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

June 21, 2004

REVENUE REGULATIONS NO. 9-2004

SUBJECT : **Implementing Certain Provisions of Republic Act No. 9238, Re-Imposing the Gross Receipts Tax on Banks and Non-Bank Financial Intermediaries Performing Quasi-Banking Functions and Other Non-Bank Financial Intermediaries Beginning January 1, 2004.**

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

SECTION 1. Pursuant to the provisions of Section 244 in relation to Sections 121 and 122 of the National Internal Revenue Code of 1997 (Code), these Regulations are hereby promulgated in order to implement Sections 3 and 4 of Republic Act No. 9238 re-imposing the gross receipts tax on banks and non-bank financial intermediaries performing quasi-banking functions and other non-bank financial intermediaries, beginning January 1, 2004.

SEC. 2. DEFINITION OF TERMS. – For purposes of these Regulations, the terms enumerated hereunder shall have the following meaning:

2.1. Financial Institution — shall refer to banks, non-bank financial intermediaries performing quasi-banking functions, and other non-bank financial intermediaries including finance companies. This does not, however, include insurance companies.

2.2. Banks or Banking Institutions — shall refer to those entities as defined in Section 3 of Republic Act No. 8791, as amended, otherwise known as the General Banking Law of 2000. The term "banks" or "banking institutions" are synonymous and interchangeable and specifically include universal banks, commercial banks, thrift banks (savings and mortgage banks, stock savings and loan associations, and private development banks), cooperative banks, rural banks, Islamic banks and other classifications of

banks as may be determined by the Monetary Board of the Bangko Sentral ng Pilipinas.

2.3. Non-bank Financial Intermediaries — shall refer to persons or entities whose principal functions include the lending, investing or placement of funds or evidences of indebtedness or equity deposited with them, acquired by them or otherwise coursed through them, either for their own account or for the account of others. This includes all entities regularly engaged in the lending of funds or purchasing of receivables or other obligations with funds obtained from the public through the issuance, endorsement or acceptance of debt instruments of any kind for their own account, or through the issuance of certificates of assignment or similar instruments with recourse, trust certificates, or of repurchase agreements, whether any of these means of obtaining funds from the public is done on a regular basis or only occasionally.

2.4. Quasi–banking Activities — shall refer to the borrowing of funds from twenty (20) or more personal or corporate lenders at any one time, through the issuance, endorsement or acceptance of debt instruments of any kind other than deposits for the borrower's own account, or through the issuance of certificates of assignment or similar instruments, with recourse, or of repurchase agreements for purposes of relending or purchasing receivables and other similar obligations. Provided, however, that commercial, industrial and other non-financial companies, which borrows funds through any of these means for the limited purpose of financing their own needs or the needs of their agents or dealers, shall not be considered as performing quasi-banking functions.

2.5. Deposit Substitutes — shall refer to an alternative form of obtaining funds from the public (the term 'public' means borrowing from twenty [20] or more individual or corporate lenders at any one time), other than deposits, through the issuance, endorsement, or acceptance of debt instruments for the borrower's own account, for the purpose of relending or purchasing of receivables and other obligations, or financing their own needs or the needs of their agent or dealer. These instruments may include, but need not be limited to, bankers' acceptances, promissory notes, repurchase agreements, including reverse repurchase agreements entered into by and between the Bangko Sentral ng Pilipinas (BSP) and any authorized agent bank, certificates of assignment or participation and similar instruments with recourse: Provided, however, That debt instruments issued for inter-bank call loans with maturity of not more than five (5) days to cover deficiency in reserves against deposit liabilities including those between or among banks and quasi-banks shall not be considered as deposit substitute debt instruments.

2.6. Insurance Companies — shall refer to entities that undertakes for a consideration to indemnify another (insured) against loss, damage or liability arising from an unknown or contingent event.

