AMENDING REVENUE REGULATIONS NO. 5-99, FURTHER IMPLEMENTING SECTION 34(E) OF THE TAX CODE OF 1997 ON THE REQUIREMENTS FOR DEDUCTIBILITY OF BAD DEBTS FROM GROSS INCOME.

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SECTION 1. Scope. — Pursuant to the provisions of Section 244 of the Tax Code of 1997, these regulations are hereby promulgated to amend Revenue Regulations No. 5-99 thereby further implementing the provisions of Section 34(E) of the same Code on the requirements for deductibility of bad debts from the gross income of a corporation, including banks and insurance companies, or an individual, estate and trust that is engaged in trade or business or a professional engaged in the practice of his profession.

SEC. 2. Amendment. — Section 3 of RR 5-99 on the requisites for valid deduction of bad debts from gross income is hereby amended by deleting the penultimate paragraph of the said Section and should now read as follows:

> "Sec. 3. Requisites for valid deduction of bad debts from gross income. — The requisites for deductibility of bad debts are:
>
> (1) There must be an existing indebtedness due to the taxpayer which must be valid and legally demandable;
>
> (2) The same must be connected with the taxpayer's trade, business or practice of profession;
>
> (3) The same must not be sustained in a transaction entered into between related parties enumerated under Sec. 36(B) of the Tax Code of 1997;
>
> (4) The same must be actually charged off the books of accounts of the taxpayer as of the end of the taxable year; and
>
> (5) The same must be actually ascertained to be worthless and uncollectible as of the end of the taxable year.
>
> "Before a taxpayer may charge off and deduct a debt, he must ascertain and be able to demonstrate with reasonable degree of certainty the uncollectibility of the debt. The Commissioner of Internal Revenue will consider all pertinent evidence, including the value of the collateral, if any, securing the debt and the financial condition of the debtor in determining whether a debt is worthless, or the assigning of the case for collection to an independent collection lawyer who is not under the employ of the taxpayer and who shall report on the legal obstacle and the virtual impossibility of collecting the same from the debtor and who shall issue a statement under oath showing the propriety of the deductions thereon made for alleged bad debts. Thus, where the surrounding circumstances indicate that a debt is worthless and uncollectible and that legal action to enforce payment would in all probability not result in the satisfaction of execution on a judgment, a showing of those facts will be sufficient evidence of the worthlessness of the debt for the purpose of deduction.
>
> In the case of banks, the Commissioner of Internal Revenue shall determine whether or not bad debts are worthless and uncollectible in the manner provided in the immediately preceding paragraph. Without prejudice to the Commissioner's determination of the worthlessness and uncollectibility of debts, the taxpayer shall submit a Bangko Sentral ng Pilipinas/Monetary Board written approval of the writing off of the indebtedness from the banks' books of accounts at the end of the taxable year.

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> "Also, in no case may a receivable from an insurance or surety company be written-off from the taxpayer's books and claimed as bad debts deduction unless such company has been declared closed due to insolvency or for any such similar reason by the Insurance Commissioner."

SEC. 3. Repealing Clause. — The provisions of any revenue regulations, revenue memorandum order, revenue memorandum circular or any other revenue issuances inconsistent with these Regulations are hereby repealed, amended, or modified accordingly.

SEC. 4. Effectivity Clause. — These Regulations shall take effect after fifteen (15) days following publication in any newspaper of general circulation and shall apply to taxable year 2002.

Adopted: 19 Nov. 2002

(SGD.) JOSE ISIDRO N. CAMACHO
Secretary of Finance

Recommending Approval:

(SGD.) GUILLERMO L. PARAYNO, JR.
Commissioner of Internal Revenue

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