REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
**BUREAU OF INTERNAL REVENUE**

Quezon City

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| Sections 24 (D) (1) and 57 (B), Tax Code of 1997; Revenue Regulations No. 2-98, as amended; |
| BIR Ruling No. 471-2019;<br>BIR Ruling No. 1109-2018 |
| CT- 355-2021 |
| OCT 04 2021 |

**OSCAR M. ARNIEGO, et. al.**

Marikina City

Gentlemen:

This refers to your letter dated October 23, 2019 requesting for exemption from income tax, capital gains tax (CGT) and/or withholding tax, documentary stamp tax (DST) and other pertinent taxes on the awards for separation pay and other damages received by the former employees of **ITTI Shoes and Mano Shoes/MANOLO SAMSON**, namely: Raul Marasigan, Remy Pagdato, Cristina Glova, Domingo Sacao Jr., Erlea Panoy and Domingo Lepalam.

As represented, Labor Arbiter Jasper Z. Dela Cruz issued Writ of Execution on June 2, 2017 for the recovery, by way of distraint, of the amounts of Php representing monetary award due to the employees, and Php as execution fee and other expenses incurred in the execution proceedings. In compliance with the Writ of Execution, levy/attachment was made upon the real property covered with Transfer Certificate of Title (TCT) No. owned by Mr. Manolo Samson.

During the public auction for the sale of the above property, the employees participated and won the bidding in the amount of Php . The Sheriff's Certificate of Sale conveying the said property to the employees was issued on December 13, 2017.

You now seek to request for exemption from payment of taxes on the transfer of real properties successfully levied and acquired through public auction.

In reply, please be informed that if the real property covered by TCT No. is considered a capital asset, Section 24 (D) (1) of the National Internal Revenue Code (Tax Code) of 1997, as amended, states that:

> "*SEC. 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,*

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*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. Commissioner of Internal Revenue,[1] the Court of Tax Appeals had the occasion to rule that the Tax 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.

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 Tax Code of 1997, as amended, unless specifically excluded therefrom or subject to another tax treatment pursuant to different provisions of the Tax Code of 1997, as amended. Thus, the Sheriff's Certificate of Sale dated December 13, 2017, in the absence of a specific law excluding it from the coverage of Section 24 (D) (1) of the Tax Code of 1997, as amended, is deemed included within the purview of said provision. Therefore, it shall be subject to the CGT imposed therein.

Moreover, the conveyance being a disposition of real property under Section 24 (D) (1) of the Tax Code of 1997, as amended, is likewise subject to the DST imposed in Sections 188 and 196 of the Tax Code of 1997, as amended.

However, in case the real property that is subject to transfer is an ordinary asset, Section 2.57.2 (J) of Revenue Regulations (RR) No. 2-98, as amended, implementing Section 57 (B) of the Tax Code of 1997, as amended, shall apply. Thus, the conveyance of the aforesaid real property in favor of the complainant-employees by way of auction sale as payment of separation pay and other damages is subject to the applicable Creditable Withholding Tax (CWT).

Accordingly, Section 2.57.3 of RR No. 2-98, as amended, providing for persons required to deduct and withhold the CWT, states that insofar as taxable sales, exchanges or transfers of real property are concerned, the buyers are constituted as withholding agents. Although ITTI Shoes and Mano Shoes/MANOLO SAMSON is the one liable to pay the CWT, the complainant-buyers are constituted as the withholding agents required to withhold the CWT.

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.