REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE
Quezon City

March 31, 2004

REVENUE REGULATIONS NO. 6-2004

SUBJECT: Implementing The Tax Exemptions and Privileges Granted Under Republic Act No. 9182, Otherwise Known As "The Special Purpose Vehicle (SPV) Act of 2002".

TO : All Internal Revenue Officers and Other Concerned

Chapter I

GENERAL PROVISIONS

SECTION 1. ***Scope.*** – Pursuant to Section 244 of the National Internal Revenue Code (NIRC) of 1997, in relation to Section 22 of the Act, these Regulations are hereby promulgated to prescribe the guidelines and procedures for availing the tax exemptions and privileges granted under the Act.

SEC. 2. ***Declaration of policy.*** – These regulations are promulgated consistent with the declared policy of the State:

(a) to develop and maintain a sound financial sector for the country;

(b) to address the non-performing asset problems of the financial sector;

(c) to encourage private sector investments in non-performing assets;

(d) to eliminate existing barriers in the acquisition of non-performing assets;

(e) to help in the rehabilitation of distressed businesses with the end in view of contributing to economic value added; and

(f) to improve the liquidity of the financial system which can be harnessed to propel economic growth.

SEC. 3. ***Definitions.*** – For purposes of these Regulations, the term:

(a) "**Act**" shall refer to Republic Act No. 9182, otherwise known as "The Special Purpose Vehicle Act of 2002".

(b) "**Appropriate Regulatory Authority**" refers to the agency/authority having jurisdiction over the Financial Institution's (FI's) operations, which shall be the following:

(1) *Bangko Sentral ng Pilipinas* (BSP) – in the case of banks, which include Land Bank of the Philippines (LBP) and Development Bank of the Philippines (DBP), and trust and quasi-banking functions of financing companies and investment houses licensed by the BSP;

(2) Department of Finance (DOF) – in the case of the Philippine Deposit Insurance Corporation (PDIC) and Government-owned-or-controlled-corporations (GOCCs), in consultation with other agencies that have primary jurisdiction over the said FIs whenever deemed appropriate by the DOF; and

(3) Securities and Exchange Commission (SEC) – in the case of financing companies and investment houses, except their trust and quasi-banking functions, or any qualified entity not under the DOF or BSP.

(c) "**Certificate of Eligibility or COE**" refers to the certificate issued by the Appropriate Regulatory Authority as to the eligibility of the NPL or ROPOA for purposes of availing of the tax exemptions and privileges, and which, if applicable, likewise indicates its approval of the transfer of the NPAs from the FI to an SPV/Individual being in the nature of a "true sale", pursuant to the provisions of the Act and its implementing rules and regulations.

(d) "**Dation in payment (*dacion en pago*)**" refers to a payment whereby property, whether real or personal, tangible or intangible, is alienated in favor of the creditor, which could either be an FI or an SPV, in satisfaction of a non-performing loan: *Provided*, That the term does not include other forms of transfer such as judicial or extra-judicial foreclosure and execution of judgment.

(e) **"Financial Institution or FI"** shall be limited to the following credit granting institutions:

(1) *Bangko Sentral ng Pilipinas* (BSP);

(2) Bank as defined under Republic Act No. 8791, also known as "The General Banking Law";

(3) Financing company as defined under Republic Act No. 8556 (also known as "The Financing Company Act of 1998");

(4) Investment house as defined in Presidential Decree No. 129 (also known as "The Investment Houses Law");

(5) Government financial institutions (GFIs), which shall be limited to the Philippine Deposit Insurance Corporation (PDIC), Land Bank of the Philippines (LBP), and Development Bank of the Philippines (DBP);

(6) Government-owned-or-controlled-corporations (GOCCs), which shall be limited to the National Home Mortgage Finance Corporation (NHMFC), Home Guaranty Corporation (HGC), Home Development Mutual Fund (HDMF), Social Security System (SSS), Government Service Insurance System (GSIS), Trade and Investment Development Corporation (TIDCORP), Small Business Guarantee and Finance Corporation (SBGFC), Technology and Livelihood Resource Center (TLRC), Livelihood Corporation (LIVECOR), National Development Corporation (NDC), Quedan and Rural Credit Guarantee Corporation (QUEDANCOR), National Housing Authority (NHA), and Armed Forces of the Philippines – Retirement and Separation Benefits System (AFP-RSBS); and

(7) Other institutions licensed by the BSP to perform quasi-banking functions: *Provided*, That a "non-bank financial institution performing quasi-banking functions" refers to a financing company, investment house or other institution licensed by the BSP to perform quasi-banking functions;

(f) **"Non-Performing Asset or NPA"** consists of Non-Performing Loans (NPLs) of, and Real and Other Properties Owned or Acquired (ROPOAs) by, FIs for which a COE was issued by the Appropriate Regulatory Authority.

