REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

Quezon City

Mariano Z. Velarde et al. vs. Court of Appeals, et al., G.R. No. 108346; Philippine Home Assurance Corporation, et al. vs Court of Appeals, et al., G.R. No. 119446
BIR Ruling No. 633-2012 BIR Ruling No. 178-2013
431-2017

9-1-2017

FERNANDO T. CHUA
No. 74 Dunhill Street
Fairview, Quezon City

Dear Mr. Chua,

This refers to your letter dated April 14, 2016, indorsed to this Office by the Legal Division of Revenue Region (RR) No. 7, Quezon City, regarding your request for exemption from the payment of capital gains tax (CGT) and documentary stamp tax (DST) on the reconveyance of a parcel of land covered by Transfer Certificate of Title (TCT) No. (formerly, TCT No.) of the Registry of Deeds for Quezon City.

It is represented that Spouses Fernando T. Chua and Maria Azineth S. Chua (Sps. Chua) were the registered owners of the lot covered by TCT No. , with an area of 260 square meters; that on December 11, 2012, Sps. Chua executed a Deed of Absolute Sale (DOAS) over the subject property in favor of Maria Karla F. Kallos (Ms. Kallos); that by virtue of said DOAS, a new TCT No. was issued to Ms. Kallos on May 29, 2013; that it was later discovered that the subject property is suffering from a hidden defect, that is, the property was found to be located along, and transected by the West Valley Fault, which precluded Ms. Kallos from constructing a residential structure on said property; that since the sole purpose of buying the property was to construct a residential house on it, Sps. Chua and Ms. Kallos executed, on March 24, 2015, an Amended Revocation/Rescission of Deed of Absolute Sale, agreeing to revoke, rescind and cancel the Deed of Absolute Sale dated December 11, 2012; and that pursuant to the said Deed of Revocation/ Rescission of Deed of Absolute Sale, Ms. Kallos shall reconvey the subject property to Sps. Chua, while the latter shall return to the former the amount of as restitution of the purchase price as well as reimbursement of the expenses incurred by Ms. Kallos on account of the aborted sale.

In reply, please be informed that in the case of *Mariano Z. Velarde et al. vs. Court of Appeals, et al., G.R. No. 108346* dated July 11, 2001, the Supreme Court held that "(t)o rescind is to declare a contract void at its inception and to put an end to it as though it never was. It is not merely to terminate it and release the parties from further obligations to each other, but to abrogate it from the beginning and restore the parties to their relative positions as if no contract has been made."

Based on the foregoing, the rescission of a contract would not give rise to a taxable event for two reasons: a) the result of rescission is that it is as if there was no sale, transfer or exchange, and hence, no income is realized; and b) the return of the object of the rescinded contract is not for monetary consideration and is merely an acknowledgement or confirmation of the title and ownership of the original owner of the property.

Such being the case, the reconveyance by Ms. Kallos of the lot covered by TCT No. in favor of Sps. Chua, in accordance with the Amended Revocation/Rescission of Deed of Absolute Sale, is not subject to CGT imposed under Section 27(D) of the 1997 Tax Code, as amended. Moreover, said reconveyance is not subject to DST pursuant to Section 185 of Revenue Regulations No. 26, otherwise known as the Revised Documentary Stamp Regulations, which provides that the conveyance of a real property without monetary consideration is not subject to the payment of DST. (*BIR Ruling No. 633-2012* dated November 26, 2012; *BIR Ruling No. 178-2013* dated May 17, 2013)

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

Celia C. King
CELIA C. KING
Deputy Commissioner
Resource Management Group
Officer-In-Charge

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