2.7. Financing Companies — shall refer to corporations except banks, investments houses, savings and loan associations, insurance companies, cooperatives, and other financial institutions organized or operating under other special laws, which are primarily organized for the purpose of extending credit facilities to consumers and to industrial, commercial, or agricultural enterprises, by direct lending or by discounting or factoring commercial papers or accounts receivables, or by buying and selling contracts, leases, chattel mortgages, or other evidences of indebtedness, or by financial leasing of movable as well as immovable properties (R.A. No. 5980 as amended by R.A. No. 8556).

2.8. Financial Leasing — shall refer to the mode of extending credit through a non-cancellable lease contract under which the lessor purchases or acquires, at the instance of the lessee, machinery, equipment, motor vehicles, appliances, business and office machines, and other movable or immovable property in consideration of the periodic payment by the lessee of a fixed amount of money sufficient to amortize at least seventy percent (70%) of the purchase price or acquisition cost, including any incidental expenses and a margin of profit over an obligatory period of not less than two (2) years during which the lessee has the right to hold and use the leased property with the right to expense the lease rentals paid to the lessor and bears the cost of repairs, maintenance, insurance and preservation thereof, but with no obligation or option on his part to purchase the leased property from the owner-lessor at the end of the lease contract (R.A. No. 5980 as amended by R.A. No. 8556). A finance lease is a lease that transfers substantially all the risks and rewards incident to ownership of an asset. Title may or may not eventually be transferred.

2.9. Operating Lease - shall refer to a lease other than a finance lease of a finance company.

2.10. Interest Income - the term shall include interest and discounts earned on loans and investment transactions.

2.11. Securities — shall include shares of stock in a corporation and rights to subscribe for or to receive such shares; and bonds, debentures, notes or certificates, or other evidence of indebtedness issued by any corporation, including those issued by the government or political subdivision thereof, with interest coupons or in registered form.

2.12. Government Securities — shall refer to securities issued by the Republic of the Philippines or any of its agencies, instrumentalities, and political subdivisions.

2.13. Private Securities — shall refer to securities not covered by Subsection 2.12. hereof.

2.14. Gross Receipts - For purposes of these Regulations, the term shall refer to the compensation for all financial and non-financial services, or combination thereof, performed by financial institutions within the Philippines, which include:

(a.) Financial intermediation service fee;
(b) Financial leasing income;
(c) Rentals on properties, real or personal;
(d) Royalties;
(e) Commissions;
(f) Trust fees;
(g) Estate planning fees;
(h) Service fees;
(i) Other charges or fees received as compensation for services
(j) Net trading gains;
(k) Net foreign exchange gains
(l) Gain on sale or redemption of investments;
(m) Net gain from the sale of properties acquired through foreclosure lodged under the account " Real and Other Properties Owned and Acquired" (ROPOA) or under any other appropriate account, which is measured by the difference between the selling price or the consideration received for such sale and the carrying cost or book value of the asset at the time of sale as determined in accordance with the generally accepted accounting principles prescribed by the Bangko Sentral ng Pilipinas (BSP) for banks and non-bank financial intermediaries performing quasi-banking functions, or by the Securities and Exchange Commission (SEC) for other financial intermediaries; and
(n) All other receipts of gross income specified in Section 32 (A) of the Code not otherwise enumerated above.

In determining gross receipts, any amount withheld by the payor of the income as taxes, i.e., on rentals, interests, etc. shall form part thereof under the doctrine of constructive receipt of income.

SEC. 3. IMPOSITION OF GROSS RECEIPTS TAX (GRT) ON BANKS AND NON-BANK FINANCIAL INTERMEDIARIES PERFORMING QUASI-BANKING FUNCTIONS. - There shall be collected on gross receipts from sources within the Philippines by all banks and non-bank financial intermediaries performing quasi-banking functions in accordance with the following schedule:

(a) On interest, commissions and discounts from lending activities as well as income from financial leasing, on the basis of remaining maturities of instruments from which such receipts are derived :

Maturity period of five (5) years or less ---------- 5%
Maturity period is more than five (5) years ---------- 1%

(b) On dividends and equity shares in the net income of subsidiaries ---------- 0%