(g) **"Non-Performing Loan or NPL"** refers to loans and receivables, such as mortgage loans, unsecured loans, consumption loans, trade receivables, lease receivables, credit card receivables and all registered and unregistered security and collateral instruments, including, but not limited to, real estate mortgages, chattel mortgages, pledges, and antichresis whose principal and/or interest has remained unpaid for at least one hundred eighty (180) days after they have become past due or any of the events of default under the loan agreement has occurred, as of June 30, 2002, as certified by the Appropriate Regulatory Authority.

(h) "**ROPOA**" refers to real and other properties owned or acquired by an FI in settlement of its loans and receivables, including, but not limited to real properties, shares of stock, and chattel formerly constituting collateral for secured loans, by way of dation in payment (*dacion en pago*), judicial or extra-judicial foreclosure, or execution of judgment, as of June 30, 2002; and to such real and other properties acquired by an FI after June 30, 2002, through the same modes in settlement of a loan or receivable classified as NPL as of June 30, 2002; in either case as certified by the Appropriate Regulatory Authority: *Provided*, That, only for the purpose of this definition, a property is deemed acquired on:

(1) The date of notarization of the "Deed of *Dacion*" in case of dation in payment (*dacion en pago*);

(2) The date of the entry of judgment in case of judicial foreclosure; or

(3) The date of notarization of the "Sheriff's Certificate" in case of extra-judicial foreclosure;

Provided, further, That this definition does not include real and other properties owned or acquired by an SPV in settlement of its loans and receivables acquired from an FI or otherwise.

i) **Single Family Residential Unit** – shall refer to a building or structure that will be used for residential purposes.

Chapter II

SPECIAL PURPOSE VEHICLE

SEC. 4. ***Registration requirements for SPV.*** –

(a) *Requirements.* – Every SPV shall register once with the appropriate Revenue District Office on or before the commencement of its business, in accordance with the provisions of Chapter II of Title IX of the National Internal Revenue Code (NIRC) of 1997 and its implementing regulations. An SPV maintaining a head office, branch or facility shall register with the Revenue District Offices having jurisdiction over the head office, branch or facility. The term **'facility'** shall include, but shall not be limited to, sales outlets, warehouses or storage places.

(b) *Required Documents.* – The SPV shall file its application for registration together with the following documents:

(1) "Certificate of Registration" as an SPV issued by the SEC;

(2) Articles of Incorporation and By-Laws; and

(3) Mayor's Permit.

(c) *Annual Registration Fee.* – An annual registration fee in the amount of Five hundred pesos (P500.00) for every separate or distinct establishment or place of business, including facility types where sales transactions occur, shall be paid by an SPV upon registration and every year thereafter on or before the last day of January. The registration fee shall be paid to an authorized agent bank (AAB) located within the revenue district, or to the Revenue Collection Officer, or duly authorized Treasurer of the city or municipality where each place of business or branch is registered.

(d) *Registration of Each Type of Internal Revenue Tax.* – An SPV shall register each type of internal revenue tax for which it is obligated to file a return and pay such taxes in accordance with the pertinent provisions of the NIRC of 1997 and its implementing revenue regulations, and update such registration of any changes in accordance with Subsection (f) hereof: *Provided*, That, unless otherwise exempted under the Act, an SPV shall be subject to all applicable taxes imposed by the NIRC of 1997 such as, but not limited to, income tax, value-added tax (VAT), other percentage taxes, documentary stamp tax (DST) etc., whichever is applicable: *Provided, further*, That an SPV shall be considered a withholding agent, and shall be required to file withholding tax returns and remit taxes withheld, on all income payments that are subject to withholding tax.

(e) *Transfer of Registration.* – In case a registered SPV decides to transfer its place of business or its head office or branches, it shall be its duty to update its registration status by filing an application for registration information update in the form prescribed therefor.

(f) *Other Updates.* – A registered SPV shall, whenever applicable, update its registration information with the Revenue District Office where it is registered, specifying therein any change in tax type and other taxpayer details.

(g) *Cancellation of Registration.* – The registration of an SPV shall be cancelled upon filing with the Revenue District Office where it is registered, an application for cancellation in a form prescribed therefor.

SEC. 5. ***Issuance of receipts or sales or commercial invoices.*** –

All SPVs shall, for each sale or transfer of merchandise or for services rendered valued at Twenty-five pesos (P25.00) or more, issue duly registered receipts or sales or commercial invoices, prepared at least in duplicate, showing the date of transaction, quantity, unit cost and description of merchandise or nature of service: *Provided, however*, That in the case of sales, receipts or transfers in the amount of One hundred pesos (P100.00) or more, or regardless of amount, where the sale or transfer is made by an SPV liable to VAT to another person also liable to VAT; or where the receipt is issued to cover payment made as rentals, commissions, compensation or fees, official receipts or sales invoices shall be issued which shall show the name, business style, if any, and address of the purchaser, customer or client: *Provided, further*, That where the purchaser is a VAT-registered person, in addition to the information herein required, the invoice or receipt shall further show the Taxpayer Identification Number (TIN) of the purchaser.

