REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

Quezon City

November 5, 2007

REVENUE MEMORANDUM CIRCULAR NO. 69 - 2007

SUBJECT : Clarification of Issues Concerning The Tax Amnesty Program Under Republic Act No. 9480 as Implemented by Department Order No. 29-07.

TO : All Internal Revenue Officers and Others Concerned.

Republic Act No. 9480 (RA 9480) entitled *"An Act Enhancing Revenue Administration and Collection by Granting an Amnesty on All Unpaid Internal Revenue Taxes Imposed by the National Government for Taxable Year 2005 and Prior Years"*, became effective on June 16, 2007. In order to implement the provisions of the said Act, Department of Finance has issued Department Order No. 29-07 (DO 29-07) prescribing the rules and regulations for the availment of the tax amnesty granted under said law.

For the purpose of clarifying certain issues relative to the availment thereof, presented hereunder, in question and answer format, are the corresponding resolutions on some of the recurring questions raised during the fora and symposia held with the private sector on the matter.

Q-1 What type of taxes and what taxable period/s are covered by the Tax Amnesty Program under RA 9480 as implemented by DO 29-07?

A-1 The Tax Amnesty Program (TAP) covers all national internal revenue taxes such as income tax, estate tax, donor's tax and capital gains tax, value added tax, other percentage taxes, excise taxes and documentary stamp taxes, except withholding taxes and taxes passed-on and already collected from the customers for remittance to the BIR, these taxes/funds being considered as funds held in trust for the government. Moreover, the time-honored doctrine that "***No person shall unjustly enrich himself at the expense of another***" should always be observed.

In case of donor's tax and capital gains tax, only cases that have underdeclarations/undervaluations and were already issued with Certificate Authorizing Registration (CAR) by the BIR are covered.

The period covered is Taxable Year 2005 and prior years for the abovementioned national internal revenue taxes, with or without assessments duly issued therefore, that have remained unpaid as of December 31, 2005.

For purposes of complying with the provisions of the Tax Amnesty Law, Taxable Year 2005 shall include all taxable years which end in any month of the year 2005, whether calendar year or fiscal year. This means that for fiscal year basis taxpayers, the Balance Sheet filed as of the end of any month in 2005 except December, which is the taxpayer's fiscal year end, shall be considered as a Balance Sheet filed as of year end of 2005 which shall be the basis in determining any increase in networth, by comparing it with the amended Balance Sheet as of the same end period while for calendar year basis taxpayers, the increase in networth shall be reckoned from the figures reflected in the Balance Sheet filed as of December 31, 2005 by comparing the original version with the amended version.

Q-2 **Who can avail of the tax amnesty?**

A-2

a. Individuals, whether resident or non-resident citizens, or resident or nonresident aliens;
b. Estates and trusts;
c. Corporations;
d. Cooperatives and tax exempt entities that have become taxable as of December 31, 2005;
e. Other juridical entities, including partnerships

In the case of an individual who is at the same time an executor or administrator of the estate of a deceased taxpayer, he may avail of the amnesty for himself or for the estate or both. In the same manner that a trustee of a taxable trust may opt to avail of the tax amnesty for himself or that for the trust or for both. One Amnesty Tax Return shall be filed for every taxpayer availing of the program.

Q-3 **Are cases subject of criminal complaint filed with the DOJ still covered by the Tax Amnesty?**

A-3 Yes, except cases filed under the RUN AFTER TAX EVADER (RATE) Program of the BIR and other cases involving tax evasion initiated and instituted with the approval of the Commissioner of Internal Revenue or his authorized representatives, pursuant to Section 220 of the National Internal Revenue Code of 1997, as amended.

Q-4 **Does availment of the TAP have an effect on assessments against the taxpayer/availer where such assessments have become final and executory prior to the said availments?**

A-4 No. Amnesty availment will not have an effect on assessments against said taxpayer where the said assessments have become final and executory prior to the amnesty availment considering that these assessments are already accounts receivable of the BIR or assets of the government.

Q-5 What are the benefits and privileges accorded to persons or entities availing of the tax amnesty under RA 9480?

