REPUBLIKA NG PILIPINAS
KAGAWARAN NG PANANALAPI
KAWANIHAN NG RENTAS INTERNAS
Quezon City

REVENUE MEMORANDUM CIRCULAR NO. 62-2006

SUBJECT : Treatment of foreclosure sales initiated by the Department of Agrarian Reform.

TO : All Internal Revenue Officers and Employees and all Others Concerned.

For the information and guidance of all revenue officials and employees, quoted hereunder is BIR Ruling No. 011-2006 dated October 20, 2006 relative to the taxability of the foreclosure sale initiated by the Department of Agrarian Reform (DAR):

"DEPARTMENT OF AGRARIAN REFORM
Elliptical Road, Diliman
Quezon City

Attention: Mr. Nasser C. Pangandaman
OIC – Secretary

Gentlemen:

This refers to your letter dated September 26, 2005 requesting clarification on the following issues:

1) Whether Revenue Regulations (RR) No. 4-99 is applicable to the Department of Agrarian Reform (DAR), the assignee-mortgagee, who initiated the extra-judicial foreclosure through the Office of the Solicitor General.

2) Is DAR exempted from the payment of related penalties for the late consolidation of titles in favor of the Government for those properties with lapsed redemption period?

The facts of the case are as follows:

DAR, pursuant to Executive Order (EO) No. 406, series of 1990, which directed the acceleration of the agrarian reform beneficiaries (ARBs) development through the provision of economic and social infrastructure support, had made available funds for lending to qualified ARBs/cooperatives through the Development Bank of the Philippines

(DBP), its accredited loan administrator. The program is designated as the DAR-SPO/ DBP Window III Financing Program.

DBP assigned all the rights and interests as mortgagee to DAR in the Deeds of Assignment executed between them for each and every Mortgage Contract made under the said financing program. DAR, through the Office of the Solicitor General, filed petitions for the extra-judicial foreclosures of mortgages of certain cooperatives which failed to settle their loans. In most cases, DAR was awarded the Sheriff's Certificates of Sale for the subject personal and real properties being the highest bidder during the foreclosure sales.

In the registration of the Sheriff's Certificates of Sale for the foreclosed real properties, the DAR Provincial Offices where such assets are located were requested to secure a Certificate Authorizing Registration (CAR) from the concerned Revenue District Offices (RDOs). DAR has already a number of foreclosed properties that were not redeemed and should be consolidated in the name of the Republic of the Philippines. Since DAR is required to pay taxes and it has no funds for such purpose, the transfer of titles of the foreclosed real properties remains pending.

In the case wherein the highest bidder is other than DAR, the highest bidder assumes payment of taxes imposed as a consequence of the foreclosure sale.

In reply, please be informed as follows:

1) RR No. 4-99 applies only to extra-judicial foreclosure sale initiated by banks, finance and insurance companies. Accordingly, said issuance is not applicable to the foreclosure sales initiated by DAR.

2) Like any other extra-judicial foreclosures which do not fall within the purview of RR No. 4-99, the capital gains tax (CGT) is due within thirty days from the time the foreclosure sale was made. The withholding and documentary stamp taxes are due on the fifth day after the close of the month when the foreclosure sale was made.

DAR representing the owner-mortgagor is considered as the "statutory seller", supposedly the one liable to pay the capital gains/income/withholding tax due on such foreclosure sale based on the bid price in the auction sale or the zonal value of the foreclosed property, whichever is higher. However, in the case where DAR is the highest bidder in the foreclosure sale, of which, eventually, it will be the party to consolidate the title of the foreclosed property in the name of the Government if such property is not redeemed, DAR, as the statutory seller and at the same time the buyer, in effect, is exempt from all taxes,

including the penalties, surcharge and interest, imposed in connection therewith inasmuch as the funds that will be used to defray the same will be coming from the government's treasury. As aptly said by the Supreme Court in the case of the *Board of Assessment Appeals, Province of Laguna vs. CA and National Waterworks and Sewerage Authority*, 8 Phil. 227:

"Moreover, taxes are financial burden imposed for the purpose of raising revenues with which to defray the cost of the operation of the Government, and a tax on the property of the government, whether national or local, would merely have the effect of taking money from one pocket to put in another pocket. (Cooley on Taxation, Sec. 621, 4th Edition) Hence, it would not serve, in the final analysis, the main purpose of taxation."

However, before the foreclosed properties can be transferred in the name of the Republic of the Philippines, DAR must first obtain a CAR in the respective RDOs where the subject properties are located. Section 58(E) of the Tax Code of 1997, as amended, provides, viz.:

"No registration of any document transferring real property shall be effected by the Register of Deeds unless the Commissioner of Internal Revenue or his duly authorized representatives has certified that such transfer has been reported, and the capital gains or creditable withholding tax, if any, has been paid."[1]

On the other hand, and as represented, in the case wherein the highest bidder is other than DAR, the highest bidder assumes payment of taxes imposed as a consequence of the foreclosure sale. Thus, if there is delay in the payment of the taxes due thereon, the highest bidder shall be liable to pay the additions thereto (penalties, surcharge and interest imposed for the delay in payment of taxes).

This ruling is being issued on the basis of the foregoing facts as represented. However, if upon investigation, it will be disclosed that the facts are different, then this ruling shall be considered null and void.

Very truly yours,

(Original Signed)
JOSE MARIO C. BUÑAG
Commissioner of Internal Revenue

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[1] BIR Ruling No. DA-577-2004 dated November 12, 2004 issued to the Board of Liquidators."

Relative to the transfer or consolidation of the titles of foreclosed properties in favor of the Republic of the Philippines, in cases wherein DAR is the highest bidder and no redemption has been made, all Revenue District Officers concerned are hereby directed to issue the CAR upon filing by the DAR of the corresponding returns reflecting that the foreclosure sale in its favor is exempt from taxes, Sheriff's Certificates of Sale and proof/s that the transaction for which CARs are being requested are transactions made pursuant to the DAR-SPO/DBP Window III Financing Program.

All revenue officials concerned are hereby enjoined to give this Circular a wide publicity as possible.

(Original Signed)
JOSE MARIO C. BUÑAG
Commissioner of Internal Revenue

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