[BIR REVENUE REGULATIONS NO. 5-2009, March 16, 2009]

REVERTING THE VENUE FOR THE FILING OF RETURNS AND PAYMENT OF CAPITAL GAINS TAX, CREDITABLE WITHHOLDING TAX AND DOCUMENTARY STAMP TAX DUE ON SALE, TRANSFER OR EXCHANGE OF REAL PROPERTY OF LARGE TAXPAYERS TO THE PLACE WHERE THE PROPERTY IS LOCATED

SECTION 1. Scope - Pursuant to Section 244 of the National Internal Revenue Code of 1997, as amended, in relation to Sections 27(A), 27 (D)(5), 57 (A), 57 (B), 196 and 245 (j) thereof, these Regulations are hereby promulgated in order to revert the venue for the filing of returns (i.e., capital gains tax returns, creditable withholding tax returns, and documentary stamp tax returns) and payment of taxes due on onerous transfers of real properties owned by large taxpayers to the Authorized Agent Banks (AABs) located within the Revenue District Office (RDO) having jurisdiction over the place where the property being transferred is located.

SEC. 2. Policy Statement - Pursuant to the provisions of Revenue Regulations No. 8-98, the venue for the filing of returns and payment of taxes due on onerous transfers of real properties for all taxpayers, including large taxpayers, is generally determined by the place where the property being transferred is located.

Sometime last year, Revenue Regulations No. 4-2008, was promulgated effectively amending Revenue Regulations No. 8-98 but only in respect to the venue for the filing of returns and payment of taxes of real estate transactions of large taxpayers. This amendment was envisioned to improve the efficiency in servicing the needs of the large taxpayers by centralizing the processing of their real estate transactions in the concerned Large Taxpayers Office where they are registered, thereby doing away with the procedure of having to secure the Certificate Authorizing Registration (CAR)/ Tax Clearance Certificate (TCL) from the various RDOs where the respective real properties are located.

However, during the implementation and with the recent delisting and enlisting of taxpayers who are to be classified as large taxpayers, it has been recognized that such differing rule has caused confusion to those who have been de-classified as large taxpayers, as well as those who have be recently enlisted as such.

In order to provide uniformity in the processing of real estate transactions of taxpayers, whether large or non-large taxpayers, and that ocular inspection of the subject real property can be performed expediently prior to the issuance of the CAR/TCL, the venue for the filing of tax returns and payment of the taxes due thereon (i.e., CGT/CWT/Regular Income Tax/DST) on real properties owned by large taxpayers, including securing of CAR/TCL, is hereby reverted to the jurisdiction of the concerned RDO where the real property concerned is located.

SEC. 3. Time and Place of Payment of Capital Gains Tax (CGT) and Documentary Stamp Tax (DST) on the Sale, Exchange or Disposition of Real Properties Classified as Capital Assets - Within thirty (30) days following each sale, exchange or disposition of lands and/or buildings which are not actually used in the business of a corporation and are treated as capital assets, the Capital Gains Tax Return (BIR Form No. 1706) shall be filed by the seller or the buyer and payment of taxes made to an AAB located within the RDO having jurisdiction over the place where the property being transferred is located based on the gross selling price or fair market value as determined in accordance with Section 6 (E) of the Tax Code, whichever is higher, of such lands and/or buildings.

The corresponding Documentary Stamp Tax Return (BIR Form No. 2000-OT) shall be filed within five (5) days after the close of the month when the taxable document was made, signed, accepted or transferred, and the tax due thereon shall be paid at the same time the aforesaid return is filed with the AAB having jurisdiction over the place where the property being transferred is located based on the consideration contracted to be paid for such realty or on its fair market value determined in accordance with Section 6 (E) of the Tax Code, whichever is higher.

The above rules apply whether the seller/transferor thereof is a large taxpayer or a non-large taxpayer.

These rules on the venue for the filing of the returns and payments of taxes due on real properties onerously disposed shall likewise apply in cases of taxable foreclosure sales.

SEC. 4 Time and Place of Payment of Creditable Withholding Tax (CWT) and Documentary Stamp Tax (DST) on the Sale, Exchange or Disposition of Real Properties Classified as Ordinary Assets - Creditable withholding taxes (CWT) deducted and with held by the withholding agent/buyer on the sale, transfer or exchange of real property classified as ordinary asset, shall be paid by the withholding agent/buyer upon filing of the CWT Return (BIR Form No. 1606) with the AAB located within the RDO having jurisdiction over the place where the property being transferred is located within ten (10) days following the end of the month in which the transaction occurred subject, however, to the specific rules prescribed by RR 2-98, as amended, and the rules prescribed under the EFPS regulations, in case the taxpayer is an EFPS taxpayer.

The corresponding Documentary Stamp Tax Return (BIR Form No. 2000-OT) shall be filed within five (5) days after the close of the month when the taxable document was made, signed, accepted or transferred, and the tax due thereon shall be paid at the same time the aforesaid return is filed with the AAB having jurisdiction over the place where the property being transferred is located based on the consideration contracted to be paid for such realty or on its fair market value determined in accordance with Section 6(E) of the Tax Code, whichever is higher.

The above rules apply whether the seller/transferor thereof is a large taxpayer or a non-large taxpayer.

These rules on the venue for the filing of the returns and payments of taxes due on real properties onerously disposed shall likewise apply in cases of taxable foreclosure sales.