A-5

a. Immunity from the payment of taxes as well as additions thereto and the appurtenant civil, criminal or administrative penalties under the National Internal Revenue Code of 1997, as amended, arising from the failure to pay any and all internal revenue taxes for taxable year 2005 and prior years.

b. The taxpayer's Tax Amnesty Return and the Statement of Asset, Liabilities and Networth (SALN) as of December 31, 2005 shall not be admissible as evidence in all proceedings that pertain to taxable year 2005 and prior years, insofar as such proceedings relate to internal revenue taxes, before judicial, quasi-judicial or administrative bodies in which he is defendant or respondent except for the purpose of ascertaining the networth beginning January 1, 2006. The same shall not be examined, inquired or looked into by any person or government office. However, the taxpayer may use this amnesty availment as a defense, whenever appropriate, on cases brought against him.

c. The books of accounts and other records of the taxpayer for the years covered by the tax amnesty availed of shall not be examined by the BIR. However, the Commissioner of Internal Revenue or his authorized representative may authorize in writing the examination of the said books of accounts and other records to verify the validity or correctness of a claim for any tax refund, tax credit (other than refund or credit of taxes withheld on wages), tax incentives and/or exemptions under existing laws, whether these cases are pending with the Bureau of Internal Revenue, One Stop Shop of the Dept. of Finance, Bureau of Custom and with any Court, as well as looking at taxpayer's records and books to check tax liabilities of other taxpayers under its access power to third parties.

Q-6 Are the benefits and privileges accorded by the tax amnesty law absolute?

A-6 No. The benefits and privileges accorded by the tax amnesty law shall not apply under the following instances:

a. where the person failed to file a SALN and the Tax Amnesty Return, or;

b. where the amount of networth as of December 31, 2005 or as of end of fiscal year of any month in year 2005, whichever is applicable, is proven to be understated to the extent of thirty percent (30%) or more in accordance with the provisions of Section 4 of RA 9480 and Section 9, Rule IV of Department Order No. 29-07.

Q-7 **Section 4 of RA 9480 and Section 9, Rule IV of DO No. 29-07 provide for the presumption of correctness of SALN. What does this mean?**

A-7 This means that SALN as of taxable year 2005 (calendar or fiscal) filed by the taxpayer pursuant to this tax amnesty program shall be presumed to represent the true and correct networth of said taxpayer as of such period.

Q-8 **What are the instances when the presumption of correctness would not apply?**

A-8 The presumption of correctness of SALN shall not apply in the following cases:

a. Where the amount of declared networth is understated to the extent of thirty percent (30%) or more as may be established in the proceedings initiated within one (1) year following the date of filing of the Tax Amnesty Return and the SALN, by or at the instance of parties other than the BIR or its agents, as when any person, entity or government agency informs the BIR, with sufficient evidence, that the amount of the declared networth is understated to the extent of thirty percent (30%) or more.

b. When the findings of or admission in congressional hearings or proceedings in administrative agencies of the government and in courts, prove that there is at least thirty percent (30%) underdeclaration of networth

Q-9 **What is the effective period within which qualified taxpayers may avail of the tax amnesty?**

A-9 Rule III Section 6.4 of Department Order No. 29-07 provides for the filing of the tax amnesty return together with the SALN and the payment of the tax amnesty within six (6) months from the effectivity of said Order.

The said Order became effective last September 6, 2007. Thus, qualified taxpayers have until March 6, 2008 to avail of the said tax amnesty program.

Q-10 **What is the basis of computing the tax amnesty and what are the tax amnesty rates prescribed therefor?**

A-10 a. For those qualified taxpayers who have **no previously filed statements of assets and liabilities/balance sheet as of December 31, 2005**, the tax amnesty payment shall be computed based on higher amount between the five percent (5%) of the networth as of December 31, 2005 (including fiscal year ending in any month of 2005) as declared in the SALN and the minimum amnesty payments as presented in the following schedule of tax amnesty computation:

a.1	Individuals (whether resident or nonresident citizens, including resident and nonresident aliens), Estates and Trusts	5% of networth or P50,000, whichever is higher
a.2	Corporations	
	a.2.1 With subscribed capital of above P50M	5% of networth or P500,000, whichever is higher
	a.2.2 With subscribed capital of above P20M up to P50 M	5% of networth or P250,000, whichever is higher
	a.2.3 With subscribed capital of P5M up to P20 M	5% of networth or P100,000, whichever is higher
	a.2.2 With subscribed capital of below P5M	5% of networth or P25,000, whichever is higher
a.3	Other juridical entities including partnerships but not limited to cooperatives and foundations that have become taxable as of December 31, 2005	5% of networth or P50,000, whichever is higher