The original of each receipt or invoice shall be issued to the purchaser, customer or client at the time the transaction is effected, who, if engaged in business or in the exercise of profession, shall keep and preserve the same in his place of business for a period of three (3) years from the close of the taxable year in which such invoice or receipt was issued, while the duplicate shall be kept and preserved by the SPV, also in its place of business, for a like period, unless a longer period of preservation is required by the circumstances.

SEC. 6. ***Keeping of books of accounts.*** – All SPVs shall keep a journal and a ledger or their equivalents, in accordance with the provisions of Chapter I of Title IX of the NIRC of 1997, and its implementing revenue regulations: *Provided, however*, That those whose quarterly sales, earnings, receipts or output do not exceed Fifty thousand pesos (P50,000.00) shall keep and use a simplified set of bookkeeping records wherein all transactions and results are shown and from which all taxes due the Government may readily and accurately be ascertained and determined any time of the year: *Provided, further*, That SPVs whose gross sales, earnings, receipts or output exceed One hundred fifty thousand pesos (P150,000.00) in any quarter, shall have their books of accounts audited and examined yearly by independent Certified Public Accountants.

Chapter III

TAX EXEMPTIONS & PRIVILEGES

SEC.7. ***Tax exempt transactions.*** – (a) Pursuant to Section 15 of Article IV of the Act, only the following transactions shall be covered by the tax exemptions as provided in paragraph (d) hereof:

(1) Transfer of an NPL by an FI to an SPV;

(2) Transfer of a ROPOA by an FI to an SPV;

(3) Dation in payment (*dacion en pago*) of an NPL by a borrower to an FI;

(4) Dation in payment (*dacion en pago*) of an NPL by a third-party, on behalf of a borrower, to an FI;

(5) Transfer of an NPL by an FI to an individual;

(6) Transfer of a ROPOA by an FI to an individual;

(7) Transfer of an NPL by an SPV to a third-party;

(8) Transfer of a ROPOA by an SPV to a third-party;

(9) Dation in payment (*dacion en pago*) of an NPL by a borrower to an SPV;

(10) Dation in payment (*dacion en pago*) of an NPL by a third-party, on behalf of a borrower, to an SPV;

(11) Transfer of an NPL by an individual to a third-party; and

(12) Transfer of a ROPOA by an individual to a third-party.

For purposes of the foregoing, the term "individual" refers only to a natural person; while the term "third-party" refers to any person, natural or juridical, unless specifically excluded in the Act (e.g., an FI which transferred the NPA to the selling SPV, the parent of the said FI).

(b) The tax exemptions as provided in paragraph (d) hereof shall apply to the transactions listed in paragraph (a) above only if the NPL/ROPOA has been issued with a COE by the Appropriate Regulatory Authority.

(c) The tax exemptions as provided in paragraph (d) hereof shall apply to the transactions listed in paragraph (a) above only if the following particular requirements, where applicable, are complied, to wit:

(1) In the case of transactions (a)(1), (a)(2), (a)(5) and (a)(6) above, the transfer must be in the nature of, and approved by the Appropriate Regulatory Authority as, a "true sale", pursuant to the Act and its implementing rules and regulations: *Provided*, That, if the NPL/ROPOA is transferred to an SPV/individual for less than an adequate and full consideration in money's worth, the amount by which the fair market value of the NPL/ROPOA exceeded the value of the consideration shall not be considered as a gift under Title III, Chapter 2 of the NIRC of 1997.

(2) In the case of transactions (a)(1) to (a)(6) above, the transaction must have occurred within the period from March 19, 2003 to March 19, 2005. Thereafter, the tax exemptions provided in paragraph (d) hereof shall no longer apply.

(3) In the case of transactions (a)(7), (a)(8), (a)(11) and (a)(12) above, the NPL/ROPOA must have been acquired by the SPV or Individual from an FI within the period from March 19, 2003 to March 19, 2005, in the nature of, and approved by the Appropriate Regulatory Authority as, a "true sale", pursuant to the Act and its implementing rules and regulations; and that the transaction must have occurred within the period of five (5) years from the date of said acquisition. Thereafter, the tax exemptions provided in paragraph (d) hereof shall no longer apply.

(4) In the case of transactions (a)(9) and (a)(10) above, the dation in payment must be in settlement of an NPL that has been acquired by the SPV or Individual from an FI within the period from March 19, 2003 to March 19, 2005, in the nature of, and approved by the Appropriate Regulatory Authority as, a "true sale", pursuant to the Act and its implementing rules and regulations; and that the dation in payment must have occurred within the period of five (5) years from the date of said acquisition.

(5) In the case of transactions (a)(2) and (a)(6) above, all applicable taxes on the previous transfer of the ROPOA to the FI have been duly paid when the taxes became due or are paid thereafter but subject to appropriate increments and penalties.

(6) In the case of ROPOAs acquired by an SPV from GFIs or GOCCs which are devoted to socialized or low-cost housing, they shall not be converted to other uses.

(7) In the case of transactions (a)(3), (a)(4), (a)(9), and (a)(10) above, the tax exemptions provided in paragraph (d) hereof shall apply only to the extent of the value of the property tendered as payment, which is equivalent to the amount of the NPL being paid, inclusive of interests and penalties, if any: *Provided*, That the dation in payment must not be intended to circumvent the intention of the Act which is to benefit solely the borrower and the FI.

