

ESTATE AND DONOR'S TAXES AS RESTRUCTURED BY REPUBLIC ACT NO. 7499.

KRI REVENUE REGULATION NO. 17-93, August 30, 1993

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Pursuant to Section 245 in relation to Section 4(h) of the National Internal Revenue Code (NIRC), as amended, these regulations are hereby promulgated to implement the provisions of RA No. 7499 which restructured Estate and Donor's Taxes amending for the purpose Sections 77, 79(a), 83(b), Chapter I and 92(a) and (b), Chapter II, Title III of the NIRC.

SECTION 1. Scope - These regulations shall govern the taxation of the transmission of the decedent's estate and donations made by persons, natural or juridical, whether citizens or aliens, residents or non-residents. For purposes of these regulations, the provisions of the Family Code of the Philippines (E.O. No. 209) which took effect on August 3, 1988 shall govern the property relations between husband and wife whose marriage was celebrated on or after such date.

SECTION 2. Rates of Estate Tax - The transfer of the net estate of every decedent, whether resident or non-resident of the Philippines as determined in accordance with Sections 78 and 79 of the NIRC, as amended, shall be subject to the estate tax in accordance with the following amended schedule under Section 77 of the NIRC. The entire value of the net estate is divided into brackets and each rate is imposed on the corresponding bracket. Below is a table showing the tax on each bracket and the cumulative total tax for the entire net estate:

If the Net Estate is:

OVER

BUT NOT OVER

THE TAX SHALL BE

PLUS

OF EXCESS OVER

-

P200,000

EXEMPT

-

-

P200,000

500,000

-

5%

P200,000

500,000

2,000,000

P15,000

8%

500,000

2,000,000

5,000,000

135,000

12%

2,000,000

5,000,000

10,000,000

495,000

21%

5,000,000

10,000,000

AND OVER

1,545,000

35%

10,000,000

SECTION 3. What Law Governs the Imposition of Estate Tax - It is a well settled rule that estate taxation is governed by the statute in force at the time of death of the decedent (26 R.C.L., p. 206, 4 Cooley on Taxation). Accrual of the estate tax as of the date of death of the decedent is distinct from the obligation to pay the same (Lorenzo vs. Posadas, 64 Phil. 353). Upon the death of the decedent, succession takes place and the right of the state to tax vests instantly.

R.A. No. 7499 was published in Volume 88, No. 24 of the Official Gazette in its issue of July 13, 1992.

Accordingly, R.A. No. 7499 took effect after fifteen (15) days following said publication or on July 28, 1992 pursuant to Article 2 of the New Civil Code and in line with the Supreme Court decisions in the case of Tañada, et. al. vs. Tuvera, 146 SCRA 446; Caltex (Phils.), Inc. v. The Commissioner of Internal Revenue, G.R. No. 97282, 26 June 1991).

SECTION 4. Computation of Net Estate and Estate Tax - Pursuant to the amendments to Section 79(a) of the NIRC, the value of the net estate of a citizen or resident of the Philippines shall be determined by deducting from the value of the gross estate:

1. Expenses, losses, indebtedness, and taxes - Such amounts for:

A. Actual funeral expenses or an amount equal to five per centum (5%) of the gross estate, whichever is lower, but in no case to exceed P100,000;

The maximum amount that can be allowed as deduction for funeral and burial expenses is the actual amount incurred or an amount equal to five per centum (5%) of the gross estate, whichever is lower, but not to exceed P100,000. The term funeral expenses is not confined to its ordinary or usual meaning. It include:

- Medical expenses during the last illness of the deceased;
- The mourning apparel of the surviving spouse and unmarried minor children of the deceased bought and used on the occasion of the burial;
- Expenses of the wake preceding the burial, including food and drinks;
- Publication charges for death notices;
- Telecommunication expenses in informing relatives of the deceased;
- Cost of burial plot, tombstones, monument or mausoleum but not their upkeep. In case the deceased owns a Family Estate or several burial lots, only the value corresponding to the plot where he is buried is deductible;
- Interment fees and charges; and
- All other expenses incurred for the performance of the rites and ceremonies incident to interment. Expenses incurred after the interment such as for prayers, masses, entertainment, or the like are not deductible. Any portion of the funeral and burial expenses borne or defrayed by relatives and friends of the deceased, such as, contributions or mutual assistance, are not deductible.

