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

Section 39, Tax Code; RR 7-2003
BIR Ruling No. 253-16
OT-0322-2020
JUN 15 2020

SVT LAW
Unit K, 21st Floor, Strata 100 Building
Emerald Avenue, Ortigas Center
Pasig City

Attention: **Atty. Solo V. Tibe**
Managing Attorney

Gentlemen:

This refers to your letter dated November 7, 2017 requesting, on behalf of **Campos Rueda Corporation**, for confirmation that its sale of real property, with Transfer Certificate of Title (TCT) No. , is subject to Capital Gains Tax (CGT) and Documentary Stamp Tax (DST).

As represented, **Campos Rueda Corporation** ("the Company") is a domestic corporation with principal business address at No. 22 N. Domingo Street, Cubao, Quezon City. It is registered with the Securities and Exchange Commission under Company Registration No. , dated June 18, 1946. The primary purposes for which it was created are: "to own and operate a motor vehicle repair shop; to exercise any power and/or to pursue any act necessary or incidental in the accomplishment of said purpose." The Company has acquired and maintained a house and lot covered by TCT No. located at No. 46, Sineguelas Street, Valle Verde 1, Pasig City. Since the beginning of its business operations until 2007, the above described property had been used by its President, Mr. Jose A. Campos, for residential purposes. Thereafter, and for over ten (10) years now, the subject property has been unutilized and has shown visible signs of deterioration. However, the Company has continued paying the homeowners' association dues and real property taxes in Pasig City. The aforesaid property has not been used for the Company's ordinary trade or business, and neither has it been classified as a property of a kind which would properly be included in the inventory at the close of a taxable year, nor held for sale to customers in the ordinary course of trade or business. The Company now intends to dispose of the subject property to an interested buyer.

In reply, please be informed that this Office has discussed in BIR Ruling No. 253-16 dated June 22, 2016 how to determine whether an asset is capital or ordinary:

"... Section 39 (A) of the National Internal Revenue Code (NIRC) of 1997, as amended, provides for the definition of a capital asset, to wit:

'*Section 39. Capital Gains and Losses. —*

(A) Definitions. — As used in this Title —

(1) Capital Assets. — The term 'capital assets' means property held by the taxpayer (whether or not connected with his trade or business), but does not include stock in trade of the taxpayer or other property of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the taxable year, or property held by the taxpayer primarily for sale to customers in the ordinary course of his trade or business, or property used in the trade or business, of a character which is subject to the allowance for depreciation provided in Subsection (F) of Section 34; or real property used in trade or business of the taxpayer.'

The foregoing provision is being implemented by Revenue Regulations (RR) No. 7-2003, issued on February 11, 2003, providing for the guidelines in the determination of whether a particular real property is a capital asset or an ordinary asset. Section 2 (a) of RR 7-2003 defines capital assets as referring to ***'all real properties held by a taxpayer, whether or not connected with his trade or business, and which are not included among the real properties considered as ordinary assets under Sec. 39 (A) (1) of the Code.'*** On the other hand, Section 2 (b) of the same Regulations laid down what constitutes ordinary assets as follows:

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'b. Ordinary assets shall refer to all real properties specifically excluded from the definition of capital assets under Sec. 39(A)(1) of the Code, namely:

1. Stock in trade of a taxpayer or other real property of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the taxable year; or

2. Real property held by the taxpayer primarily for sale to customers in the ordinary course of his trade or business; or
3. Real property used in trade or business (i.e., buildings and/or improvements) of a character which is subject to the allowance for depreciation provided for under Sec. 34(F) of the Code; or
4. Real property used in trade or business of the taxpayer.

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c. Real property shall have the same meaning attributed to that term under Article 415 of Republic Act No. 386, otherwise known as the "Civil Code of the Philippines."

d. Real estate dealer shall refer to any person engaged in the business of buying and selling or exchanging real properties on his own account as a principal and holding himself out as a full or part-time dealer in real estate. (underscoring supplied)

e. Real estate developer shall refer to any person engaged in the business of developing real properties into subdivisions, or building houses on subdivided lots, or constructing residential or commercial units, townhouses and other similar units for his own account and offering them for sale or lease.

f. Real estate lessor shall refer to any person engaged in the business of leasing or renting real properties on his own account as a principal and holding himself out as lessor of real properties being rented out or offered for rent.

g. Taxpayers engaged in the real estate business shall refer collectively to real estate dealers, real estate developers, and/or real estate lessors. Conversely, the term "taxpayers not engaged in the real estate business" shall refer to persons other than real estate dealers, real estate developers and/or real estate lessors. A taxpayer whose primary purpose of engaging in business, or whose Articles of Incorporation states that its primary purpose is to engage in the real estate business shall be deemed to be engaged in the real estate business for purposes of these Regulations. (underscoring supplied)

SECTION 3. Guidelines in Determining Whether a Particular Real Property is a Capital Asset or Ordinary Asset. —

a. Taxpayers engaged in the real estate business. — Real property shall be classified with respect to taxpayers engaged in the real estate business as follows:
   1. Real Estate Dealer. — All real properties acquired by the real estate dealer shall be considered as ordinary assets. (underscoring supplied)
   2. Real estate Developer. — All real properties acquired by the real estate developer, whether developed or undeveloped as of the time of acquisition, and all real properties which are field by the real estate developer primarily for sale or for lease to customers in the ordinary course of his trade or business or which would properly be included in the inventory of the taxpayer if on hand at the close of the taxable year and all real properties used in the trade or business, whether in the form of land, building, or other improvements, shall be considered as ordinary assets.
   3. Real Estate Lessor. — All real properties of the real estate lessor, whether land and/or improvements, which are for lease/rent or being offered for lease/rent, or otherwise for use or being used in the trade or business shall likewise be considered as ordinary assets.
   4. Taxpayers habitually engaged in the real estate business. — All real properties acquired in the course of trade or business by a taxpayer habitually engaged in the sale of real estate shall be considered as ordinary assets. Registration with the HLURB or HUDCC as a real estate dealer or developer shall be sufficient for a taxpayer to be considered as habitually engaged in the sale of real estate. If the taxpayer is not registered with the HLURB or HUDCC as a real estate dealer or developer, he/it may nevertheless be deemed to be engaged in the real estate business through the establishment of substantial relevant evidence (such as consummation during the preceding year of at least six (6) taxable real estate sale transactions, regardless

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> of amount; registration as habitually engaged in real estate business with the Local Government Unit or the Bureau of Internal Revenue, etc.).'

Based on the above-quoted provisions, it is clear that all real property owned or acquired by a taxpayer engaged in the real estate business are classified as ordinary assets. The classification, therefore, of a particular real property as being capital or ordinary asset does not depend upon its actual use or the purpose for its acquisition, but on the nature of the business of its registered owner. . ."

The Articles of Incorporation of Campos Rueda Corporation reveals that it is engaged in the real estate business. Among its secondary purposes is "to purchase and sell, exchange and deal in lands and estate, and any interest of any kind whatsoever therein."

Inasmuch as the subject property previously constituted as the residence of the Company's President is owned by a corporation engaged in the real estate business, the same is classified as ordinary asset. Therefore, its sale shall be subject to Value-Added Tax (VAT), Creditable Withholding Tax (CWT) and DST.

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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