The value of the property being transferred as payment is its fair market value as determined in accordance with Section 6(E) of the NIRC of 1997, whereas the consideration for such transfer shall be the value of the NPL including interests and other charges, if any, as stated in the *Deed of Dacion*.

(8) In the case of transactions (a)(5), (a)(6), (a)(11), and (a)(12) above, the transaction shall be limited to a single family residential unit ROPOA, or an NPL secured by a real estate mortgage on a residential unit: *Provided, however*, That the tax exemptions provided in paragraph (d) hereof shall apply only to one acquisition of NPA (either NPL or ROPOA) by an individual and to the subsequent transfer of the same NPA.

(9) In the case of transactions (a)(1), (a)(2), (a)(5), (a)(6), (a)(7), (a)(8), (a)(11), and (a)(12) above, the tax exemptions provided in paragraph (d) hereof shall not apply to the transfer of any property in exchange for such NPL/ROPOA, unless the same is exempted under a pertinent provision of an existing law such as paragraph (a) hereof.

(10) In the case of transaction (a)(4) and (a)(10) above, the tax exemptions provided in paragraph (d) hereof shall not extend to any transaction or agreement between the borrower and the third-party as a result of the latter paying the former's NPL on its behalf.

(d) The transactions enumerated in paragraph (a) above, subject to the conditions set forth in paragraphs (b) and (c) above, shall be exempt from the following taxes:

(1) Documentary stamp tax (DST) on any document evidencing the transfer or dation in payment as may be imposed under Title VII of the NIRC of 1997, the last phrase of Section 173 of said Code notwithstanding;

(2) Capital gains tax (CGT) imposed on the transfer of land and/or building treated as capital asset in the hands of the transferor, as defined under Section 39(A)(1) of the NIRC of 1997;

(3) Creditable withholding income taxes imposed on the transfer of land and/or building treated as ordinary asset in the hands of the transferor pursuant to Revenue Regulations No. 2-98, as amended: *Provided*, That this shall not include exemption from income tax under Title II of the NIRC of 1997. The transfer by an FI or by an SPV of its NPA which is treated as its ordinary asset shall continue to be subject to the ordinary corporate income tax or minimum corporate income tax, as the case may be, under pertinent provisions of the NIRC of 1997.

(4) Value-added tax (VAT) as may be imposed under Title IV of the NIRC of 1997, or gross receipts tax under Title V thereof, whichever is applicable: *Provided*, That in case of a VAT-exemption and pursuant to Section 110(A)(3) of the NIRC of 1997, the following rules shall apply:

(i) if the property being transferred was intended for sale, for conversion into or intended to form part of a finished product for sale, for use as supplies in connection with trade or business, or as supplies in the sale of services, by a VAT-registered person, the input tax which can be directly attributed to the said property shall not be allowed as input tax to the transferor's other VATable activities;

(ii) if the property being transferred is a capital good used in the trade or business of a VAT-registered person, the input tax on the said property shall be allocated as follows: the depreciated book value of the property over its acquisition cost, multiplied by the input tax directly attributed to the said property shall not be allowed as input tax to the transferor's other VATable activities; and

(iii) the amount of the unallowable input taxes as determined in paragraphs (i) and (ii) above, if previously debited to "Input Taxes", shall be charged back to the property under the following adjusting entry:

Dr. Inventory/Supplies/Asset	x x x	
Cr. Input Taxes		x x x

(e) Illustrations:

Example 1: Transfer of NPL from FI to SPV

If an FI transfers its NPL with a book value of P100,000.00 to an SPV in exchange for a land with a fair market value of P50,000.00, plus debt instrument with a face value of P20,000.00, then

(i) the loss of P30,000.00 incurred by the FI shall not be considered as a gift and, therefore, is not subject to donor's tax;

(ii) the debt instrument transferred/issued to the FI shall be subject to DST; and

(iii) the transfer of the land to the FI shall be subject to either capital gains tax or creditable withholding tax, and DST, unless the transfer is exmepted under a pertinent provision of an existing law.

Example 2: Transfer of NPA from SPV to third-party

If an SPV transfers an NPL with a book value of P100,000.00 acquired from an FI on March 27, 2003, within 5 years therefrom, to any person other than the same FI, in exchange for a land with a fair market value of P50,000.00, plus debt instrument with a face value of P20,000.00, then

(i) the transfer of the NPL shall not be subject to VAT;

(ii) the insufficiency in the consideration received by the SPV in the amount of P30,000.00 shall be considered as a gift and, therefore, is subject to donor's tax;

(iii) the debt instrument issued/transferred to the SPV shall be subject to DST; and

(iv) the transfer of the land to the SPV shall be subject to either capital gains tax or creditable withholding tax, and DST, unless the transfer is exempted under a pertinent provision of an existing law.