Actual funeral expenses shall mean those which were actually incurred in connection with the interment or burial of the deceased and paid for from the estate of said deceased. The expenses must be duly supported by receipts or invoices or other evidence to show that the expenses was really incurred. For example -

1. If 5% of the gross estate is P70,000 and the amount actually incurred is P50,000, only P50,000 will be allowed as deduction.
2. If the expenses actually incurred amount to P90,000 and 5% of the gross estate is P70,000, only P70,000 will be allowed as deduction.
3. If 5% of the gross estate is P120,000, and the amount actually incurred is P115,000, the maximum amount that may be deducted is only P100,000.

B. Judicial expenses of the testamentary or intestate proceedings;

C. Claims against the estate: Provided; That at the time the indebtedness was incurred the debt instrument was

duly notarized and, if the loan was contracted within three years before the death of the decedent, the administrator or executor shall submit a statement showing the disposition of the proceeds of the loan;

D. Claims of the deceased against insolvent persons where the value of the decedent's interest therein is included in the value of the gross estate; and

E. Unpaid mortgages upon, or any indebtedness, with respect to property, where the value of decedent's interest therein, undiminished by such mortgage or indebtedness, is included in the value of the gross estate, but not including any income taxes upon income received after the death of the decedent, or property taxes not accrued before his death, or any estate tax. The deduction herein allowed in the case of claims against the estate, unpaid mortgages, or any indebtedness, shall when founded upon a promise or agreement, be limited to the extent that they were contracted bona fide and for an adequate and full consideration in money or money's worth. There shall also be deducted losses incurred during the settlement of the estate arising from fires, storms, shipwreck, or other casualties, or from robbery, theft, or embezzlement, when such losses are not compensated for by insurance or otherwise, and if at the time of the filing of the return such losses have not been claimed as a deduction for income tax purposes in an income tax return, and provided that such losses were incurred not later than the last day for the payment of the estate tax as prescribed in Section 84(a) of the NIRC.

2. Property previously taxed - An amount equal to the value specified below of any property forming part of the gross estate situated in the Philippines of any person who died within five years prior to the death of the decedent, or transferred to the decedent by gift within five years prior to his death, where such property can be identified as having been received by the decedent from the donor by gift, or from such prior decedent by gift, bequest, devise, or inheritance, or which can be identified as having been acquired in exchange for property so received:

One hundred per centum of the value if the prior decedent died within one year prior to the death of the decedent, or if the property was transferred to him by gift within the same period prior to his death;

Eighty per centum of value if the prior decedent died more than one year but not more than two years prior to the death of the decedent, or if the property was transferred to him by gift within the same period prior to his death;

Sixty per centum of the value if the prior decedent died more than two years but not more than three years prior to the death of the decedent, or if the property was transferred to him by gift within the same period prior to his death;

Forty per centum of the value if the prior decedent died more than three years but not more than four years prior to the death of the decedent, or if the property was transferred to him by gift within the same period prior to his death; and

Twenty per centum of the value if the prior decedent died more than four years but not more than five years prior to the death of the decedent, or if the property was transferred to him by gift within the same period prior to his death.

These deductions shall be allowed only where a gift tax, or estate tax imposed under Title III of the NIRC, was finally determined and paid by or on behalf of such donor, or the estate of such prior decedent, as the case may be, and only in the amount finally determined as the value of such property in determining the value of the gift, or the gross estate of such prior decedent, and only to the extent that the value of such property is included in the decedent's gross estate and only if in determining the value of the estate of the prior decedent no deduction was allowable under paragraph (2), subsection (a) of Section 79, NIRC, in respect of the property or properties given in exchange therefor. Where a deduction was allowed of any mortgage or other lien in determining the gift tax, or the estate tax of the prior decedent, which were paid in whole or in part prior to the decedent's death, then the

deduction allowable under said paragraph shall be reduced by the amount so paid. Such deduction allowable shall be reduced by an amount which bears the same ratio to the amounts allowed as deductions under paragraphs (1) and (3) of subsection (a), Section 79, NIRC as the amount otherwise deductible under said paragraph (2) bears to the value of the decedent's estate. Where the property referred to consists of two or more items the aggregate value of such items shall be used for the purpose of computing the deduction.