(c) On royalties, rentals of property, real or personal, profit from exchange and all other items treated as gross income under Section 32 of the Code---------- 5%

(d) On net trading gains within the taxable year on foreign currency, debt securities, derivatives and other similar financial instruments ---------- 5%

In computing for the net trading gain within the taxable year on items of income provided in (d) above, the figure to be reported in the monthly percentage tax return (GRT) shall be the cumulative total of the net trading gain/loss since the first month of the applicable taxable year less the figures already reflected in the previous months of the same taxable year. Provided, that net trading loss on items of income provided in (d) above may only be deducted from net trading gain on items of income provided in (d) above, but not from any other items of gross receipt to arrive at the total monthly gross receipts tax due.

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Illustrations:

ABC Bank has the following income/loss for the month of March 2004:

Interest Income with Maturity of less than five years	P	50,000.00
Rentals		50,000.00
Net trading Loss		(10,000.00)

For the month of March 2004, ABC Bank is liable for GRT amounting to P 5,000.00 computed as follow:

Interest Income with Maturity of Less than Five years	P 50,000.00	
Multiply by GRT Rate	5%	P 2,500.00
Rentals	P 50,000.00	
Multiply by GRT Rate	5%	2,500.00
TOTAL		P 5,000.00

For the month of April 2004, ABC Bank has the following income:

Interest Income with Maturity of less than five years	P 100,000.00
Rentals	50,000.00
Net trading gain	20,000.00

For the month of April 2004, ABC Bank is liable for GRT amounting to P8,000.00 computed as follow:

Interest Income with Maturity of Less than Five years	P 100,000.00	
Multiply by GRT Rate	5%	P 5,000.00
Rentals	P 50,000.00	
Multiply by GRT Rate	5%	2,500.00
Net Trading Gain for April 2004	P 20,000.00	
Less: Net Trading Loss for March 2004	(10,000.00)	
Adjusted Net Trading Gain	P10,000.00	
Multiply by GRT Rate	5%	500.00
TOTAL		P 8,000.00

Furthermore, if for the sake of this illustration, ABC Bank shall have by the end of December 2004, a cumulative net trading loss of P 50,000.00, said trading loss can no longer be carried over to taxable year 2005 and deducted against any trading gain earned on any taxable year other than the year it was incurred.

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In the case of financial leasing, the taxable gross receipts shall consist of the interest income only whereas in the case of transactions under operating lease agreements, the gross receipts is the gross rental. Whether the lease transaction is "finance lease" or "operating lease" shall be determined by the contents of the document evidencing the lease agreement or, in short, the substance of the agreement rather than the form used to evidence such agreement between the lessor and the lessee.

Provided, however, that in case the maturity period referred to in paragraph (a) is shortened thru pretermination, then the maturity period shall be reckoned to end as of the date of pretermination for purposes of classifying the transaction and the application of the correct tax rate.

Provided, further, that the generally accepted accounting principles as may be prescribed by the Bangko Sentral ng Pilipinas for the bank or non-bank financial intermediary performing quasi-banking functions shall be the basis for the calculation of the taxable gross receipts.

Provided, finally, that the financial statements from which the basis for deriving the taxable gross receipts is determined must be prepared likewise in accordance with the generally accepted accounting principles as may be prescribed by the Bangko Sentral ng Pilipinas for the bank and non-bank financial intermediary performing quasi-banking functions.

Nothing in these Regulations shall preclude the Commissioner from imposing the same tax herein provided on persons performing similar banking activities.