Illustration:

The last time that Mr. X filed his Statement of Assets and Liabilities was in Year 2003 where he declared his networth to be P4,000,000. In Year 2005, his networth amounted to P10,000,000. If Mr. X desires to avail of the tax amnesty, the basis of the five percent (5%) tax amnesty rate shall be the entire networth of P10,000,000, which therefore amounts to P500,000 (P10,000,000 times 5%) and not on the net increase in the networth of P6,000,000 (P10,000,000 minus P4,000,000) which is the difference between the last declared networth in Year 2003 and the declared networth in Year 2005.

As an individual availing of the tax amnesty, his tax amnesty liability therefore amounts to P500,000 which is the amount higher than the minimum tax amnesty payment of P50,000 prescribed for individuals.

b. For those qualified **taxpayers who have filed with BIR's authorized**

agents their SALN/balance sheet together with their income tax returns for taxable year 2005 and who desire to avail of the tax amnesty, they shall amend their previously filed statements by including still undeclared assets and/or liabilities and pay an amnesty tax equal to five percent (5%) based on the resulting increase in the networth or the minimum amount prescribed by the Tax Amnesty Law for each category of taxpayer, whichever is higher. (Refer to the schedule of minimum payments in the table above).

Q-11 **In the filing of the Statement of Assets, Liabilities and Networth (SALN) as of Taxable Year 2005 pursuant to RA 9480, what should such statement contain?**

A-11 The SALN should contain the following:

a. Assets within or without the Philippines (in the case of resident and non-resident citizens and domestic corporations) or assets within the Philippines (in the case of resident and non-resident foreign corporations, resident and non-resident aliens), whether real or personal, tangible or intangible, whether or not used in trade or business:

a.1 Real properties shall be accompanied by a statement of the following information:

i. TCT/OCT/CCT Number;
ii. Tax Declaration Number;
iii. Classification;
iv. Description;
v. Exact Location;
vi. Measurement (in square meter); and
vii. Value

a.2 Personal properties other than money (e.g. automobiles, shares of stock, investments, etc.), shall state the following:

i. Quantity;
ii. Kind of asset;
iii. Description (e.g. Certificate of Registration, Machine Number); and
iv. Value

a.3 Assets denominated in foreign currency converted into the corresponding Philippine currency at the rate of exchange prevailing as of Balance Sheet date;

a.4 Cash on hand and in bank in peso as of Balance Sheet date as well as cash on hand and in bank in foreign currency converted to peso at the rate of exchange prevailing as of Balance Sheet date.

b. All existing liabilities which are legitimate and enforceable, secured or unsecured, whether or not incurred in trade or business, disclosing or indicating clearly the name and address of the creditor and the amount of the corresponding liability as of SALN date.

c. The total networth of the taxpayer which shall be the difference between the total assets and total liabilities.

Q-12 For amnesty availment purposes, what are the valuation rules?

A-12 The following valuation rules should be observed for purposes of availment of the TAP:

FOR CORPORATIONS –

All assets, liabilities and networth shall be valued and reflected in the SALN/Balance Sheet following/observing prevailing Philippine Financial Reporting Standards (PFRS/IFRS) unless a different rule is mandated or allowed by the concerned regulatory agency, e.g. SEC, etc.

FOR INDIVIDUALS –

a. For business-related assets and/or liabilities and networth, valuation should follow the Generally Accepted Accounting Principles (GAAP).

b. For non-business-related assets and/or liabilities and networth, valuation should be at cost, if acquired through purchase or at Fair Market Value, if acquired through inheritance or donation. Valuation shall be at Fair Market Value/Zonal Value at the time of death or the date of donation, whichever is applicable.