3. Transfers for public use - The amount of all bequests, legacies, devises, or transfers to or for the use of the Government of the Republic of the Philippines, or any political subdivision thereof, for exclusively public purposes.

4. The family home - An amount equivalent to the current or fair market value or zonal value of the decedent's family home, whichever is higher: Provided, however, That, if the said "current or fair market value or zonal value exceeds one million pesos (P1,000,000), the excess shall be subject to estate tax. As a sine qua non condition for the exemption or deduction, said family home must have been the decedent's family home as certified by the Barangay Captain of the locality.

5. Net share of the surviving spouse in the conjugal partnership or community property.

SECTION 5. Definitions -

a. Family home - The dwelling house, including the land on which it is situated, where the husband and wife, or an unmarried person who is the head of a family and members of their family reside, as certified to by the Barangay Captain of the locality. The family home is deemed constituted on the house and lot from the time it is actually occupied as a family residence and is considered as such for as long as any of its beneficiaries actually resides therein. (Arts. 152 and 153, Family Code)

For purposes of these regulations, however, actual occupancy of the house or house and lot as the family residence shall not be considered interrupted or abandoned in such cases as the temporary absence from the constituted family home due to travel or studies or work abroad, etc.

In other words, the family home is generally characterized by permanency, that is, the place to which, whenever absent for business or pleasure, one still intends to return.

The family home must be part of the properties of the absolute community or the conjugal partnership, or of the exclusive properties of either spouse with the latter's consent. It may also be constituted by an unmarried head of a family on his or her own property. (Art. 156, Ibid)

For purposes of availing of a family home deduction to the extent provided in R.A. 7499, a person may constitute only one family home. (Art. 161, Ibid)

b. Husband and Wife - Legally married man and woman.

c. Unmarried Head of a Family - unmarried man or woman with any of the beneficiaries mentioned in Article 154 of the Family Code who is living in the family home and dependent upon the head of the family for legal support.

The beneficiaries of a family home are:

- The husband and wife, or an unmarried person who is the head of a family; and
- Their parents, ascendants, descendants, brothers and sisters, whether the relationship be legitimate or illegitimate, who are living in the family home and who depend upon the head of the family for legal support. (Art. 154, Ibid)

d. Absolute community of property - a property regime/system whereby there is merger of all the properties of the husband and the wife respectively owned by them at the time of the celebration of the marriage, or those acquired thereafter unless excepted in the Family Code or in the marriage settlement. The regime of absolute community of property shall apply:

- If the future spouses stipulate upon it in their marriage settlement; or
- If they married without entering into or executing a marriage settlement; or
- If they entered into a marriage settlement and the same is void.

e. Conjugal partnership of gains In order to govern the property relations of the future spouses, this regime must be agreed upon in the marriage settlement. Under this regime/system the spouses retain the ownership of the property which they respectively brought to the marriage as well as those they may acquire during the marriage by gratuitous title or by right of redemption, barter or by exchange with separate property and those which they purchased with their own money. (Art. 109, Family Code) The spouses place in a common fund the proceeds, products, fruits and income from their separate properties and those acquired by either or both spouses through their efforts, or by chance, and upon dissolution of the marriage, the net gains or benefits obtained by either or both spouses shall be divided equally between them, unless otherwise agreed in the marriage settlements. (Art. 106, Ibid)

f. Exclusive property of each spouse: -

- That which is brought to the marriage as his or her own;
- That which each acquires during the marriage by gratuitous title;
- That which is acquired by right of redemption, by barter or by exchange with property belonging to only one of the spouses; and
- That which is purchased with exclusive money of the wife or of the husband.

g. Marriage settlement - a contract entered into by man and woman about to be married for the purpose of fixing the terms and conditions of their property relations with regard to their present and future property. It is also referred to as ante-nuptial agreement or matrimonial contract.

SECTION 6. Computation for the Allowance of the Family Home as Deduction from the Gross Rate -

A. Valuation of Family Home - The decedent's family home shall be appraised as of the time of his death, at its current or fair market value or zonal value, whichever is higher.

