to the National Labor Union (NLU) of Sampaguita Garments Corporation (SGC) predicated on the finality in the execution proceedings in National Labor Relations Commission (NLRC) Case No. 00-08-05390-1993 entitled "*National Labor Union vs. Sampaguita Garments Factory Corporation and/or Raymond Ang*".

It is represented that the NLRC – National Capital Region (NCR) awarded the NLU representing two hundred fifty (250) employees of SGC, the amount of (P) representing NLUs balance of the judgment award. In compliance therewith, the Sheriff of NLRC-NCR made levy/attachment upon two (2) condominium units (subject properties) owned by SGC and/or Raymond Ang.

The subject properties were then sold through public auction. NLU-SGC, being the lone bidder, acquired the subject properties. Accordingly, the Certificates of Sale of the subject properties were issued by the NLRC-NCR Sheriff in favor of NLU-SGC, and the same were annotated on the Condominium Certificates of Title on November 4, 2010 by the Register of Deeds of Pasig. It was indicated therein that a Final Certificate of Sale/Award shall be issued one year after registration of said Certificates of Sale with the Register of Deeds.

The subject properties were never redeemed within the reglementary period. Consequently, however, the Final Certificates of Sale/Award were issued only on March 26, 2013 and were further implemented on April 12, 2013 by the Sheriff of NLRC-NCR.

Meanwhile, it can be gleaned from the documents that the Revenue District Office of Pasig (RDO Pasig) made an assessment on the transfer of the subject properties to NLU following the expiration of the redemption period on November 4, 2011. Since the same was not settled within the prescribed period, RDO Pasig imposed penalties thereto.

In reply, please be informed that Section 24(D)(1) of the National Internal Revenue Code (Tax Code) of 1997, as amended, provides, *viz*:

"Section 24. Income Tax Rates. –

xxx xxx xxx

(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."

In the case of *Salud vs. CIR*[1], the Court of Tax Appeals had occasion to rule that the Tax Code of 1997, as amended, does not define nor qualify the phrase "other disposition". Since there is no ambiguity or vagueness in the law, it 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[2].

It is thus clear that the phrase "other disposition" under Section 24(D)(1) of the Tax Code of 1997, as amended includes all kinds of dispositions of real property unless specifically excluded therefrom or subject to another tax treatment pursuant to other provisions of the Tax Code of 1997, as amended or other special tax laws. Thus the sale of a real property to satisfy the money judgment of the court, in the absence of a specific law excluding it from the coverage of Section 24(D)(1) If the Tax Code of 1997, as amended, is deemed included within the purview of the said provision.

Moreover, Section 2 of Revenue Regulations (RR) No. 9-2012 dated May 31, 2012 provides for the tax treatment of unredeemed foreclosed/auctioned off properties sold during involuntary sales, to wit:

"Section 2. Taxability of Owner's/Mortgagor's Failure to Redeem his Foreclosed/Auctioned Off Property within the Applicable Statutory Redemption Period. —

In case of non-redemption of properties sold during involuntary sales, regardless of the type of proceedings and personality of mortgagees/selling persons or entities, the capital gains tax (CGT)

[1] CTA EB Case No. 412, April 30, 2009
[2] Black's Law Dictionary, 6th Edition

imposed under Sections 24(D)(1) and 27(D)(5) of the Tax Code in relation to Section 57 of the Tax Code and RR 2-98, as amended, if the property is a capital asset; or the Creditable Withholding Tax (CWT) imposed under Section 57 and RR 2-98, as amended, if the property is an ordinary asset; the value added tax (VAT) imposed under Section 106 of the Tax Code and RR 16-05, as amended; and the documentary stamp tax (DST) imposed under Section 196 of the Tax Code shall become due."

The buyer of the subject property, who is deemed to have withheld the CGT or CWT due from the sale, shall then file the CGT return and remit the said tax to the Bureau within thirty (30) days from expiration of the applicable statutory redemption period; or file the CWT return and remit the said tax to the Bureau within ten (10) days following the end of the month after expiration of the applicable statutory redemption period.

If the property sold through involuntary sale is under the circumstances which warrant the imposition of VAT, the said tax must be paid to the Bureau by the VAT-registered owner/mortgagor on or before the 20th or 25th day, whichever is applicable, of the month following the month when the right of redemption prescribes.

The DST return shall be filed and the said tax paid to the Bureau within five (5) days after the close of the month after the lapse of the applicable statutory redemption period.

The CGT/CWT/VAT & DST shall be based on whichever is higher of the consideration (bid price of the highest bidder) or the fair market value or the zonal value as determined in accordance with Section 6(E) of the Tax Code of 1997, as amended.

Based on the foregoing, it is clear that unredeemed foreclosed/auctioned off properties sold during involuntary sales, regardless of the type of the proceedings, including real properties sold pursuant to a court's order for the satisfaction of a money judgment, are subject to CGT/CWT/VAT, as the case may be, and DST. In view of the foregoing, your request for exemption from CGT and DST is hereby denied for lack of legal basis.

Accordingly, the transfer of the subject properties to NLU-SGC shall be subject to CGT and DST, based on whichever is higher of the consideration (bid price of the highest bidder) or the fair market value or the zonal value as determined in accordance with Section 6 (E) of the Tax Code of 1997, as amended.

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

K-1