FOR COOPERATIVES, FOUNDATIONS AND PARTNERSHIPS –

The valuation of the assets and liabilities and networth shall follow the mandated rules of the concerned regulatory agency namely: Securities and Exchange Commission (SEC), Cooperatives Development Authority (CDA), etc.

FOR ESTATE –

For estate under administration, the valuation of assets and liabilities and networth shall follow GAAP; whereas for estate not under administration, the valuation of assets, liabilities and networth shall follow GAAP, for business-related assets, and valued at cost if assets/liabilities are acquired by purchase or at fair market value, if assets/liabilities are acquired through

donation or inheritance, for non-business related assets/liabilities.

FOR TRUST –

The valuation of assets and liabilities and networth shall follow GAAP.

Q-13 What are the procedures for availment?

A-13 A person or entity who would wish to avail of the Tax Amnesty shall follow these procedures:

a. Accomplish and prepare for submission the following forms:

a.1 NOTICE OF AVAILMENT OF TAX AMNESTY FORM, to be filled up by the person who will avail of the tax amnesty (such form can be presented to the BIR representative for proper computation or taxpayer himself can compute for the amnesty amount);

a.2 Statement of Assets, Liabilities and Networth (SALN) as of Balance Sheet date and/or the Balance Sheets, both original and amended, in case where the taxpayer had previously filed his/its Balance Sheet together with the income tax return for 2005;

a.3 Tax Amnesty Return (BIR Form No. 2116);

a.4 Payment Form (BIR Form No. 0617)

a.5 Such other documentary requirements that may be required, as discussed in subsequent paragraphs.

b. Pay the Amnesty Tax:

The taxpayer shall pay the amnesty tax using Amnesty Tax Payment Form No. 0617 to the authorized agent bank or in the absence thereof, the Collection Agent or duly authorized Treasurer of the city or municipality in which such person has his legal residence or principal place of business/place of work.

c. File the Amnesty Tax Return:

- After payment, the Notice of Availment of Tax Amnesty, the Tax Amnesty Return, together with the SALN/Balance Sheet, both original and amended, and a copy of the TAX AMNESTY PAYMENT FORM (BIR Form 0617) shall be filed as follows:

- Residents shall file with the Revenue District Office (RDO)/Large Taxpayer District Office (LTDO) of the BIR which has jurisdiction over the legal residence or principal place of business/employment of the taxpayer, as the case may be. (The head of the RDO/LTDO shall create an Amnesty Task Force which is in charged of receiving Amnesty Tax Availment and giving advice, if needed.)

- Non-residents shall file with the Office of the Commissioner of the BIR, or with any RDO.

Q-14 **For taxpayers who had been filing their correct networth and have no additional asset to declare further, but would like to participate in the amnesty program, will they be allowed to do so?**

A-14 In cases where the taxpayer decides to avail but does not declare additional assets or decides that he/it should not make any amendments of his/its networth as December 31, 2005, he/it can avail of the amnesty program by paying five percent (5%) of the total declared networth as of Balance Sheet date in 2005 or the prescribed minimum absolute amount, whichever is higher.

Q-15 **In lieu of the SALN, can taxpayers be allowed to file a Balance Sheet for purposes of tax amnesty availment?**

A-15 While the Balance Sheet may be equivalent to the SALN, the regulations have prescribed a specific SALN format to be filled-up and submitted for purposes of availment. Thus, in the availment of the tax amnesty, the Balance Sheet should be converted to the SALN format as provided by the BIR in the SALN form.

Q-16 **Can taxpayer amend its 2006 Balance Sheet to reflect the 2005 SALN/networth as beginning balance for 2006?**

A-16 Amendments of 2006 Balance Sheet shall be allowed even if Letters of Authority (LAs), Tax Verification Notices (TVNs) or audit notices (ANs) were already issued **only if the taxpayer avails of the TAP.** The amendment should be limited only to increase in previously declared business-related assets and networth. The purpose of the amendment is for the taxpayer to reflect the newly reported asset and therefore reflect the correct beginning networth of the

taxpayer in 2006. No other item in the Financial Statements can be amended within three (3) years from submission thereof or when an LA/AN/TVN has already been issued within the said three-year period except those that were reported in the SALN/Balance Sheet for purposes of amnesty availment. Resulting effect to nominal accounts shall be closed directly to Retained Earnings, for corporate taxpayers, and Capital, for individuals and partnerships.

