

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

April 26, 2009

REVENUE MEMORANDUM ORDER NO. 18-2009

SUBJECT : An Order Dispensing the Necessity of Securing a Ruling from the Bureau of Internal Revenue As a Requisite for the Issuance of CAR/TCL on the Conveyance of Land and Common Areas by the Real Estate Developer to the Condominium Corporation Organized in Accordance with the Provisions of Republic Act No. 4726 for the Purpose of Holding Title to and Managing and Maintaining the Land And the Common Areas for the Benefit of the Condominium Unit Owners, as well as Prescribing the Policies and Guidelines to Be Observed in the Issuance of CAR/TCL in Respect Thereto.

TO : All Internal Revenue Officers and Others Concerned.

I. BACKGROUND. -

Based on existing policies, before any Certificate Authorizing Registration (CAR) / Tax Clearance (TCL) can be issued by the concerned RDO allowing the transfer of the land and the common areas from the real estate developer to the Condominium Corporation established pursuant to the provisions of Republic Act No. 4726, otherwise known as the Condominium Act, there is first the need to secure a prior BIR Ruling confirming the tax exemption of the transfer.

This additional requirement of securing a prior ruling, notwithstanding the fact that Bureau has already given its opinion on the tax consequences of this transfer, has only protracted the process by which CARs/TCLs are issued, thereby hampering the ability of the Bureau to provide an expedient service to the public.

II. OBJECTIVE. - This Order is thus issued to :

1. Improve taxpayer service by further streamlining and enhancing the process by shortening the period within which to secure the CAR/TCL with respect to such type of transfer of real property; and
2. Provide the guidelines and procedures to be observed in the issuance of CAR/TCL with respect thereto.

III. POLICIES AND GUIDELINES. -

1. The Bureau hereby dispenses with the requirement of securing a prior ruling before any Certificate Authorizing Registration (CAR) / Tax Clearance (TCL) can be issued by the concerned RDO allowing the transfer of the land and the common areas from the real estate developer to the Condominium Corporation established pursuant to the provisions of Republic Act No. 4726, otherwise known as the Condominium Act;
2. The taxpayer, however, may at his option still secure a prior ruling from the Bureau to confirm the tax-exempt status of such transfer;
3. The concerned Revenue District Officer (RDO), upon receipt of all the documents as enumerated in item (IV) hereunder, can proceed with the issuance of the CAR/TCL relative to the conveyance of the land and the common areas made by the real estate developer to the Condominium Corporation, provided, that the RDO is assured that the facts and the circumstances surrounding such transfer are analogous to the facts and circumstances contained in the previously promulgated rulings of the Bureau resolving the tax issues on the matter.
4. The facts analogous to all of these promulgated rulings are as follows:
 - (a) The real estate developer is the registered owner of a parcel of land which undertook a real estate development project thereat by constructing a condominium building on said parcel of land in accordance with the provisions of Republic Act No.(RA) 4726, otherwise known as the Condominium Act;
 - (b) A Condominium Corporation is formed for the purpose of holding the land and the common areas, either in ownership or any other interest in real property recognized by law, and for managing the land and the common areas for the benefit of the condominium unit owners, and for such other purposes as may be necessary, incidental or convenient to the accomplishment of said purposes.

The articles of incorporation or by-laws of such Condominium Corporation do not contain any provision contrary to or inconsistent with the provisions of RA 4726, the enabling or master deed of conveyance, or the declaration of restrictions of the project.

Membership in a condominium corporation, regardless of whether it is a stock or non-stock corporation, is not transferable separately from the condominium unit of which it is an appurtenance.

When a member or stockholder ceases to own a unit in the project in which the condominium corporation owns or holds the common areas, he automatically ceases to be a member or stockholder of the condominium corporation;

- (c) The Condominium Corporation while enjoying the power of ownership is prohibited by law from transacting the properties for the purpose of gainful profit;
- (d) A Deed of Conveyance was executed between the owner-developer and the Condominium Corporation whereby the former conveyed the title to the said land, the common areas of the building and facilities of the project, in favor of the latter, free from all liens and encumbrances;
- (e) The said Deed of Conveyance was executed without any monetary consideration, in pursuance to the requirements of the Condominium Act which mandates that the Condominium Corporation shall hold title to the common areas (including the land).

IV. DOCUMENTARY REQUIREMENTS. -

Before the CAR/TCL can be issued, the concerned RDO shall first require the taxpayer to submit the following documents:

- (1) Letter duly signed by the authorized representative of the taxpayer requesting for the issuance of CAR/TCL to transfer the land and common areas from the real estate developer to the Condominium Corporation and stating the reasons why such real properties are being transferred to the Condominium Corporation as well as all the facts and information necessary for the RDO to establish that the intended transfer is of the same kind as what is contemplated in this Circular;
- (2) Certified true copy of the Notarized Master Deed of Conveyance of Land and Common Areas with Declaration of Restrictions;
- (3) Certified true copy of the Notarized Amendment to the Master Deed of Conveyance of Land and Common Areas with Declaration of Restrictions, if any;
- (4) Certified true copy of the TCT of the land being conveyed;
- (5) Certified true copy of the Tax Declaration of the land;
- (6) Certified true copy of the Tax Declaration of the common areas;

- (7) Certified true copy of the SEC Registration of the Condominium Corporation including the Articles of Incorporation; and
- (8) Certified true copy of the by-laws of the Condominium Corporation .

V. TAX CONSEQUENCES OF THE TRANSFER. -

As to the tax consequences attached to this type of transfer of real property, the concerned RDO is hereby guided, as follows:

1. Based on these facts aforementioned, the Bureau has been consistent in its view that since the Deed of Conveyance was made without consideration and not in connection with a sale made to the Condominium Corporation, no taxable income is realized and therefore, no creditable withholding tax is payable and collectible;
2. In addition to the exemption from the imposition of creditable withholding tax imposed by Revenue Regulations No. 2-98, as amended, the Bureau has likewise held that the Deed of Conveyance executed is exempt from the imposition of DST imposed under Sec. 196 of the Code, as amended. This exemption from the imposition of DST under Sec. 196 thereof has been granted in accordance with Section 185 of the Revised Documentary Stamp Tax Regulations (Regulations No. 26) which provides that *"conveyances of realty not in connection with a sale, to trustees or other persons without consideration are not taxable"*;
3. However, for the notarial acknowledgment made to said Deed of Conveyance, the same is subject to the DST of P15.00, pursuant to Section 188 of the Code, as amended;
4. Finally, the transfer of land and the common areas to the Condominium Corporation as embodied in the Deed of Conveyance is also not subject to VAT under Title IV of the Code, as amended. It is to be noted that the transfer of a real property from one party to another where the beneficial ownership of which is retained by the original party is not taxable. Hence, when the title of the land and the common areas are transferred to the Condominium Corporation composed of the condominium unit owners, the real estate developer receives no additional payment. The conveyance is without any monetary consideration and is not in connection with any sale in favor of the Condominium Corporation. As such, the same can not be considered as a transaction subject to VAT pursuant to Sec. 105 of the Code, as amended.

VI. REPEALING CLAUSE. -

All other issuances and/or portions thereof inconsistent herewith are hereby repealed or amended accordingly.

VII. EFFECTIVITY CLAUSE. -

This Order takes effect immediately.

(Original Signed)
SIXTO S. ESQUIVIAS, IV
Commissioner of Internal Revenue