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

Section 24 (D) (1) of the National Internal Revenue Code of 1997, as amended; RA No. 3844, as amended by RA No. 6657
BIR Ruling No. 353-2019
OT-0614-2020
OCT 28 2020

LUISA A. ESTEBAN
3401 A. Mag-Arellano St.
Bacood, Sta. Mesa, Manila

Madam:

This refers to your letter, with attachments, dated February 26, 2020, requesting for exemption from the payment of capital gains tax (CGT) relative to the disturbance compensation received by the agricultural tenant, Mr. Hilario Delos Santos Mauricio.

Documents submitted disclosed that Luisa A. Esteban married to Leonardo Esteban, Tita Imelda A. Maquinto married to Edwin B. Maquinto, and Edna A. Dandin married to Benjamin V. Dandin (hereinafter referred to as the Landowners), are the registered owners of a parcel of land covered by Transfer Certificate of Title (TCT) No. (M) containing an area of Eleven Thousand Eight Hundred Twenty-Four (11,824) square meters located at San Gabriel, Sta. Maria, Bulacan; that based on the Certification dated January 28, 2020 issued by Engr. Artemio S. Tomacruz, Jr. of the Municipal Agrarian Reform Office of the Department of Agriculture (DA), Cluster 5 – Balagtas, Bocaue, Marilao, City of Meycauayan, Obando, City of San Jose del Monte, Sta. Maria and Pandi, Mr. Pedro Mauricio is the Agricultural Lessee (Leaseholder) over a parcel of land owned by Luisa Mendoza Vda. De Alberto represented by Mr. Ruben Alberto located at Brgy. San Gabriel, Sta. Maria, Bulacan, with an area of ( ) square meters, more or less; that based on the same Certification, Mr. Hilario Delos Santos Mauricio (son of Pedro Mauricio) became his father's successor as tenant over the part/portion of the subject parcel of land which is now covered by TCT No. (M); and that the Landowners and Mr. Hilario Delos Santos agreed to terminate the above-mentioned tenancy relationship, thus, on November 27, 2019, a Deed of Assignment with Release, Waiver and Quitclaim was executed by the Landowners in favor of Mr. Hilario Delos Santos, whereby the former transferred and conveyed, by way of disturbance compensation, to the latter a portion of TCT No. (M) with an area of One Thousand Eight Hundred Twenty-Four (1,824) square meters. Hence, this request.

In reply, please be informed that Section 66 of Republic Act (RA) No. 6657 otherwise known as the "Comprehensive Agrarian Reform Law of 1988" states that:

> *"Section 66. Exemptions from Taxes and Fees of Land Transfers. — Transactions under this Act involving a transfer of ownership, whether from natural or juridical persons, shall be*

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exempted from taxes arising from capital gains. These transactions shall also be exempted from the payment of registration fees, and all other taxes and fees for the conveyance or transfer thereof; provided, that all arrearages in real property taxes, without penalty or interest, shall be deductible from the compensation to which the owner may be entitled."

These transactions include, among others, transfer of land to a tenant as disturbance compensation as a result of extinguishment of tenancy relationship by reason of the reclassification or conversion of the agricultural land into non-agricultural uses or purposes enunciated in Section 36 (1) of RA No. 3844, as amended, *viz*:

> *"Section 36. Possession of Landholding; Exceptions. — Notwithstanding any agreement as to the period or future surrender, of the land, an agricultural lessee shall continue in the enjoyment and possession of his landholding, except when his dispossession has been authorized by the Court in a judgment that is final and executory if after due hearing it is shown that:*
>
> *(1) The landholding is declared by the department head upon recommendation of the National Planning Commission to be suited for residential, commercial, industrial or some other urban purposes: Provided, That the agricultural lessee shall be entitled to disturbance compensation equivalent to five times the average of the gross harvests on his landholding during the last five preceding calendar years;"* (emphasis ours)

Only Section 35 of RA No. 3844 was expressly repealed by RA No. 6657. Hence, disturbance compensation given to a tenant due to the extinguishment of tenancy relationship by reason of reclassification or conversion of the agricultural land into non-agricultural uses, pursuant to Section 36 of RA No. 3844, as amended, is still considered one of the transactions contemplated under Section 66 of RA No. 6657.[1]

However, in this case, while the parties agreed to terminate their agricultural tenancy relationship and convert the agricultural landholding into residential, commercial or industrial purposes, nothing on the documents presented show that the land was declared by the proper authorities as suited for residential, commercial, industrial or some other urban purposes. In the absence of any proof showing that the subject parcel of land has already been converted into non-agricultural uses, the transfer of the same by way of disturbance compensation is not covered by RA No. 6657.

Please take note that *"[a] tax exemption represents a loss of revenue to the State and must therefore not be lightly granted or inferred. When claimed, it must be strictly construed against the taxpayer, who must prove that he comes under the exemption rather than the rule that everyone must contribute his just share in the maintenance of the government".*[2] *"He who claims tax exemptions must be able to justify his claim or right".*[3]

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[1] BIR Ruling No. 353-19 dated June 20, 2019
[2] Justice Cruz, Dissenting opinion in Maceda vs. Macaraig, G.R. No. 88291, May 31, 1991
[3] Commissioner of Internal Revenue vs. P.J. Liener Co., Ltd., G.R. No. L-24754, July 18, 1975

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In view of the foregoing, your request for exemption from CGT cannot be sustained as the facts established is not in accordance with what the law requires. To rule otherwise would undermine the prevailing principles for the sake of expediency.

Also, the conveyance, being a disposition of real property under Section 24(D)(1) of the 1997 Tax Code, as amended, is likewise subject to the documentary stamp taxes imposed under Section 188 and Section 196 of the same Code.

Please be guided accordingly.

Very truly yours,

CAESAR R. DULAY
Commissioner of Internal Revenue

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