Example 3: Transfer of ROPOA from FI to SPV, then to a third-party

An FI acquired on January 31, 2003, a land through extra-judicial foreclosure of a mortgage, which was an NPL as of June 30, 2002. The land is then sold to an SPV on January 31, 2004. The SPV builds a house on the land and sells it to a third-party. Hence,

(i) the extra-judicial foreclosure sale to the FI is not covered by the exemption for it is not a dation in payment;

(ii) the transfer of the land (being a ROPOA of the FI) to the SPV is covered by the tax exemption – it was acquired by the FI in settlement of an NPL; and

(iii) the transfer of the land from the SPV to the third-party is covered by the tax exemption BUT the transfer of the house thereon is not covered by the tax exemption – it is not a ROPOA acquired from an FI.

Example 4: Dation in payment by borrower

If a borrower transfers its "PLDT shares" (classified as capital asset with a FMV of P100,000.00), which cost it P20,000.00 to acquire, to an SPV in settlement of its NPL of P70,000.00, then:

(i) the transfer is exempt from CGT but only to the extent of P70,000.00, less the expenses and the cost allocated thereto at 7/10 of P20,000.00, and also from the DST to the extent of 7/10 of the par value of the PLDT shares; and

(ii) the transfer is subject to CGT based on the difference of P30,000.00, less the expenses and the cost allocated thereto at 3/10 of P20,000.00,and to the DST based on 3/10 of the par value of the PLDT shares.

On the other hand, if a borrower transfers its truck used in business (with a book value of P90,000.00) to an SPV in settlement of an NPL of P100,000.00, then:

(i) the transfer is exempt from VAT, subject to the provisions of Sec. 110(A)(3) of the NIRC of 1997; and

(ii) the borrower is liable for income tax on the gain of P10,000.00.

Example 5: Dation in payment by third-party

If a third-party, in behalf of the borrower, transfers its land (classified as capital asset with a FMV of P100,000.00) to an FI in settlement of an NPL of P70,000.00, without any intention of claiming reimbursement from the said borrower, then:

(i) the transfer is exempt from CGT and DST, but only to the extent of P70,000.00;

(ii) the transfer is subject to CGT and DST on the difference of P30,000.00; and

(iii) the third-party is liable for donor's tax by paying the borrower's NPL of P70,000.00.

On the other hand, if a third-party, in behalf of the borrower transfers its VATable land (with a book value of P70,000.00 and a FMV of P120,000.00) to an FI in settlement of an NPL of P100,000.00 because the said borrower gave P80,000.00 to the said third-party, then:

(i) the transfer is exempt from VAT subject to the provisions of Sec. 110(A)(3) of the NIRC of 1997;

(ii) the transfer is exempt from creditable withholding income tax and DST;

(iii) the third-party is liable for income tax on its gain of P10,000.00; and

(iv) the third-party is liable for donor's tax on the transfer for insufficient consideration where the insufficiency in the consideration amounts to P40,000.00 (P120,000.00 – P80,000.00).

SEC. 8. ***Additional tax exemptions for an SPV.*** –

(a) The SPV shall be exempt from income tax on the net interest income arising from new loans in excess of existing loans, which are extended to a borrower with NPL that has been

acquired by the said SPV from an FI within two (2) years from March 19, 2003 and which are solely for the purpose of rehabilitating the borrower's business. The term "net interest income" shall mean gross interest income less allowable deductions attributable thereto; hence, the said allowable deductions shall no longer be allowed as a deduction from the SPV's other taxable gross income.

(b) Any document evidencing the new loans mentioned in paragraph (a) above shall be exempt from DST.

(c) Any document evidencing an SPV's capital infusion to the business of the borrower with an NPL that has been acquired by the said SPV from an FI within two (2) years from March 19, 2003, shall be exempt from DST.

Provided, That the above-mentioned tax exemptions shall apply only for a period of not more than five (5) years from the date of acquisition of the borrower's NPL by the said SPV.

Illustration of the "net interest income"

SPV acquires NPL with a principal amount of P100,000.00, then lends P200,000.00 to the borrower, making a total exposure of P300,000.00, and sets the interest at 20% *per annum*. Assuming its total annual gross income is P100,000.00 (this is different from the principal amount of P100,000.00), and its total annual allowable deductions is P80,000.00, then:

(i) The P200,000.00 new loan is exempt from DST;

(ii) The SPV shall be exempt from income tax on the "net interest income" computed as follows:

Gross income (P300,000.00 x 20% x 200Th/300Th)	P40,000.00
Less: Allowable deductions (P80Th x 40Th/100Th)	32,000.00
Net interest income (income tax exempt)	P 8,000.00

(iii) The SPV's taxable gross income shall then be computed as follows:

Gross income (P100,000.00 less P40,000.00)	P60,000.00
Less: Allowable deductions (P80,000.00 less P32,000.00)	48,000.00
Net taxable income	P12,000.00

