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

Sections 21, 29, 37, 51 (e), 72, 233 of Commonwealth Act No. 466; BIR General Circular No. V-125
BIR Ruling No. 396-2015
#384-2017
8-22-2017

NATHAN L. SANTOS
No. 135, Zone 3,
Bagumbayan Norte,
Naga City

Sir:

This refers to your letter dated February 25, 2014 requesting exemption from payment of Capital Gains Tax (CGT) and Documentary Stamp Tax (DST) on a Deed of Sale over a parcel of land executed between you as Vendee and Marcelo Santos as Vendor on December 02, 1965, since the effectivity of CGT and DST was on September 09, 1979.

In reply, please be informed that the Deed of Sale executed between you and Marcelo Santos on December 02, 1965 over a parcel of land is exempt from CGT. However, Marcelo Santos should have reported and included the value of the property received in the amount of (P) for income tax purposes as imposed under Section 21 in relation to Sections 29 and 37 of Commonwealth Act No. 466, as amended by Republic Act (RA) No. 1094.

No CGT is due on the sale since Commonwealth Act No. 466, the National Internal Revenue Code in 1954, does not have any provision imposing CGT. However, the same law provides that income from sale of real property shall be considered part of an individual or a corporation's gross income and subjects the same, not to CGT, but to the regular income tax rates. Sections 29 and 37 (5) of Commonwealth Act No. 466, as amended by RA No. 1094, provides:

> *"SECTION 29. Gross Income. - (a) General Definition. - "Gross income" includes gains, profits, and unicorn derived from salaries, wages, or compensation for personal service of whatever kind and in whatever form paid, or from professions, vocations, trades, business, commerce, sales, or dealings in property, whether real or personal, growing out of the ownership or use of or interest in such property; also from interests, rents, dividends, securities, or the transactions of any business carried on for gain or profit, or gains, profits, and income derived from any source whatever.*
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> *xxx xxx xxx*
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> *SECTION 37. Income from Sources within the Philippines. — (a) Gross income from sources within the Philippines. — The following items of gross income shall be treated as gross income from sources within the Philippines:*
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> *xxx xxx xxx*
>
> *(5) Sale of real property. — Gains, profits, and income from the sale of real property located in the Philippines."*

Moreover, the sale is subject to DST pursuant to Section 233 of Commonwealth Act No. 466, as amended by RA No. 1094, which provides:

"SECTION 233. Stamp Tax on Deeds of Sale and Conveyances of Real Property. – On all conveyances, deeds, instruments, or writings, other than grants, patents, or original certificates of adjudication issued by the Government, whereby any lands, tenements, or other realty sold shall be granted, assigned, transferred, or otherwise conveyed to the purchaser or purchasers, or to any other person or persons designated by such purchaser or purchasers, there shall be collected a documentary stamp tax at the following rates:

(a) When the consideration, or value received or contracted to be paid for such realty, after making proper allowance for any incumbrance, exceeds two hundred pesos and does not exceed one thousand pesos, fifty centavos.

(b) For each additional one thousand pesos, or fractional part thereof in excess of one thousand pesos of such consideration or value, one peso.

When it appears that the amount of the documentary stamp tax payable hereunder has been reduced by an incorrect statement of the consideration in any conveyance, deed, instrument, or writing subject to such tax, the Collector of Internal Revenue, provincial or city treasurer, or other revenue officer shall, from the assessment rolls or other reliable source of information, assess the property at its true market value and collect the proper tax thereon."

Thus, for purposes of the issuance of the Certificate Authorizing Registration (CAR) on the property subject of the sale, proof of payment of income tax and DST based on the value of the property received by Marcelo Santos must be presented to the Revenue District Office having jurisdiction over the said property.

If no proof of payment is presented, DST and income tax shall have to be paid. Income tax shall be paid based on Section 21 of Commonwealth Act No. 466, as amended by RA No. 1094, the rate of income tax for individuals in 1954. Since the same shall be considered late payment of taxes, interest, surcharge, and compromise penalty shall be imposed as follows:

A. Interest

Section 51 (e) of Commonwealth Act No. 466, as amended by RA No. 1094, to wit:

"SECTION 51. Assessment and Payment of Income Tax. - xxx

(e) Surcharge and interest in case of delinquency. - To any sum or sums due and unpaid after the dates prescribed in subsections (b), (c) and (d) for the payment of the amount of tax unpaid and interest at the rate of one per centum a month upon said tax from the time the same became due, except from the estates of insane, deceased, or insolvent persons."

B. Surcharge

The imposition of surcharge shall be based on Section 72 of Commonwealth Act No. 466, as amended by RA No. 1094, which provides:

"SECTION 72. Surcharge for Failure to Render Returns and for Rendering False and Fraudulent Returns. - The Collector of Internal Revenue shall assess all income taxes. In case of willful neglect to file the return or list within the time prescribed by law, or in case a false or fraudulent return or list is willfully made, the Collector of Internal Revenue shall add to the tax or to the deficiency tax, in case any payment has been made on the basis of such return before the discovery of the falsity or fraud, or surcharge of fifty per centum of the amount of such tax or deficiency tax.

In case of any failure to make and file a return or list within the time prescribed by law or by the Collector or other internal-revenue officer, not due to willful neglect, the Collector of Internal Revenue shall add to the tax twenty-five per centum of its amount, except that, when a return is voluntarily and without notice from the Collector or other officer filed after such time, and it is shown that the failure to file it was due to a reasonable, cause, no such addition shall be made to the tax. The amount so added to any tax shall be collected at the same time and in the same manner as part of the tax unless the tax has been paid before the discovery of the neglect, falsity or fraud, in which case the amount so added shall be collected in the same manner as the tax"

C. Compromise Penalty

BIR General Circular No. V-125 dated January 2, 1952 imposes the following compromise penalties:

1. *Failure to file required income tax return*

    a. *Individual for gross income of P10,000.00 or less — P10.00*
    b. *Corporations . . .*

    These compromises are for those cases where the returns have been voluntarily filed. Where the returns have been required to be filed, the compromise should be doubled. Where the taxpayer refuses to file or sign a return, the compromise should be trebled.

2. *Failure to Pay tax on time.*

    In addition to the 5% surcharge and 1% monthly interest for late payment, the following compromise for such late payment should be collected.

    If the amount of the income tax assessed or demanded, exclusive of the 5% surcharge and the 1% monthly interest:

    a. *Does not exceed P100 - P5.00*
    b. *Exceeds P100.00 but does not exceed P1,000.00 - P10.00*
    c. *Exceed P1,000.00 but does not exceed P5,000.00 - P20.00*
    d. *Exceeds P5,000.00 - P40.00*

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

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