B. Conditions for the allowance of Family Home as deduction from the gross estate:

- The family home must be the actual residential home of the decedent and his family at the time of his death, as certified to by the Barangay Captain of the locality where the family home is situated;
- The total value of the family home must be included as part of the gross estate of a person who died on or after July 28, 1992, the date of effectivity of R.A. 7499; and
- Allowable deduction must be in an amount equivalent to the fair market value or zonal value of the family home as declared or included in the gross estate but not exceeding P1,00,000.

To illustrate:

1. Decedent is an unmarried head of a family:

a. Real and personal properties.....

P5,000,000

Family home

2,000,000

Gross Estate

P7,000,000

Less: Deductions:

Family home..... P1,000,000

Other deductions 3,000,000

4,000,000

Net Taxable Estate

P3,000,000

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Note: Although the family home is valued at P2 million, the maximum allowable deduction for the family home is P1 million only.

b. Real and personal properties.....

P5,000,000

Family home

800,000

P5,800,000

Gross Estate

Less: Deductions:

Family home P800,000

Other deductions.....3,000,000

3,800,000

Net Taxable Estate.....

P2,000,000

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Note: Deduction for family home is allowed for P800,000 only which is the declared value of the home.

2. Decedent is a married man with surviving spouse:

a. The family home is his exclusive property -

Exclusive

Conjugal

Total

Conjugal Properties:

Real Properties

P5,000,000

P5,000,000

Exclusive Properties:

Family Home

P2,000,000

Other Exclusive Properties

2,500,000

4,500,000

Gross Estate

P4,500,000

P5,000,000

P9,500,000

Less: Conjugal Deductions:

Other deductions

(2,000,000)

(2,000,000)

Share of surviving spouse:

Conjugal Properties

P5,000,000

Less: Conjugal Deductions

2,000,000

Net Conjugal Estate

3,000,000

1/2 share of surviving spouse

(1,500,000)

(1,500,000)

Family Home

(1,500,000)

(1,000,000)

Net Taxable Estate

P3,500,000

P1,500,000

P5,000,000

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b. Family home is a conjugal or community property.

Exclusive

Conjugal

Total

Conjugal Properties:

Family Home P2,000,000

Other Real Properties 5,000,000 P7,000,000

Exclusive Real Properties

P2,000,000

2,000,000

Gross Estate

P2,000,000

P7,000,000

P9,000,000

Less Deductions:

Conjugal deductions

(2,000,000)

(2,000,000)

Share of surviving spouse:

Conjugal property

7,000,000

Less: Conjugal deductions

2,000,000

Net conjugal estate

P5,000,000

1/2 share of surviving spouse

(2,500,000)

(2,500,000)

Family Home

(1,000,000)

(1,000,000)

Net Taxable Estate

P2,000,000

P1,500,000

P3,500,000

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Note: Family home allowance of P1,000,000 is considered as one item of deduction after the computation and deduction of the net share of the surviving spouse in the conjugal property.

c. Same facts and figures as in (b) except for Family home which has a fair market value/zonal value of only P1,500,000.

Exclusive

Conjugal

Total

Conjugal Properties:

Family home

1,500,000

Other Real Properties

5,000,000

P6,500,000

Exclusive Real Properties

P2,000,000

2,000,000

Gross Estate

P2,000,000**P6,500,000****P8,500,000**

Less Deductions:

Conjugal deductions

(2,000,000)

(2,000,000)

Share of surviving spouse:

Conjugal property

P6,500,000

Less: Conjugal deductions

2,000,000

Net Conjugal estate

P4,500,000

1/2 share of surviving spouse

(2,500,000)

(2,250,000)

Family Home

(750,000)

(750,000)

Net Taxable Estate

P2,000,000

P1,500,000

P3,500,000

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NOTE: Since the fair market value/zonal value of Family home (Conjugal) in the above example is P1,500,000, the Family Home deduction corresponding to 1/2 of such fair market value/zonal value is P750,000 only.

d. Family home is conjugal property, but lot on which it stands is exclusive property.

