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

Secs. 24(D)(1) & 58(E), Tax Code
BIR Ruling No. 369-2018
OT - 0646 - 2020
DEC 01 2020

OPTICAL MEDIA BOARD
No. 35 Scout Limbaga Street
Bgy. Laging Handa, Quezon City 1103

Attention: **Atty. Victor Luis Q. Padilla II**
Executive Director

Gentlemen:

This refers to your letter dated August 16, 2017 requesting for the issuance of the Certificate Authorizing Registration (CAR) pending the payment of the transfer tax liability or possible reduction thereof and legal avoidance of payment of surcharges, interest and penalties on the transfer of real property to Optical Media Board ("OMB").

As represented, in June 2017, Renato Ma. Avena ("Mr. Avena") sold and conveyed a real property located at No. 35 Scout Limbaga Street, Bgy. Laging Handa, Quezon City ("Subject Property") to Videogram Regulatory Board (now, OMB), a national government regulatory agency. Before the sale, the Subject Property was classified as capital asset and utilized as a residential abode. It is now utilized as the principal office of the Optical Media Board, an agency performing governmental functions catering to public service.

In reply, please be informed that the requirement of a Certificate Authorizing Registration (CAR) prior to registration with the Registry of Deeds is mandated under Section 58 (E) of the National Internal Revenue Code of 1997, as amended (NIRC), which states that:

> "*(E) Registration with Register of Deeds. –* ***No registration of any document transferring real property shall be effected by the Register of Deeds unless the Commissioner or his duly representative has certified that such transfer has been reported, and the capital gains or creditable withholding tax, if any, has been paid****: Provided, however, That the information as may be required by rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner, shall be annotated by the Register of Deeds in the Transfer Certificate of Title or Condominium Certificate of Title: Provided, further, That in cases of transfer*

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of property to a corporation, pursuant to a merger, consolidation or reorganization, and where the law allows deferred recognition of income in accordance with Section 40, the information as may be required by rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner, shall be annotated by the Register of Deeds at the back of the Transfer Certificate of Title or Condominium Certificate of Title of the real property involved: Provided, finally, ***That any violation of this provision by the Register of Deeds shall be subject to the penalties imposed under Section 269 of this Code.*** " (emphasis supplied)

Pursuant to Section 24 (D)(1) of the NIRC, a six percent (6%) Capital Gains Tax (CGT) is imposed on the gains presumed to have been realized by the seller from the sale, exchange, or other disposition of capital assets located in the Philippines, including pacto de retro sales and other forms of conditional sale. Moreover, since the buyer is a government agency, the seller may opt to be taxed under Section 24 (A) of the same Code, as amended.

It must be noted that the burden of paying the six percent (6%) capital gains tax on the sale of the Subject Property classified as capital asset rests upon the seller, Mr. Avena, because he is the one who is presumed to have realized the capital gains subject to tax. Until Mr. Avena pays the CGT or the income tax on the sale of the Subject Property, no registration of the Deed of Sale transferring the Subject Property to OMB can take effect notwithstanding the fact that OMB is an agency of the government.

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

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