

[BIR REVENUE MEMORANDUM CIRCULAR NO. 69-2003, October 13, 2003]

CLARIFYING THE TAX BASE FOR PURPOSES OF THE PERCENTAGE (GROSS RECEIPTS) TAX IMPOSED UNDER SECTIONS 121 AND 122 OF THE TAX CODE

For information and guidance of all concerned, quoted hereunder are pertinent portions of the Supreme Court decision on the consolidated petitions for review of *China Banking Corporation, petitioner vs. Court of Appeals, Court of Tax Appeals and Commissioner of Internal Revenue, respondents, G.R. No. 146749 and Commissioner of Internal Revenue, petitioner vs. China Banking Corporation, respondent G.R. No. 147938 dated June 10, 2003*, which reiterated the position of the Bureau under Revenue Memorandum Circular No. 51-2002 dated November 14, 2002 that for purposes of the gross receipts tax, the basis of the tax should be the gross amount inclusive of the final withholding tax used in extinguishing the income tax liability of the recipient of the income, to wit:

"xxx xxx xxx"

"By its nature, a gross receipts tax applies to the entire receipts without deduction, exemption or exclusion, unless the law clearly provides otherwise."

"xxx xxx xxx"

"Moreover, when Section 121 of the Tax Code includes "interest" as part of gross receipts, it refers to the entire interest earned and owned by the bank without any deduction. "Interest" means the gross amount paid by the borrower to the lender as consideration for the use of the lender's money. Section 2(h) of Revenue Regulations No. 12-80, now Section 2(I) of Revenue Regulations No. 17-84, defines the term "interest" as "the amount which a depository bank (borrower) may pay on savings and time deposit in accordance with rates authorized by the Central Bank of the Philippines." This definition does not allow any deduction. The entire interest paid by the depository, without any deduction, is what forms part of the lending bank's gross receipts. To illustrate, assume that the gross amount of the interest income is P100. The lending bank owns this entire P100 since this is the amount the depository bank pays the lending bank for use of the lender's money. In its books the depository bank records an interest expense of P100 and claims a deduction for interest expense of P100. The 20% final withholding tax on this interest income is P20, which the law requires the depository bank to withhold and remit directly to the government. The depository bank withholds the final tax in trust for the government which then becomes the owner of the P20. The final tax is the legal liability of the lending bank as recipient of the interest income. The payment of the P20 final tax extinguishes the tax liability of