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

Sections 24 (D) (1) and 188 of the NIRC of 1997, as amended
BIR Ruling No. 216-2015
286-2018
2-27-2018

BABAN & BABAN LAW OFFICE
AND CONSULTANCY SERVICES
Room D, Masonic Center,
180 Yandoc St., Baguio City

Attention: ATTY. NESTOR L. BABAN

Gentlemen:

This refers to your letter dated June 29, 2016 duly indorsed by Revenue Region No. 2-Baguio City, requesting exemption from payment of Capital Gains Tax (CGT) and Documentary Stamp Tax (DST) in reference to Civil Case No. 8312-R.

Background:

On August 3, 2016, the Regional Trial Court (RTC) of Baguio City, Branch 6, rendered its decision in Civil Case No. 8312-R entitled *"Elfreda G. Pinangat, et. al. vs. Nenita O. Avancy, et. al."* approving, *in toto*, the Compromise Agreement entered into by the parties during the Judicial Dispute Resolution. The said Compromise Agreement provides that:

"That the parties have mutually decided to buy peace of mind and end this case under the following terms and conditions:

a) In the exercise of utmost generosity, defendant Nenita Avancy agreed to waive all her claims on the foreclosed house and lot covered by ARP NO. and ARP NO. respectively which are now declared in her name in favour of the plaintiffs.

b) The plaintiffs shall cause the cancellation of the tax declarations in the name of the defendant Nenita Avancy back to its original declared owner, Avelina Gawiden, mother of the plaintiffs.

c) The real property taxes in the amount of P paid by defendant Nenita Avancy to the Baguio City local government will be reimbursed by the plaintiffs to her on May 23, 2016 at 2:00 o'clock in the afternoon at RTC 6 Baguio City.

d) The plaintiffs expressed their gratitude on the generosity of defendant Nenita Avancy and wisher her well.

e) Both parties prayed for the dismissal of this case of the Honorable Court."

In reply, we regret to inform you that your request for tax exemption cannot be granted for lack of legal basis.

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*[1], 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[2].

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, or other special tax laws. Thus, the reconveyance of the real property in favor of Avelina Gawiden, in the absence of a specific law excluding it from the coverage of Section 24 (D) (1) of the National Internal Revenue Code of 1997, as amended, is deemed included within the purview of the said provision. Therefore, it shall be subject to CGT imposed therein. ***(BIR Ruling No. 216-2015 dated June 19, 2015)***

Moreover, the reconveyance being a disposition of real property under Section 24(D)(1) of the National Internal Revenue Code of 1997, as amended, is likewise subject to DST imposed in Section 188 of the National Internal Revenue Code of 1997, as amended.

Please be guided accordingly.

Very truly yours,

CAESAR R. DULAY
Commissioner of Internal Revenue

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