Q-17 **May husband and wife be allowed to submit only one SALN? Would they be separately liable for the minimum amount of amnesty tax if they avail of the amnesty?**

A-17 No. They have to submit two separate SALNs reflecting their exclusive properties and liabilities as well as their respective shares in the conjugal properties and liabilities. In such a case, the tax amnesty liability of each spouse shall be the higher amount between the 5% of his/her total declared networth or increase in his/her networth and the minimum absolute amount of P50,000.

Q-18 **Will individuals engaged in business submit two SALNs - one strictly for business-related assets/liabilities/networth and another one for non-business related assets/liabilities/networth?**

A-18 An individual taxpayer/availer shall submit only one SALN or Balance Sheet presenting the assets and liabilities and networth into two major groups which are those that are classified as business-related and those that are non-business related.

Q-19 **In the case of a representative office in the Philippines of a foreign corporation which is only required to file audited statements of receipts and disbursements, what would be the content of the SALN to be filed?**

A-19 The resident foreign corporation shall report assets and liabilities and networth related to the business in the Philippines and the amnesty tax shall be the 5% of the total declared Philippine networth or 5% of the resulting increase in Philippine networth, whichever is applicable, or the minimum absolute amount, whichever is higher.

Q-20 **What would be used as basis in determining the minimum amnesty payment of a local branch of a foreign corporation where the subscribed capital stock is not determinable for this purpose?**

A-20 The basis of the 5% shall be the networth or increase in networth of the branch located in the Philippines, whichever is applicable, and the amnesty tax payable is whichever is higher between the resulting product therefrom and the minimum absolute amount prescribed by the Tax Amnesty Law where the subscribed capital refers to the assigned capital in the Philippine Branch lodged in the account "Due to Head Office".

Q-21 **Can the SALN be presented using US dollars or the company's functional currency?**

A-21 Yes. The SALN can be presented in US dollars or the company's functional currency provided that the peso value shall also be shown in the SALN converted using the exchange rate as of Balance Sheet date.

Q-22 **The SALN prescribed by BIR appears to be very specific as to description of assets and liabilities. Is it also applicable to big companies (such as the banks which have accounts receivables, ROPOAs, stocks traded, investments, inventories) whose assets and liabilities are so varied and numerous which would require substantive schedules to detail the specific description of all of their accounts? Are they still required to comply strictly with this requirement?**

A-22 Yes, these companies should file and declared ALL their assets and liabilities and networth using the SALN format prescribed by the BIR.

Q-23 **Can a taxpayer who has availed of the tax amnesty still be issued a Letter of Authority or TVN to audit his tax liabilities for the year 2005 and prior taxable years?**

A-23 Yes, but the audit shall be limited only to withholding taxes, unpaid self-assessed taxes and funds collected from customers held in trust for the Government.

Q-24 **How do we compute the minimum increase in networth in case a taxpayer wants to avail of the tax amnesty due to the discovered under declaration of sales as a result of TRS-Letter Notice (TRS-LN) matching as illustrated below:**

***AGENT-TAXPAYER RECONCILLIATION*:**

	VAT	PERCENTAGE TAX	INCOME TAX
Discrepancy on gross sales/revenue/receipt	13,500,000		15,000,000
DISCREPANCY ON TAXES WITHHELD CLAIMED BY PAYEE	0		1,000,000

A-24 Taxpayers who want to avail of the tax amnesty program because they have underdeclarations of sales/income as shown in the TRS-LN can avail of the program provided that the underdeclared/undeclared sales shall be treated as undeclared assets.

The higher amount (gross sales/revenue/receipt) in the table of discrepancies as

shown above, shall be added to any increase in the networth. Hence, in the example above, 5% of P15,000,000 (on the assumption that P15,000,000 is the only increase in networth) which is P750,000 or the prescribed minimum absolute amount, whichever is higher, shall be the tax amnesty payment.

