FURTHER AMENDING REVENUE MEMORANDUM ORDER NO. 29-86 DATED SEPTEMBER 3, 1986, AS AMENDED BY REVENUE MEMORANDUM ORDER NO. 16-88 DATED APRIL 18, 1988, AS FURTHER AMENDED BY REVENUE...

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SECTION 1. Scope. — Pursuant to Section 244 of the Tax Code of 1997, in relation to Sections 24(D)(1) and 27(D)(5) of the same Code, these Regulations are hereby promulgated amending Revenue Memorandum Order No. 29-86, as last amended by Revenue Memorandum Order No. 6-92 and other relevant revenue regulations and issuances regarding the payment of capital gains tax and documentary stamp tax on extrajudicial foreclosure sale of capital assets initiated by banks, finance and insurance companies.

SECTION 2. Foreclosure of Mortgage Provision Under Presidential Decree No. 1529, Otherwise Known as "Property Registration Decree". — Section 63 of P.D. No. 1529, otherwise known as the "Property Registration Decree" provides as follows:

> "SECTION 63. Foreclosure of Mortgage — (a) If the mortgage was foreclosed judicially, a certified copy of the final order of the court confirming the sale shall be registered with the Register of Deeds. If no right of redemption exists, the certificate of title of the mortgagor shall be cancelled, and a new certificate issued in the name of the purchaser.
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> "Where the right of redemption exists, the certificate of title of the mortgagor SHALL NOT BE CANCELLED, but the certificate of sale and the order confirming the sale shall be registered by a BRIEF MEMORANDUM thereof made by the Register of Deeds upon the certificate of title. In the event the property is redeemed, the certificate or deed of redemption shall be filed with the Register of Deeds, and a brief memorandum thereof shall be made by the Register of Deeds on the certificate of title of the mortgagor.
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> "If the property is not redeemed, the final deed of sale executed by the sheriff in favor of the purchaser at a foreclosure sale shall be registered with the Register of Deeds; whereupon the title of the mortgagor shall be cancelled, and a new certificate issued in the name of the purchaser.
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> "(b) If the mortgage was foreclosed extrajudicially, a certificate of sale executed by the officer who conducted the sale shall be filed with the Register of Deeds who shall make a brief memorandum thereof on the certificate of title.
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> "In the event of redemption by the mortgagor, the same rule provided for in the second paragraph of this section shall apply.
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> "In case of non-redemption, the purchaser at foreclosure sale shall file with the Register of Deeds, either a final deed of sale executed by the person authorized by virtue of the power of attorney embodied in the deed of mortgage, or his sworn statement attesting to the fact of non-redemption; whereupon, the Register of Deeds shall issue a new certificate in favor of the purchaser after the owner's duplicate of the certificate has been previously delivered and cancelled."

It is clear from the above provision of the "Property Registration Decree" that where the right of redemption of the mortgagor exists, the certificate of title of the mortgagor shall not be cancelled yet even if the property had

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already been subjected to foreclosure sale, BUT INSTEAD only a brief memorandum shall be annotated at the back of the certificate of title, and the cancellation of the title and the subsequent issuance of a new title in favor of the purchaser/highest bidder depends on whether the mortgagor shall redeem or not the mortgaged property within one year from the issuance of the certificate of sale. Thus, no transfer of title to the highest bidder can be effected yet until and after the lapse of the one-year period from the issuance of the said certificate of sale.

SECTION 3. Capital Gains Tax. —

(1) In case the mortgagor exercises his right of redemption within one year from the issuance of the certificate of sale, no capital gains tax shall be imposed because no capital gains has been derived by the mortgagor and no sale or transfer of real property was realized. A certification to that effect or the deed of redemption shall be filed with the Revenue District Office having jurisdiction over the place where the property is located which certification or deed shall likewise be filed with the Register of Deeds and a brief memorandum thereof shall be made by the Register of Deeds on the Certificate of Title of the mortgagor.

(2) In case of non-redemption, the capital gains tax on the foreclosure sale imposed under Secs. 24(D)(1) and 27(D)(5) of the Tax Code of 1997 shall become due based on the bid price of the highest bidder but only upon the expiration of the one-year period of redemption provided for under Sec. 6 of Act No. 3135, as amended by Act No. 4118, and shall be paid within thirty (30) days from the expiration of the said one-year redemption period.

SECTION 4. Documentary Stamp Tax. —

(1) In case the mortgagor exercises his right of redemption, the transaction shall only be subject to the P15.00 documentary stamp tax imposed under Sec. 188 of the Tax Code of 1997 because no land or realty was sold or transferred for a consideration.

(2) In case of non-redemption, the corresponding documentary stamp tax shall be levied, collected and paid by the person making, signing, issuing, accepting, or transferring the real property wherever the document is made, signed, issued, accepted or transferred where the property is situated in the Philippines; Provided, That whenever one party to the taxable document enjoys exemption from the tax, the other party thereto who is not exempt shall be the one directly liable for the tax. The tax return prescribed under the Code shall be filed within ten (10) days after the close of the month following the lapse of the one-year redemption period, and the tax due under Sec. 196 of the Tax Code of 1997 shall be paid based on the bid price at the same time the aforesaid return is filed.

SECTION 5. Tax Clearance Certificate/Certificate Authorizing Registration. — In case of non-redemption, a tax clearance certificate (TCL) or Certificate Authorizing Registration (CAR) in favor of the purchaser/highest bidder shall only be issued upon presentation of the capital gains and documentary stamp taxes returns duly validated by an authorized agent bank (AAB) evidencing full payment of the capital gains and documentary stamp taxes due imposed under Secs. 3 and 4 of these Regulations on the sale of the property classified as capital asset. The AAB must be located at the Revenue District Office having jurisdiction over the place where the property is located.

SECTION 6. Repealing Clause. — The provisions of any revenue regulations, revenue memorandum order, revenue memorandum circular or any other revenue issuance inconsistent with these Regulations are hereby repealed, amended, or modified accordingly.

SECTION 7. Effectivity Clause. — These Regulations shall take effect fifteen (15) days after publication in any newspaper of general circulation.

Adopted: 09 March 1999

(SGD.) EDGARDO B. ESPIRITU

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