SEC. 9. ***Privileges of an FI.*** – Any loss that is incurred by an FI as a result of transferring its NPA to an SPV within the period of two (2) years from March 19, 2003, excluding accrued interests and penalties receivable, and which had not been previously offset as deduction from gross income, shall be treated as ordinary loss, and may be carried over as a deduction from its taxable gross income for a period of five (5) consecutive taxable years immediately following the year of the transfer that resulted to such loss: *Provided*, That the "tax savings" derived by the FI from such loss carry-over shall not be made available for dividend declaration, but shall be retained as a form of capital build-up: *Provided, further*, That the FI cannot enjoy this privilege if it enters into a merger, consolidation, or combination with another person, unless, as a result of such merger, consolidation or combination, the shareholders of the said FI gains control of at least 75% or more in nominal value of the outstanding issued shares or paid up capital of the surviving/new corporation: *Provided, finally*, That the FI shall continue to

be subject to the minimum corporate income tax (MCIT) of two percent (2%) of its gross income as of the end of the taxable year pursuant to Sec. 27 or Sec. 28 of the NIRC of 1997, whichever is applicable, notwithstanding the above provisions.

For purposes of the foregoing, the term "tax savings" shall mean the excess of the normal income tax due from the FI without the benefit of the loss carry-over under the Act, over and above the normal income tax due after availing the said loss carry-over for a particular taxable year: *Provided, however*, That, in case the FI is liable for an MCIT despite the benefit of the said loss carry-over, the excess of the MCIT over and above the normal income tax due from the FI after availing the said loss carry-over for a particular taxable year shall no longer be considered as a "tax savings" if the same cannot be credited against the normal income tax for any of the three (3) immediately succeeding taxable years: *Provided, further*, That the "tax savings", if there be any, shall be recognized in the books of accounts of the FI and shall appear on its financial statements.

Illustrative computations of loss carry-over and "tax savings". – The computation of the loss carry-over and the application of the rules prescribed in the preceding paragraph are illustrated in the following examples:

(a) Sale of NPAs to SPV in 2003:

Total NPAs sold	P100,000.00
Less: Total consideration received	70,000.00
Total loss from sale of NPAs	P 30,000.00
Less: Accrued interests/penalties (capital loss)	20,000.00
Loss that may be carried over for 5 years	P 10,000.00

Illustrative journal entry:

Dr. Cash/Property	P 70,000.00	
Dr. Loss from sale of NPAs	10,000.00	
Dr. Loss on sale of accrued interests/penalties	20,000.00	
Cr. NPLs/ROPOAs		P100,000.00
To record sale of NPAs.		

(b) Taxable year 2003 – gross income of P500,000.00; allowable deductions of P495,000.00; and ordinary loss carry-over of P6,000.00:

Gross income		P500,000.00
Less: Allowable deductions	P495,000.00	
Ordinary loss carry-over (3-yr limit)	6,000.00	501,000.00
Ordinary loss to be carried over		P 1,000.00
Less: Loss from sale of NPAs (5-yr limit)		10,000.00
Total net loss carry-over		P 11,000.00
Normal income tax before loss		Zero
Normal income tax after loss		Zero
MCIT		P 10,000.00

Income tax due (MCIT)		P 10,000.00
Excess MCIT[1] (P10,000.00 less Zero)		P 10,000.00
Tax savings		None[2]

Illustrative journal entry:

Dr. Excess MCIT	10,000.00	
Cr. Income tax payable		P 10,000.00
To record excess MCIT.		

(c) Taxable year 2004 – gross income of P300,000.00; and allowable deductions of P295,000.00:

Gross income		P300,000,000
Less: Allowable deductions	P295,000.00	
Ordinary loss carry-over	1,000.00	296,000.00
Net income before loss from sale of NPAs		P 4,000.00
Less: Loss carry-over from sale of NPAs		10,000.00
Loss from sale of NPAs to be carried over (4-yrs)		P 6,000.00
Normal income tax before loss from sale of NPAs		P 1,280.00
Normal income tax after loss from sale of NPAs		Zero
Minimum corporate income tax		P 6,000.00
Income tax due (MCIT)		P 6,000.00
Excess MCIT (P6,000.00 less Zero)		P 6,000.00
Tax savings (P1,280.00 less Zero)		P 1,280.00[3]

Illustrative journal entry:

Dr. Excess MCIT	P 6,000.00	
Dr. Retained earnings	1,280.00	
Cr. Income tax payable		P 6,000.00
Cr. Reserve for capital build-up – NOLCO/SPV		1,280.00

To record the excess MCIT, and to set up the tax savings on NOLCO derived from the sale of NPAs, computed as follows: (P4,000.00 x 32%) less Zero

(d) Taxable year 2005 – gross income of P200,000.00; and allowable deductions of P160,000.00:

Gross income	P200,000.00

[1] Note: The excess MCIT of P10,000.00 shall be carried forward on an annual basis and credited against the normal income tax for the three (3) immediately succeeding taxable years. However, such excess MCIT is creditable only against the normal income tax and not against the MCIT itself.

2 Reason: There is no loss carried-over from the previous year.

3 Reason: The excess MCIT for this year should have been P4,720.00 only (P6,000.00 less P1,280.00); but with the loss carry-over from the transfer of NPAs, the excess MCIT would now be P6,000.00.