Discrepancy on taxes withheld claimed by the payee is not covered by the tax amnesty it representing unpaid self-assessed tax.

Discrepancy discovered under the module "Agent Reconciliation" is not covered by the tax amnesty it representing error in withholding tax computation and remittance.

Q-25 **I have an ongoing examination for taxable period 2004 and no assessment yet has been issued. Can I avail of the tax amnesty? What will happen to the examination?**

A-25 The company can avail of the amnesty. Upon presentation of the duly received Notice of Availment, Tax Amnesty Return, payment form, SALN and the other documentary requirements, the LA/TVN and Audit Notice pertaining to that taxable year shall be deemed cancelled except for those specifically excluded by law, e.g. withholding tax, unpaid self-assessed tax, funds collected from customers for remittance to the BIR as these are funds held in trust for the Government.

Q-26 **We have been issued a Final Assessment Notice (FAN) on which we have filed a protest. Can we still avail of the amnesty?**

A-26 As a rule, duly protested FAN can be covered by the tax amnesty, except those excluded under existing rules (e.g. Withholding Tax Liabilities; Taxes passed-on and collected from customers for remittance to the Bureau of Internal Revenue (BIR); Delinquent Accounts/Accounts Receivable assets of the Bureau of Internal Revenue/Government, including unpaid self-assessed tax; issues that were already ruled by the Court in favor of the Bureau of Internal Revenue/Government prior to amnesty availment of the taxpayer, etc.).

Q-27 **If BIR suspects commission of tax fraud for taxable year 2005 and prior years, can the taxpayers still avail of the TAP?**

A-27 Yes. What is not covered by the amnesty tax law are pending criminal cases filed in court as well as tax evasion cases and cases under the BIR RATE Program already filed with the DOJ on or before the date of effectivity of the tax amnesty law which is June 16, 2007.

Q-28 **If a company which is in a deficit position (negative networth) amends its Balance Sheet to include additional assets resulting to a reduction in deficit, can it avail of the amnesty tax law on the change in networth (still in a deficit position)? What about companies in deficit position that will not amend their Balance Sheets but would want to avail of the tax amnesty, can they qualify?**

A-28 Only companies reflecting positive networth can avail of the tax amnesty law.

Q-29 **Can payments under the NAP, IVAP and EVAP be deducted from amnesty payment?**

A-29 No, these types of administrative amnesty payments are not allowed to be deducted from the Tax Amnesty payments under RA 9480.

Q-30 **Can the tax amnesty payments be allowed as deductible expense?**

A-30 No. The amnesty tax is a non-deductible expense for tax purposes.

Q-31 **What is the extent of examination which the BIR can conduct on the books and record of taxpayers who would availed of the tax amnesty but have pending claim for refund/tax credit before the BIR or DOF or BOC or the Courts?**

A-31 The examination of the said books of accounts and other records shall be limited to the purpose of verifying whether the claim for refund/tax credit is valid and duly supported and substantiated. Disallowances may be made on the tax refund/tax credit being claimed on account of the findings made as a result of the verification . Tax assessments can still be issued on the audit coverage.

Q-32 **May surviving or new corporations avail of the tax amnesty in behalf of the corporations absorbed or dissolved pursuant to a merger or consolidation that took effect prior to Taxable Year 2005? Can they avail of the Tax Amnesty?**

A-32 Yes, these companies can avail of the tax amnesty for purposes of obtaining tax clearances for the dissolved or absorbed corporations.

Q-33 **What about retiring corporations under liquidation and/or dissolution, can they avail of the tax amnesty law?**

A-33 Yes, the program is also available to retiring companies under liquidation and/or dissolution

Q-34 **If there is already an ongoing investigation when the tax amnesty is availed of and the covering LA includes all internal revenue taxes, will the investigation be allowed to continue?**

A-34 Yes, but the investigation will cover only the withholding taxes and the collection of unpaid self assessed taxes and taxes passed-on and collected from customers for remittance to the BIR which are considered as funds held in trust for the Government.