SEC. 4. IMPOSITION OF GROSS RECEIPTS TAX ON OTHER NON-BANK FINANCIAL INTERMEDIARIES. –Gross receipts of other non- bank financial intermediaries (non-bank financial intermediary not performing quasi-banking functions) doing business in the Philippines shall be subject to GRT at rates and on items of income provided hereunder:

(a) From interest, commissions, discounts and all other items treated as gross income under the Code ---------- 5%

(b) On interests, commissions and discounts from lending activities as well as income from financial leasing, on the basis of remaining maturities of the instruments from which such receipts are derived:

Maturity period is five (5) years or less ---------- 5%
Maturity period is more than five (5) years---------1%

In the case of financial leasing, the taxable gross receipts shall consist only of interest income (recovery of principal not included). However, in the case of transactions under operating lease agreements, the gross receipts is the gross rental amount. Whether the lease transaction is "finance lease" or "operating lease" shall be determined by the contents of the document evidencing the lease agreement or, in short, the substance of the agreement rather than the form used to evidence such agreement between the lessor and the lessee.

Provided, however, that in case the maturity period referred to in paragraph (b) is shortened thru pretermination, then the maturity period shall be reckoned to end as of the date of pretermination for purposes of classifying the transaction and the application of the correct tax rate.

Provided, further, that the generally accepted accounting principles as may be prescribed by the Securities and Exchange Commission for other non-bank financial intermediaries (non-bank financial intermediaries not performing quasi-banking functions) shall be the basis for the calculation of the taxable gross receipts.

Provided, finally, that the financial statements from which the basis for deriving the taxable gross receipts is to be determined must be prepared likewise in accordance with the generally accepted accounting principles as may be prescribed by the Securities and Exchange Commission (SEC) for other non-bank financial intermediaries (Non-bank financial intermediaries not performing quasi-banking functions).

Nothing in these Regulations shall preclude the Commissioner from imposing the same tax herein provided on persons performing similar activities.

SEC. 5. PRETERMINATION. - In case of pretermination, the maturity period shall be reckoned to end as of the date of pretermination for purposes of classifying the transaction and applying the correct rate of tax. Any adjustment in tax due caused by pre-terminations of existing agreements shall be reflected as a separate item in the GRT return covering all transactions of the month in which the pre-terminations take place.

Illustrations:

Mr. A executed on November 10, 2003 a long-term loan from Bank B in the amount of P5,000,000 payable within ten (10) years with the first installment due on or

before November 10, 2004 and the succeeding yearly installment on the same date of the subsequent years. Assume that on November 10, 2008, the loan was preterminated and that the interest paid and other fees received from year 2004 up to year 2008, amounting to P100,000 annually, were received and declared by Bank B correctly and the applicable gross receipts taxes were paid as follows:

Year	Remaining maturity	Amount of interest, etc.	Applicable tax rate	Gross receipt tax
2004	9	P100,000	1%	P1,000
2005	8	100,000	1%	1,000
2006	7	100,000	1%	1,000
2007	6	100,000	1%	1,000
2008	5	100,000	5%	5,000
			Total Gross Receipts Tax	P9,000

In 2008, upon pretermination, the loan agreement shall be reclassified and the correct gross receipt tax, including prior years, shall be recomputed on the basis of the new category as shown hereunder:

Year	Remaining maturity	Amount of interest, etc.	Applicable tax rate	Gross receipt tax
2004	4	P100,000	5%	P5,000
2005	3	100,000	5%	5,000
2006	2	100,000	5%	5,000
2007	1	100,000	5%	5,000
2008	Less than 1 year	100,000	5%	5,000
				P25,000

Total Gross Receipts Tax	P25,000
Less: Gross Receipts Tax Previously paid	9,000
Gross Receipts Tax Due as Recomputed	P16,000

SEC. 6. TIME AND VENUE FOR THE FILING AND PAYMENT OF GRT – The GRT due computed and determined in accordance with these Regulations shall be paid monthly within 20 days following the end of the taxable month using BIR Form 2551M to the concerned AAB of the RDO/LTDO/LTAID I where the taxpayer is registered or required to be registered. Provided, that, if the taxpayer is an EFPS taxpayer, the rules and regulations governing the filing of returns and payment of taxes under EFPS shall be observed.