Less: Allowable deductions		160,000.00
Net income before loss from sale of NPAs		P 40,000.00
Less: Loss carry-over from sale of NPAs		6,000.00
Net taxable income		P 34,000.00
Normal income tax before loss from sale of NPAs		P 12,800.00
Normal income tax after loss from sale of NPAs		P 10,880.00
Minimum corporate income tax		P 4,000.00
Income tax due		P 10,880.00
Less: Excess MCIT - 2003	P 10,000.00	
Excess MCIT - 2004	6,000.00	P 16,000.00
Balance of excess MCIT - 2004		P 5,120.00
Tax savings (P12,800 less P10,880)		P 1,920.00

Illustrative journal entry:

Dr. Income tax expense	P10,880.00	
Dr. Retained Earnings	1,920.00	
Cr. Excess MCIT		P10,880.00
Cr. Reserve for capital build-up – NOLCO/SPV		1,920.00

To record income tax expense (P34,000.00 x 32%); reduction of excess MCIT; and amortization of NOLCO/SPV (P6,000.00 x 32%)

SEC. 10. ***True sale.*** – Any transfer of NPAs not in the nature of a "true sale" as provided in the Act and its implementing rules and regulations shall not qualify for any of the tax exemptions granted under the Act.

SEC. 11. ***Investment Unit Instruments or IUIs.*** – (a) These refer to participation certificates, debt instruments or similar instruments issued by an SPV and subscribed by Permitted Investors as provided in Section 11 of the Act, pursuant to an Approved Plan: *Provided,* That these shall not include the instruments to be issued by an SPV to the selling FIs as full or partial settlement of the NPAs transferred to the said SPV: *Provided, further*, That these shall not form part of the capital stock of the SPV.

(b) IUIs issued by an SPV shall not be considered as deposit substitutes and any interest or other monetary benefit derived from IUIs is not subject to the twenty-percent (20%) final income tax under Secs. 24(B)(1), 25(A)(2), 27(D)(1), and 28(A)(7) of the NIRC: *Provided, however*, That the IUI and any such income derived from IUIs shall be subject to the normal income tax and/or such other applicable taxes, including but not limited to, documentary stamp tax imposed under the NIRC and its implementing regulations.

Chapter III

PROCEDURAL GUIDELINES

SEC. 12. ***Certificate of Eligibility.*** – (a) The COE issued by the Appropriate Regulatory Authority shall serve as a *prima facie* proof of an NPL/ROPOA being an NPA within the purview of the Act and its implementing rules and regulations without the need of a prior BIR determination/ruling. If applicable, it shall likewise serve as a *prima facie* proof that the transfer from an FI to an SPV is in the nature of a "true sale" within the purview of the Act and its implementing rules and regulations without the need of a prior BIR determination/ruling.

(b) Each COE shall be valid for only one transfer; every transfer shall require a separate COE from the Appropriate Regulatory Authority. It shall indicate, among others, the name of the borrower, the name of the FI owning the NPA, the date granted/acquired, manner of acquisition, name of the person from whom the NPA was acquired by the FI, particulars of the NPL/ROPOA, and the name of the transferee (if applicable).

(c) To ensure the authenticity of the COE, the Appropriate Regulatory Authority shall coordinate with and furnish the Commissioner of the BIR an original duplicate copy thereof, in addition to the complete list of NPAs (NPLs and ROPOAs) of every FI which may be submitted by the appropriate regulatory authority or the FI, itself.

SEC. 13. ***Transfers of real property located in the Philippines.*** – (a) No registration of any document transferring real property covered by the tax exemptions granted under the Act shall be effected by the Register of Deeds unless the Commissioner or his duly authorized representative has issued a Certificate Authorizing Registration after such transfer has been reported, and that the BIR is satisfied that the same is qualified for tax exemptions pursuant to these Regulations.

(b) Within thirty (30) days following the issuance of a COE covering each transfer of real property as mentioned in paragraph (a) above, a Capital Gains Tax Return therefor shall be filed by the transferee with the Revenue District Office (RDO) having jurisdiction over the place where the real property being transferred is located. The return shall be accompanied by the appropriate COE and the following documentary requirements:

(i) taxpayer's identification number (TIN) and certificate of SEC registration (in the case of an FI/SPV) of both the transferor and transferee;
(ii) notarized Deed of Dation/Transfer;
(iii) Original/Transfer Certificate of title (OCT/TCT), Condominium Certificate of Title (CCT), or any other document showing proof of ownership over the real property tendered as payment for the NPL;

(iv) certified true copy of the latest Tax Declaration for land and improvement as of the date of the transaction and/or sworn Declaration of No Improvement by the transferee or Certificate of No. Improvement issued by the assessor;
(v) the promissory note/s and/or other loan document/s, in case of dation in payment;
(vi) the Certificate Authorizing Registration (CAR) and the Tax Clearance Certificate (TCL) issued by the BIR for the previous transfer, if the transferor is an FI;
(vii) copy of the agreement between the Borrower and the third-party who made the dation in payment on behalf of the former (if applicable); and

(c) Upon presentation of the Capital Gains Tax Return, together with the corresponding COE and the documentary requirements as mentioned in the preceding paragraph, the Revenue District Office (RDO) where the property being transferred is located, shall issue the corresponding Tax Clearance Certificate (TCL) and Certificate Authorizing Registration (CAR) for the registration of the real property in favor of the transferee: *Provided*, That, in case the transferor is an FI, no such TCL/CAR shall be issued unless all applicable taxes on the previous transfer to the FI have been duly paid when the taxes became due or are paid thereafter but subject to appropriate increments and penalties.