Q-35 **Is there only one application for the tax amnesty covering taxable year 2005 and prior years or should the taxpayer file an amnesty application on a per year basis?**

A-35 Yes, the tax amnesty is a one-time availment and it shall cover taxable year 2005 and all prior years.

Q-36 **Will the BIR suspend LAs issued for taxable years 2004 and 2005 to pave the way for the taxpayers to avail of the tax amnesty?**

A-36 No. The investigation and other legal processes on the said taxable years shall continue. The only time such investigation will cease is upon presentation of the proof that the taxpayer has availed of the tax amnesty.

Q-37 **Can the excess creditable withholding taxes (CWT)/input taxes, taxes carried-over, Tax Credit Certificates (TCCs), Tax Debit Memo (TDMs) be used as payment for amnesty tax?**

A-37 No. Excess CWT/input taxes, taxes carried-over, TCCs or TDMs cannot be used as payment for the Amnesty Tax. Only **CASH** payments are allowed.

Q-38 **Can the taxpayer pay the amnesty tax on installment?**

A-38 No, the law does not provide for installment payments. Full payment of the tax amnesty amount is required for the availment of the program.

Q-39 **Are PEZA-registered companies, business enterprises operating within the Freeport Zones (Subic, Clark, etc.), and business enterprises operating within the other Special Economic Zones covered by the Tax Amnesty?**

A-39 Yes. All corporations liable for internal revenue taxes may avail of the tax amnesty. The law does not make of any distinction.

Q-40 **Our company is a PEZA-registered entity paying 5% GIT where 3% thereof represents the share of the National Government and the remaining 2% represents the share of the LGU. Does this mean that in the availment of the tax amnesty, there is a need to pay the 2% of the 5% tax amnesty rate to LGU?**

A-40 The amnesty tax covers only national internal revenue taxes. The LGU does not have a direct share on the 5% amnesty tax, and therefore the entire 5% amnesty tax payment shall be paid directly to the BIR through its authorized collection agents.

Q-41 **For purposes of determining the zonal value or fair market value of properties forming part of an estate, in what period should the valuation be based for purposes of tax amnesty availment (Should it be in the year when the decedent died or should it be the value in year 2005)?**

A-41 The valuation of the properties of the decedent shall be at the time of death.

Q-42 **In case of estate under administration, who is the person liable to avail of the tax amnesty?**

A-42 In case of estate under administration, the one that should avail of the tax amnesty for the estate is the administrator/executor of the estate, in representation of the estate.

Q-43 **In case of estate not under administration, who is the person liable to avail of the tax amnesty?**

A-43 In case of estate not under administration, the persons liable to avail of the tax amnesty shall be the estate and the heirs.

Q-44 **If the estate involved is still in the name of another decedent, can the present holder declare one estate tax return/amnesty tax return for all the other decedents through which this property shall pass?**

A-44 No. The present holder shall file tax amnesty return for each decedent.

Q-45 **What will be the basis of the amnesty tax payment of estate?**

A-45 The basis of the amnesty tax payment of the estate shall be the networth of such estate valued at the time of death of the decedent.

Q-46 **How do we compute the networth of an estate?**

A-46 Networth is equals to assets less liabilities. For purposes of computing the networth of the estate, only the decedent's exclusive properties and liabilities as well as share in the conjugal assets and liabilities shall be included. The deductible liabilities shall refer to unpaid legitimate and enforceable obligations incurred in acquiring the properties included in the gross taxable estate.. Thus, family home, medical expenses incurred, funeral expenses incurred, standard deduction and other deductions not related to the acquisition of the properties forming part of the gross taxable estate are not allowed as claimed liabilities for purposes of computing the networth of the estate for tax amnesty availment purposes.

Q-47 **Are Delinquent Accounts/Accounts Receivable, including unpaid self-assessed taxes, in the records of the BIR which are already Accounts Recievable of the BIR/assets of the Government as of date of amnesty availment by the taxpayer still covered by such amnesty availment?**

A-47 No. This is so because these are already properties/assets of the Government prior to/upon taxpayer's date of amnesty availment.

