

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

July 10, 2013

REVENUE MEMORANDUM CIRCULAR NO. 49-2013

SUBJECT: Circularizing Revocation of Certification Ruling issued under SN No. 391-2009 dated 29 December 2009

TO: All Internal Revenue Officials, Employees and Others Concerned

This refers to the revocation of a Certification Ruling No. SN 391-2009 dated 29 December 2009 issued on the exchange of real properties for shares by and between Spouses Martiniano G. Abad and Remedios M. Abad ("SPOUSES ABAD") as transferors and ABAD ROYAL ESTATE, INC., as transferee.

On 7 December 2009, concerned taxpayers executed and submitted to the Bureau an Application and Joint Certification for the exchange of real properties for shares by and between Spouses Martiniano G. Abad and Remedios M. Abad ("SPOUSES ABAD") as transferors and ABAD ROYAL ESTATE, INC., as transferee.

Documents submitted upon application for the Certification Ruling disclose that:

- 1) On 25 June 2006, three (3) documents of Special Power of Attorney (SPA) were executed by SPOUSES ABAD granting unto MARY ANNE A. ABAD as their attorney-in-Fact, the authority to sell, transfer, lease, assign, exchange, subdivide, convey, mortgage, encumber or dispose by any lawful means, particular real properties located in Makati City, Manila and Quezon City. The signature of Remedios Abad appears in all the SPAs.
- 2) On 05 October 2009, MARY ANNE A. ABAD, acting as attorney-in-fact of SPOUSES ABAD, executed three (3) Deeds of Assignment (notarized 14 October 2009) to transfer and convey real properties¹ to ABAD

¹ Per 1st Deed of Assignment dated October 5, 2009, notarized October 14, 2009

TCT No.	Location	Lot No.	Area (in sq.m.)
RT-121278(18295)	San Juan, Rizal	18	1,613
RT-115880(18282)	Cubao, Quezon City	16-B	331
RT-115026(108525)	Diliman, Quezon City	6-B-3	1,500

Per 2nd Deed of Assignment dated October 5, 2009, notarized October 14, 2009

TCT No.	Location	Lot No.	Area (in sq.m.)
22770	Sta Cruz, Manila	Lot D	110.50
8225	Sta Cruz, Manila	Lot D	111.30
25646	Sta Cruz, Manila	Lot A	110.10
47152	P. Paredes, Manila	51	150

ROYALE ESTATE, INC. (represented by its Treasurer, Rubilita T. De Los Santos), in exchange for shares of stock of that corporation. Thereafter, an Application and Joint Certification (BIR Form 1927) was executed and submitted on 07 December 2009 for exemption from taxes on the based on Section 40 (C) (2) of the Tax Code of 1997, as amended.

Based on the application and documents submitted, BIR Certification Ruling SN No. 391-2009 dated 29 December 2009 was issued covering the real properties specified in the Deeds of Assignment.

However, an investigation conducted by the Special Investigation Division of Revenue Region No. 7-Quezon City on the subject transaction revealed that transferor REMEDIOS M. ABAD died on 08 February 1986. Moreover, it was also disclosed that transferor MARTINIANO G. ABAD had died on 21 December 2008. This is supported by certified true copies of the spouses' death certificates issued by the National Statistics Office (NSO).

The Certification Ruling in SN No. 391-2009 dated 29 December 2009 states that:

“This certification shall be valid unless sooner revoked by this Office for **misrepresentation** or violations of the conditional requirements set forth in Section 40 (C) (2) of the Tax Code of 1997, Revenue Regulations No. 18-2001 dated November 13, 2001, and Revenue Memorandum Order No. 32-2001 dated November 28, 2001. (emphasis supplied)”

It appears from the report of investigation that there are factual misrepresentations in the application for Certification Ruling of tax exemption under Section 40(C)(2) of the Tax Code. SPOUSES ABAD's attorney-in-fact, MARY ANNE A. ABAD, had knowingly utilized the SPAs to execute the Deeds of Assignment and to apply for tax exemption ruling with the BIR notwithstanding the fact that her principals were already dead at the time.