SEC. 14. ***Transfers of shares of stocks in a domestic corporation.*** – (a) No sale, exchange, transfer or similar transaction intended to convey ownership of, or title to any share of stock in a domestic corporation, covered by the tax exemptions granted under the Act, shall be registered in the books of the corporation unless the Commissioner or his duly authorized representative has issued a Certificate Authorizing Registration after such transfer has been reported, and that the BIR is satisfied that the same is qualified for tax exemptions pursuant to these Regulations.

(b) Within thirty (30) days following the issuance of a COE covering each sale, transfer or other disposition of shares of stock as mentioned in paragraph (a) above, a Capital Gains Tax Return therefor shall be filed by the transferor with the Revenue District Office (RDO) or Collection Agent or duly authorized Treasurer of the city or municipality where such person is required by law to register. The return shall be accompanied by the appropriate COE and the following documentary requirements:

(i) taxpayer's identification number (TIN) and certificate of SEC registration (in the case of an FI/SPV) of both the transferor and transferee;
(ii) notarized Deed of Transfer;
(iii) Certificate of the shares of stock used to pay the NPL; and
(iv) for listed shares of stocks, certification from the Philippine Stock Exchange of the price index on the nearest date to the time of the transfer;
(v) for unlisted shares of stocks, audited financial statements of the issuing corporation with a computation of the book value per share, nearest the time of the transfer;
(vi) the promissory note/s and/or other loan document/s, in case of dation in payment;

(vii) the tax Clearance Certificate (TCL) and the Certificate Authorizing Registration (CAR) issued by the BIR for the previous transfer, if the transferor is an FI;

(viii) copy of the agreement between the Borrower and the third-party who made the dation in payment on behalf of the former (if applicable); and

(c) Upon presentation of the Capital Gains Tax Return, together with the corresponding COE and the documentary requirements as mentioned in the preceding paragraph, the concerned Revenue District Office (RDO) shall issue the corresponding Tax Clearance Certificate (TCL) and Certificate Authorizing Registration (CAR) for the registration of the shares of stocks in favor of the transferee in the books of the corporation: *Provided*, That, in case the transferor is an FI, no such TCL and CAR shall be issued unless all applicable taxes on the previous transfer to the FI have been duly paid when the taxes became due or are paid thereafter but subject to appropriate increments and penalties.

SEC. 15. ***Other exempt transactions and tax privileges.*** – An SPV claiming any of the tax exemptions and privileges under the Act on other transactions shall upon request provide the appropriate COE to the Commissioner of the BIR or his duly authorized representative for purposes of examining any taxpayer and the assessment of the correct amount of tax. This is in addition to such other documentary requirements as stated above.

SEC. 16. ***Reports to be submitted by an SPV.*** – The SPV shall, in addition to the existing requirements under the NIRC of 1997 and its implementing regulations, for purposes of implementing the provisions of the Act, submit to the BIR the following:

(a) List of taxable transactions;

(b) List of tax-exempt transactions;

(c) List of partly tax-exempt and partly taxable transactions.

SEC. 17. ***Abuse of tax exemptions and privileges.*** – Any person, natural or juridical, who benefits from the tax exemptions and privileges herein granted, when such person is not entitled thereto, shall refund to the government double the amount of the tax exemptions and privileges availed of under the Act, plus interest of twelve percent per year from the date prescribed for its payment until the full payment thereof: *Provided*, That this is without prejudice to the applicable penalties under the NIRC of 1997.

SEC. 18. ***Transitory Provisions.*** – Any existing document or instrument which may qualify for the tax exemption and other privileges under the Act shall be presented/submitted to the Revenue District Office concerned within thirty (30) days from the effectivity of these regulations, otherwise the pertinent penalties incident to late filing shall be imposed.

SEC. 19. ***Incorporation Clause.*** – All existing rules and regulations, rulings, orders or parts thereof which are not inconsistent with any of the above provisions are hereby adopted and incorporated as part of these regulations.

SEC. 20. ***Repealing Clause.*** – All existing rules and regulations or parts thereof, which are inconsistent with the provisions of these regulations, are hereby revoked.

SEC. 21. ***Effectivity.*** – These Revenue Regulations shall take effect after fifteen (15) days following publication in a newspaper of general circulation.

(Original Signed)
JUANITA D. AMATONG
Secretary of Finance

Recommending approval:

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