

[BIR REVENUE MEMORANDUM CIRCULAR NO. 28-2013, April 01, 2013]

REVOCATION OF BIR RULING NO. SH (044) 261-2008 DATED OCTOBER 30, 2008 PURSUANT TO BIR RULING NO. 433-2012 DATED JUNE 25, 2012

In BIR Ruling No. SH (044) 261-2008 dated October 30, 2008, it was held that "NHA is exempt from the payment of creditable withholding tax imposed under Section 57(B) of the Tax Code of 1997, as implemented by Section 2.57.2(J) of Revenue Regulations No. 2-98, or capital gains tax under Section 27(b)(5) of the Tax Code of 1997, whichever is applicable on its sale of the aforementioned parcel of land (commercial lot) to Wilbert S. Ramos. The NHA is likewise exempt from the payment of the documentary stamp tax imposed under Section 196 of the Tax Code of 1997."

However, in BIR Ruling No. 433-2012 dated June 25, 2012, it was ruled that "the sale of commercial lot to Sy E. Him, Antonio Sy and Manuel Sy, although certified by the NHA as within its low cost housing project, is nevertheless outside the definition of a "socialized housing" in relation to the tax incentives for the NHA under Section 19 of R.A. 7279."

Section 19 of Republic Act (R.A.) No. 7279, otherwise known as the Urban Development and Housing Act of 1992 provides as follows:

"Sec. 19. Incentives for the National Housing Authority. – The National Housing Authority, being the primary government agency in charge of providing housing for the underprivileged and homeless, shall be exempted from the payment of all fees and charges of any kind, whether local or national, such as income and realty taxes. All documents or contracts executed by and in favor of the National Housing Authority shall also be exempt from the payment of documentary stamp tax and registration fees, including fees required for the issuance of transfer certificates of title."

The above provision must be read in connection with Section 3(r) of R.A. No. 7279 which defines "socialized housing" as follows:

"(r) "Socialized housing" refers to housing programs and projects covering houses and lots or homelots only undertaken by the Government or the private sector for the underprivileged and homeless citizens which shall include sites and services development, long-term financing, liberalized terms on interest payments, and such other benefits in accordance with the provisions of this Act;" (Underscoring supplied)

It is apparent that the tax incentive provision granting incentives for NHA is limited to housing projects only with a view to reduce the cost of housing units for the benefit of the underprivileged and homeless.