At the time the SPAs were executed, REMEDIOS M. ABAD could not have signed or acknowledged the same before the notary public, being deceased for a little over 20 years prior. MARTINIANO G. ABAD, on the other hand died 21 December 2008, prior to the execution and notarization of the Deeds of Assignment subject of the

Per 3rd Deed of Assignment dated October 5, 2009, notarized October 14, 2009

TCT No.	Location	Lot No.	Area (in sq.m.)
135465	Makati, Rizal	2-A	686
135466	Makati, Rizal	2-C	570
135467	Makati, Rizal	2-K	686
135468	Makati, Rizal	2-O	570
135469	Makati, Rizal	2-P	570
135470	Makati, Rizal	2-M	570
135471	Makati, Rizal	2-L	686
108606	Makati, Rizal	2-N	570
108606	Makati, Rizal	2-B	570

BIR Certification Ruling. These misrepresentations are crucial to the validity of the transaction and the Ruling.

Assuming *arguendo* that the 25 June 2006 SPAs are valid on the part of MARTINIANO G. ABAD because he was then alive when the SPAs were executed, the said document cannot be given legal effect and be made an integral part of the Deeds of Assignment because he was already dead when the Deeds were executed on 05 October 2009.

It is a basic axiom in civil law embodied in the Civil Code of the Philippines that the contract of agency is basically *personal representative*, and *derivative* in nature. The authority of the agent to act emanates from the powers granted to him by his principal; his act is the act of the principal if done within the scope of the authority. *Qui facit per alium facit se*. ("He who acts through another acts himself").² By reason of the very nature of the relationship between principal and agent, agency is extinguished by the death of the principal or the agent. This is the law in this jurisdiction.³

Article 1919 of the Civil Code of the Philippines states:

“Art. 1919. Agency is extinguished:

x x x x x x x x x

(3) By the **death**, civil interdiction, insanity or insolvency **of the principal** or of the agent; (Emphasis supplied)”

Since the authority of MARY ANNE A. ABAD emanates from the powers granted to him by her principals, consequently, the respective deaths of SPOUSES ABAD automatically extinguished her authority to perform the specific powers granted by them in their 25 June 2006 SPAs. She no longer had any authority to execute the Deeds of Assignment covering the real properties of SPOUSES ABAD. Notwithstanding such fact, the utilization of such SPAs in executing the Deeds as well as in applying for tax exemption with this Office constitute misrepresentation and bad faith necessitating the revocation of the ruling issued

In view of the foregoing and since the facts represented upon which the ruling was issued are found to be different upon investigation, this Office hereby revokes BIR Certificate Ruling No. 391-2009 dated October 14, 2006.

Moreover, Section 246 of the Tax Code of 1997, as amended, provides:

"SEC. 246. Non-Retroactivity of Rulings. — Any revocation, modification or reversal of any of the rules and regulations promulgated in accordance with the preceding Sections or any of the rulings or circulars promulgated by the Commissioner shall not be given retroactive application if the revocation, modification or

² *Rallos v. Felix Go Chan & Sons Realty Corporation*, L-24332, 31 January 1978

³ *Ibid.*

reversal will be prejudicial to the taxpayers, except to the following cases:

- (a) Where the taxpayer **deliberately misstates** or omits material facts from his return or any document required of him by the Bureau of Internal Revenue;
- (b) Where the facts **subsequently gathered by the Bureau of Internal Revenue are materially different from the facts** on which the ruling is based; or
- (c) Where the taxpayer acted in bad faith."
(Emphasis provided)

Interpreting the above provision, the Honorable Supreme Court in the case of *ABS-CBN Broadcasting Corporation v. Court of Tax Appeals and the Commissioner of Internal Revenue*⁴ held that:

“The insertion of Sec. 338-A [now Sec. 246] into the National Internal Revenue Code . . . is indicative of legislative intention to support the principle of good faith. In fact, in the United States . . . it has been held that the Commissioner or Collector is precluded from adopting a position inconsistent with one previously taken where injustice would result therefrom, or where there has been a misrepresentation to the taxpayer. [Word in brackets supplied].”

In other words, rulings issued revoking, modifying or reversing another ruling does not have any retroactive effect where injustice would result therefrom unless the previous ruling is tainted by misrepresentation or bad faith on the part of the taxpayer.

In view of thereof, the revocation of the said Certification Ruling shall be retroactive considering that the cause of revocation falls among the enumerated cases where the revocation may be given retroactive application notwithstanding the prejudicial effect to the taxpayer.

All concerned are hereby enjoined to be guided accordingly and give this circular as wide as publicity a possible.

(Original Signed)
KIM S. JACINTO-HENARES
Commissioner of Internal Revenue

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⁴ *ABS-CBN Broadcasting Corporation v. CTA and CIR*, G.R. No. L-52306, October 12, 1981, 108 SCRA 142, 148