Exclusive

Conjugal

Total

Conjugal properties:

Other real properties

P3,000,000

Family house

1,000,000

P4,000,000

Exclusive properties:

Other real

properties

P2,000,000

Family lot

400,000

2,400,000

Gross estate

P2,400,000

P4,000,000

P6,400,000

Less Deductions:

Other deductions

(2,000,000)

(2,000,000)

Share of surviving spouse:

Conjugal properties

4,000,000

Less: Conjugal Deductions

2,000,000

Net conjugal estate

P2,000,000

1/2 share of surviving spouse

(1,000,000)

(1,000,000)

Family house and lot (500,000 + 400,000)

400,000

(500,000)

(900,000)

Net taxable estate

P2,000,000

=====

P500,000

=====

P2,500,000

=====

3. Family home is conjugal property and both spouses died in the same year, leaving THREE (3) children:

A. Estate of HUSBAND:

Exclusive

Community/ Conjugal

Total

Conjugal Properties:

Real Properties

P6,000, 000

P6,000,000

Personal Properties

4,000,000

4,000,000

Family Home

2,000,000

2,000,000

Exclusive Properties:

Real Properties

4,000,000

4,000,000

Personal Properties

1,000,000

1,000,000

Gross Estate

P5,000,000

P12,000,000

P17,000,000

Less Deductions:

Conjugal Deductions

(4,000,000)

(4,000,000)

Net Estate

P5,000,000

P8,000,000

P13,000,000

Less: Share of surviving spouse -

(4,000,000)

(4,000,000)

Family Home

(1,000,000)

(1,000,000)

Net taxable Estate

P5,000,000

=====

P3,000,000

=====

P8,000,000

=====

B. Estate of WIFE:

Inheritance

Conjugal

Share

Share

Total

Conjugal Real Properties

P750,000

P3,000,000

P3,750,000

Conjugal Personal Properties

500,000

2,000,000

2,500,000

Family Home

250,000

1,000,000

1,250,000

Exclusive Real Properties

1,000,000

- 1,000,000

Exclusive Personal Properties

250,000

-

250,000

Gross Estate

P2,750,000

P6,000,000

P8,750,000

Less Deductions:

Other deductions

(500,000)

(2,000,000)

(2,500,000)

Family Home

-

(1,000,000)

(1,000,000)

Vanishing deductions*

(1,964,286)

(1,964,286)

Net taxable estate

P285,714

P3,000,000

P3,285,714

=====

=====

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* Vanishing deductions:

Inherited properties

2,750,000

Less:

P2,750,000

x P2,500,000

=785,714

8,750,000

Amount subject to vanishing deductions

P1,964,286

100% Vanishing deduction

P1,964,28

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SECTION 7. (a) Time for filing estate tax return - For purposes of determining the estate tax provided for in Section 77 of the NIRC, the estate tax return shall be filed within six (6) months from the decedent's death. The Court approving the project of partition shall furnish the Commissioner with a certified copy thereof and its order within thirty (30) days after the promulgation of such order.

b. Place of filing Except in cases where the Commissioner of Internal Revenue permits, the estate tax return shall be filed with the Revenue District Officer, Collection Agent or duly authorized treasurer of the city or municipality in which the decedent was domiciled at the time of his death or if there be no legal residence in the Philippines, then with the Office of the Commissioner of Internal Revenue.

c. Time for payment of estate tax - The estate tax imposed under Section 77 of the NIRC and Section 2 of these

Regulations shall be paid at the time the return is filed by the executor, administrator or the heirs.

SECTION 8. Rates Of Donor's Tax - (a) The transfer of the total net gifts made during the calendar year shall be subject to tax in accordance with the following amended schedule under Section 92 of the NIRC. The entire value of the net gifts for each calendar year is divided into brackets and each rate is imposed on the corresponding brackets as shown below:

If the net gift is:

	OVER
	BUT NOT OVER
	THE TAX SHALL BE
	PLUS
	OF EXCESS OVER
-	
	P50,000
	EXEMPT
-	
-	
	P50,000
100,000	
-	
1.5%	
	P50,000
100,000	
200,000	
750	
3%	
100,000	
200,000	
500,000	

3,750

5%

200,000

500,000

1,000,000

18,750

8%

500,000

1,000,000

3,000,000

58,750

10%

1,000,000

3,000,000

5,000,000

285,750

15%

3,000,000

5,000,000

-

558,750

20%

5,000,000

b. Tax payable by the donor if donee is a stranger - When the donee or beneficiary is a stranger, the tax payable by the donor shall be ten percent (10%) of the net gifts. For purposes of the donor's tax, a stranger is a person who is not a:

i.

