

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

March 2, 2011

REVENUE MEMORANDUM CIRCULAR NO. 25-2011

SUBJECT: Circularizing Revocation of BIR Ruling DA (DT-065) 715-2009 dated November 27, 2009

TO : All Internal Revenue Officials, Employees and Others Concerned

For the information and guidance of all internal revenue officials, employees and others concerned, quoted hereunder is the full text of the memorandum letter to the Assistant Commissioner, Large Taxpayers Service declaring BIR Ruling DA (DT-065)715-2009 dated November 27, 2009 as null and void ab initio:

"MEMORANDUM

TO: ZENAIDA G. GARCIA
Assistant Commissioner, Large Taxpayers Service

SUBJECT: Revocation of BIR Ruling DA (DT-065)715-2009 in relation to Certificate Authorizing Registration (CAR) application of Metro Pacific Corporation (MPC) on its sale of Bonifacio Land Corp. (BLC) shares

DATE: March 2, 2011

This refers to memorandum dated January 7, 2011 recommending the revocation of BIR Ruling DA (DT-065)715-2009 for lack of factual and legal basis.

Section 100 of the National Internal Revenue Code (NIRC) of 1997, as amended, provides that:

"SEC. 100. Transfer for Less Than Adequate and Full Consideration. — Where property, other than real property referred to in Section 24(D), is transferred for less than an adequate and full consideration in money or money's worth, then the amount by which the fair market value of the property exceeded the value of the consideration shall, for the purpose of the tax imposed by this Chapter, be deemed a gift, and shall be included in computing the amount of gifts made during the calendar year."

Furthermore, Revenue Regulations No. 6-2008 provides that:

SECTION 7. Sale, Barter or Exchange of Shares of Stock Not Traded Through a Local Stock Exchange Pursuant to Secs. 24 (C), 25 (A)(3), 25 (B), 27 (D) (2), 28 (A) (7) (C), 28 (B) (5) (C) of The Tax Code, as Amended. —

Xxx xxx xxx

(c.1) *Determination of Selling Price. — In determining the selling price, the following rules shall apply:*

Xxx xxx xxx

(c.1.4) *In case the fair market value of the shares of stock sold, bartered, or exchanged is greater than the amount of money and/or fair market value of the property received, the excess of the fair market value of the shares of stock sold,*

bartered or exchanged over the amount of money and the fair market value of the property, if any, received as consideration shall be deemed a gift subject to the donor's tax under Sec. 100 of the Tax Code, as amended.

It is noteworthy to state that above provisions do not mention of any exempt transactions. The above provision is clear and free from any doubt or ambiguity. Hence, there is no room for interpretation. There is only room for application. (Cebu Portland Cement Co. vs. Municipality of Naga, Cebu, et. al., G.R. No. 24116-17, August 22, 1968).

In City of Iloilo, et. al. vs. Smart Communications, Inc., G.R. No. 167260, February 27, 2009, the Supreme Court held that:

The basic principle in the construction of laws granting tax exemptions has been very stable. As early as 1916, in the case of Government of the Philippine Islands v. Monte de Piedad, this Court has declared that he who claims an exemption from his share of the common burden of taxation must justify his claim by showing that the Legislature intended to exempt him by words too plain to be beyond doubt or mistake. This doctrine was repeated in the 1926 case of Asiatic Petroleum v. Llanes, as well as in the case of Borja v. Commissioner of Internal Revenue (CIR) decided in 1961. Citing American jurisprudence, the Court stated in E. Rodriguez, Inc. v. CIR:

The right of taxation is inherent in the State. It is a prerogative essential to the perpetuity of the government; and he who claims an exemption from the common burden, must justify his claim by the clearest grant of organic or statute law . . . When exemption is claimed, it must be shown indubitably to exist. At the outset, every presumption is against it. A well-founded doubt is fatal to the claim; it is only when the terms of the concession are too explicit to admit fairly of any other construction that the proposition can be supported.

In the recent case of Digital Telecommunications, Inc. v. City Government of Batangas, et al., we adhered to the same principle when we said:

A tax exemption cannot arise from vague inference . . . Tax exemptions must be clear and unequivocal. A taxpayer claiming a tax exemption must point to a specific provision of law conferring on the taxpayer, in clear and plain terms, exemption from a common burden. Any doubt whether a tax exemption exists is resolved against the taxpayer."

Foregoing considered, the taxpayer's claim for exemption from donor's tax has no legal basis. It is hereby declared that BIR Ruling DA (DT-065)715-2009 dated November 27, 2009 is null and void ab initio as it contravenes a direct provision of the NIRC of 1997.

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

All rulings issued upon the effectivity Revenue Regulations (RR) No. 6-2008 which are contrary to or inconsistent with the provisions of the said RR are hereby revoked accordingly.

All revenue officials and employees are enjoined to give this Circular the widest possible publicity.

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

