REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

Quezon City

Sections 24 (D) (1) and 196 of the National Internal Revenue Code of 1997, as amended
BIR Ruling No. 224-11 dated July 12, 2011
BIR Ruling No. 252-13 dated July 8, 2013

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JUN 09 2020

ATTY. ELMER DISTOR
Assistant Secretary
Field Operations Office
Department of Agriculture

Sir:

This refers to your letter dated February 21, 2020, requesting for a tax exemption on the transfer of parcels of land ("property") from MRC Allied Industries Incorporated ("MRC") to the Province of Leyte through a Deed of Forfeiture.

It is represented that MRC bought the aforesaid property from Julia P. Muertegui. For failure to pay the Province of Leyte the corresponding real property taxes from 2003 to 2008, MRC was declared delinquent. Consequently, the Province of Leyte issued a Warrant of Levy and Notice of Levy to MRC and the property was advertised for sale at a public auction. However, due to the lack of a bidder, the property was forfeited in favor of the Province of Leyte.

In reply, please be informed that Section 263 of R.A. 7160 or the Local Government Code of 1991 provides that:

> "SEC. 263. Purchase of Property by the Local Government Units for Want of Bidder. — In case there is no bidder for the real property advertised for sale as provided herein, or if the highest bid is for an amount insufficient to pay the real property tax and the related interest and costs of sale the local treasurer conducting the sale shall purchase the property in behalf of the local government unit concerned to satisfy the claim and within two (2) days thereafter shall make a report of his proceedings which shall be reflected upon the records of his office. It shall be the duty of the Registrar of Deeds concerned upon registration with his office of any such declaration of forfeiture to transfer the title of the forfeited property to the local government unit concerned without the necessity of an order from a competent court.
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> Within one (1) year from the date of such forfeiture, the taxpayer or any of his representative, may redeem the property by paying to the local treasurer the full amount of the real property tax and the related interest

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and the costs of sale. If the property is not redeemed as provided herein, the ownership thereof shall be vested on the local government unit concerned." (Emphasis supplied)

From the foregoing provision, it is clear that when there are no bidders of a real property advertised for sale in the public auction, the local treasurer conducting the sale shall purchase the property in behalf of the local government unit (LGU).

Sections 24 (D) (1) and 196 of the Tax Code of 1997, as amended, on the other hand provides:

"SEC. 24. Income Tax Rates. —

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(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: . . ." (Emphasis supplied)

In the case of a public auction, sale of the realty of the delinquent taxpayer is the enforcement by the LGU of its tax lien for unpaid real property taxes and is being conducted through public bidding or public auction sale. However, CGT is usually paid by the seller considering that it is 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 such as mortgage foreclosure sales whether it is done judicially or extra-judicially.

While the LGU is the statutory seller of the properties on public auction, the CGT and DST due on the said sale of the realty are for the account of the real property owner. However, when no redemption is made by the owner of the auctioned property, ownership over such real property shall be transferred in the name of the concerned LGU pursuant to Section 263 of R.A. 7160. The LGU, then, becomes liable to pay the CGT and DST in order for the properties to be registered in its name.

We note that forfeiture under Section 263 of the Local Government Code contemplates two instances, i.e., want of bidder in the auction, or the highest bid is insufficient to satisfy the LGU's claim. Thus, there may not be a bid price, or the highest bid is insufficient to cover the claim of the LGU. In such cases, the claim of the

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LGU against the taxpayer should be considered as the selling or bid price. Thus, for purposes of computing the applicable taxes due thereon, the tax base shall be whichever is the highest of the total claim of the LGU, the fair market value or the zonal value as determined in accordance with Section 6 (E) of the 1997 Tax Code, as amended.

Moreover, Section 2 of Revenue Regulations (RR) No. 9-2012 dated May 31, 2012 provides for the taxability of unredeemed foreclosed/auctioned off properties sold during involuntary sales, and the mode of payment of the taxes that may be due thereon, to wit:

> "Section 2. Taxability of Owner's/Mortgagor's Failure to Redeem his Foreclosed/Auctioned Off Property within the Applicable Statutory Redemption Period. —
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> 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) 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.
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> 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, provided that, for tax withheld in December, the CWT return shall be filed and the taxes remitted to the Bureau on or before January 15 of the following year.
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> 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.
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> 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

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statutory redemption period, provided that, for taxes withheld in December, the CWT return shall be filed and the taxes remitted to the Bureau on or before January 15 of the following year.

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."

Based on the foregoing, it is clear that unredeemed foreclosed/auctioned off properties sold during involuntary sales, regardless of the type of the proceedings, are subject to CGT/CWT/VAT, as the case may be, and DST. This includes sale of real properties by LGUs in a public auction sale due to the owner's delinquency in the payment of real property taxes. If no redemption is made by the owner of the auctioned property, ownership over such real property shall be transferred in the name of the concerned LGU pursuant to Section 263 of R.A. 7160. The LGU, then, becomes liable to pay the CGT and DST in order for the properties to be transferred in its name.

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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