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AMENDMENT OF REVENUE MEMORANDUM ORDER NO. 29-86 RELATIVE TO THE PAYMENT OF CAPITAL GAINS TAX ON EXTRA-JUDICIAL FORECLOSURE SALE INITIATED BY BANKS, FINANCE AND INSURANCE COMPANIES

BIR REVENUE MEMORANDUM ORDER NO. 6-92, January 15, 1992

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Section 2.2 of RMO No. 29-86 dated September 3, 1986 as amended by RMO No. 16-88 dated April 18, 1988 and as further amended by RMO No. 27-89 dated April 18, 1989 reads as follows:

> "2.2. - The tax applies not only to ordinary sale transaction but also to pacto de retro sales and other forms of conditional sales. This accordingly, includes mortgage foreclosure sales, except extra-judicial foreclosure sales under Act No. 3135, as amended by Act No. 4118 wherein the tax shall become due only upon the expiration of the one-year period of redemption provided for under Act No. 3135 as amended by Act No. 4118."

Considering that in extra-judicial foreclosure sales under Act No. 3135 as amended by Act No. 4118, the creditor-financial institution (bank, finance and insurance companies) is the statutory seller, representing the owner-mortgagor of the real property, the said financial institution becomes liable for the payment of the capital gains tax due on such foreclosure sale based on the bid price in the auction sale. The bank, finance and insurance, companies, however, may get a reimbursement or recover the capital gains tax paid, if the right of redemption is exercised by the debtor-mortgagor or when the property is sold to any party whatsoever. (BIR Ruling No. 006-92)

Accordingly, Section 2.2 of RMO No. 29-86 as amended by RMO No. 16-88 and as further amended by RMO 27-89 is therefore hereby amended to read as follows:

> "2.2. - The tax applies not only to ordinary sale transaction but also to pacto de retro sales and other forms of conditional sales, which necessarily includes mortgage foreclosure sales (judicial and extra-judicial foreclosure sales)."

This Revenue Memorandum Order shall take effect immediately.

Adopted: 15 Jan. 1992

(SGD.) JOSE U. ONG
Commissioner

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