Brother, sister (whether by whole or half blood), spouse, ancestor, and lineal descendant; or (ii) Relative by consanguinity in the collateral line within the fourth degree of relationship.

c. Any contribution in cash or in kind to any candidate, political party or coalition of parties for campaign purposes, shall be governed by the Election Code, as amended.

SECTION 9. What Law Governs the Imposition of the Donor's Tax - The donor's tax is not a property tax, but is a tax imposed on the transfer of property by way of gift inter vivos (Lladoc v. Commissioner of Internal Revenue, L-19201, June 16, 1965; 14 SCRA, p. 292). The donor's gift tax shall not apply unless and until there is a completed gift. (34 Am. Jur. 2d, p. 845) The transfer of property by gift is perfected from the moment the donor knows of the acceptance by the donee; and completed by the delivery to the donee either actually or constructively of the donated property. (Art. 734 Civil Code; Richardson, 39 BTA 927, Macomber, T.C. Memo, 6-6-51) Thus, the law in force at the time of the perfection/completion of the donation shall govern the imposition of the donor's tax.

R.A. No. 7499 took effect on July 28, 1992.

SECTION 10. Computation of the Donor's Tax Due on Donations made in 1992. For donor's tax purposes, donations made on or before July 28, 1992 shall be subject to the donor's tax computed on the basis of the old rates imposed under Section 92 of the NIRC (before RA 7499 amendment), while donations made on or after July 28, 1992 shall be subject to the donor's tax computed in accordance with the new/amended schedule of rates prescribed under Section 92 of the NIRC as amended.

Illustration:

Donations made on:

January 30, 1992 -

P2,320,000.00

March 30, 1992

3,840,000.00

August 15, 1992

2,160,000.00

September 15, 1992

4,970,000.00

1. January 30, 1992 donation

P2,320,000.00

Donor's tax due

P667,460.00

2. March 30, 1992 donation

P3,840,000.00

Add: January 30, 1992 donation

2,320,000.00

Total

P6,160,000.00

=====

Donor's tax due

P2,189,860.00

Less: Donor's tax due on January 30 donation

667,460.00

Donor's tax due on March 30, 1992 donation

1,522,400.00

3. August 15, 1992 donation

2,160,000.00

Donors tax due

174,750.00

4. September 15, 1992 donation

P4,970,000.00

Add: August 15, 1992 donation

2,160,000.00

Total

P7,130,000.00

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Donor's tax due

P984,750.00

Less: Donor's tax on August 15 donation

174,750.00

Donor's tax on

September 15, 1992 donation

810,000.00

Total

P3,174,610.00

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SECTION 11. (a) Time and Place of Writing The donor's tax return shall be filed within thirty days from the date the gift is made and, except in cases where the Commissioner permits, the return shall be filed with the Revenue District Officer, Collection Agent or duly authorized Treasurer of the city or municipality in which the donor was domiciled at the time of transfer or if there be no legal residence in the Philippines, then with the Office of the Commissioner of Internal Revenue.

b. Time and Payment of donor's tax - The donor's tax imposed under Section 92 of the NIRC and Section 8 of these Regulations shall be paid by the donor at the time the donor's tax return is filed.

SECTION 12. Penalties - There shall be imposed in addition to the tax required to be paid under this Act and these Regulations, the civil penalties and interest prescribed under Sections 248 and 249 of the Tax Code in the cases enumerated therein. These penalties shall be collected at the same time, in the same manner and as part of the tax.

The provisions of Sections 253 and 254 of the same Code imposing fine or imprisonment, or both shall be applied to any person, upon conviction, for violation of any provision of this Act and these Regulations.

SECTION 13. Repealing Clause - All regulations, rulings, orders, or portions thereof, which are inconsistent with the provisions of these regulations are hereby revoked and/or amended.

SECTION 14. Effectivity - These regulations shall take effect fifteen (15) days after publication in the Official Gazette or newspaper of general circulation whichever comes first and shall apply to transfers of property by death or donation made on or after July 28, 1992.

Adopted: 30 Aug. 1993

(Sgd.) ERNEST LEUNG
Acting Secretary of Finance

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