Q-48 **In the case of transactions involving sale of real property and/or donation of real property, are these covered by the tax amnesty program?**

A-48 The only instance when these transactions may be covered by the tax amnesty program is when the real property has already been transferred and/or declared in the name of the taxpayer/donee and the capital gains tax/DST/donor's taxes have already been paid but during the time of transfer there was underdeclaration in the selling price/consideration or undervaluation made in the declaration of such real property.

In availing of the tax amnesty, the resulting increase in networth cannot be lower than the amount representing the difference between the true and correct value of the real property and the previously declared value. The resulting increase in the networth is still the basis of the 5% amnesty tax rate which is compared with the prescribed minimum absolute amount and the amnesty tax payable is the higher amount between the two compared amounts.

Q-49 **Are tax assessments that are disputed administratively or judicially still covered by the tax amnesty law?**

A-49 As a rule yes, except those cases excluded from the coverage of the Tax Amnesty Program as discussed in this CIRCULAR and those cases involving issues that have already been ruled by the trial court/appellate court in favor of the BIR/Government prior to taxpayer's availment of the amnesty law.

Q-50 **If the real property of the taxpayer is registered in the name of another person, can taxpayer declare the said property in his SALN and pay the amnesty tax**

A-50 No, because this kind of scenario is not covered by the tax amnesty program.

Q-51 **Are corporations that filed notice of dissolution to the BIR as of taxable year 2005 covered by the tax amnesty? Upon presentation of proof of availment, will the BIR issue the corresponding tax clearance?**

A-51 Yes, the dissolving corporations as of taxable year 2005 can be covered by the tax amnesty for as long as in the availment thereof, they pay 5% of the increase in the networth determined by comparing original SALN with amended SALN as of said year or 5% of the networth as of Balance Sheet/SALN date, whichever is applicable, which resulting amount should not

of course, be lower than the prescribed minimum absolute amount.. Consequently, upon availment and presentation of proof of availment, the BIR will issue the corresponding tax clearance.

Q-52 **In the filing of the amended 2005 SALN/Balance Sheet for purposes of tax amnesty availment, should the same require the opinion of an independent auditor?**

A-52 No. The amended SALN/Balance Sheet is considered as a truthful declaration by the taxpayer himself which does not need an evidence *aliunde* to establish its correctness.

Q-53 **In case a company is originally classified as tax exempt but currently its status is in question, can such company avail of the tax amnesty?**

A-53 Yes. The basis of such exempt entity of the tax amnesty rate of 5% shall be the total networth or the resulting increase in networth, whichever is applicable, but the amnesty tax payable is still the higher amount between the resulting figure therefrom and the prescribed minimum absolute amount.

Q-54 **Is it possible to amend the SALN already filed under the Tax Amnesty Program?**

A-54 Yes. As long as the next amendment would reflect only an inclusion of additional asset with corresponding increase in networth. No reduction in payment shall be allowed.

Q-55 **Can minors avail of the tax amnesty?**

A-55 Yes, minors who would want to avail of the TAP may avail provided that their amnesty tax payment is the higher amount between the resulting product of 5% of his total declared networth or 5% of the increase in networth, as the case maybe, and the prescribed minimum absolute amount of P50,000.

Q-56 **In cases where the taxpayer has already agreed to pay the deficiency taxes and has in fact already entered into an agreement with the Bureau to pay such deficiency taxes on installment basis, will the same be covered by the tax amnesty?**

A-56 No. The taxpayer who has already entered into an agreement with the BIR to pay taxes, whether in full amount or on installment basis, can no longer avail of the tax amnesty in so far as this particular tax case is concerned. It/he can avail of tax amnesty to cover its/his other tax liabilities, if there is no legal impediment for such availment.

Q-57 **Are tax cases covered by compromise agreement and/or abatement agreement in accordance with existing revenue regulations relative to the compromise settlement program and abatement program of the Bureau covered by the tax amnesty?**

A-57 No, such cases which have been covered by the compromise program or abatement program of the Bureau can no longer avail of the tax amnesty insofar as the tax subject of the compromise/abatement is concerned.

All internal revenue officers and others concerned are hereby enjoined to give this Circular as wide a publicity as possible.

(Original Signed)
LILIAN B. HEFTI
Commissioner of Internal Revenue