SEC. 7. TRANSITORY PROVISIONS. –

(1) Conversion From VAT-Registered Taxpayer to That of Non-VAT Taxpayer. – Affected VAT-registered banks, non-bank financial intermediaries performing quasi-banking functions and other non-bank financial intermediaries are required to update their corresponding registration records with the concerned BIR Office by filing the necessary registration update forms (BIR Form No. 1905) converting their status from VAT-registered taxpayer to that of Non-VAT taxpayer on or before July 31, 2004. Provided, that, all Large Taxpayers that went through the centralized registration procedures at the BIR National Office in converting their status from non-VAT to VAT in year 2003 shall follow the same procedure in converting their status from VAT to non-VAT. Release of the Certificates of Registration and other registration-related documents shall likewise follow the same procedures done in 2003.

(2) Unused VAT Receipts. – Taxpayers who change status from VAT to Non-VAT as a result of RA 9238 shall be required to submit, on or before July 31, 2004, to the BIR office having jurisdiction over the taxpayers' head office an inventory of unused VAT invoice/ receipts as of February 13, 2004, the last working day prior to the publication of RA 9238 on February 16, 2004, indicating the number of booklets and the corresponding serial numbers of said unused VAT invoices/receipts. It is stressed, moreover, that starting February 16, 2004, financial institutions covered by Sections 121 and 122 of the Tax Code must be issuing non-VAT invoices/receipts as enunciated in Revenue Memorandum Circular No. 9-2004. For this purpose, financial institutions shall be allowed, up to July 31, 2004, to use unused VAT receipts included in the inventory of unused VAT receipts as of February 13, 2004 required to be submitted herein, provided, they are clearly stamped with the word " Non-VAT receipt", and countersigned by a duly-authorized officer of the financial institution-taxpayer.

Cost of unused VAT invoices/receipts, as listed in the inventory submitted, shall be allowed as an income tax deduction for taxable year 2004.

(3) Taxability of Collections Received On or Before December 31, 2003 On Account of Services to be Rendered Thereafter As Well as Services Rendered On or Before Dec. 31, 2003 the Considerations for Which Were Received Thereafter – Collections forming part of gross receipts on or before December 31, 2003 are supposed to have been subjected to VAT, the last payment date of which is January 20/25, which collection shall no longer be subject to the payment of GRT. Advance payments received on or before December 31, 2003 where the services thereof are to be rendered after such date shall not be considered as income earned beginning January 1, 2004 subject to GRT considering that the same has already been subjected to VAT in the previous year. On the other hand, services rendered prior to December 31, 2003, the considerations for which were received thereafter and therefore not reflected in any VAT return filed shall be subject to GRT.

(4) Transition Period in the Filing of Tax Return and Payment of Tax .

a. All financial institutions are required to file a VAT return and pay value added tax on or before February 20/25, 2004 for all of their transactions for the month of January 2004, without any deduction of whatsoever nature, other than the creditable VAT withheld by government institutions, such as the Bureau of Treasury and the Bangko Sentral ng Pilipinas (BSP). In addition to the foregoing, all financial institutions are required to file a gross receipt tax return and pay the gross receipt tax due on all their transactions for the month of January 2004, without any deduction or adjustment of whatsoever nature.

b. All financial institutions are required to file a VAT return and pay value added tax on or before March 20/25, 2004 for all of their transactions for the period of February 1-16, 2004, without any deduction of whatsoever nature, other than the creditable VAT withheld by government institutions, such as the Bureau of Treasury and the Bangko Sentral ng Pilipinas (BSP). In addition to the foregoing, all financial institutions are required to file a gross receipt tax return and pay the gross receipt tax due on all their transactions for the month of February 2004, without any deduction or adjustment of whatsoever nature.

c. Under the presumption that all financial institutions are in full compliance hereof, i.e., all transactions of all financial institutions are covered by NON-VAT receipt, all financial institutions shall thereafter be required to file the quarterly VAT return for the first

quarter of 2004 to cover for all of its transaction for the period beginning January 1, 2004 to February 16, 2004 reported in the two preceding paragraph under this subsection, said quarterly VAT return shall be the last VAT return to be filed by financial institutions.

Additional clarification, guidelines and procedures in the filing of VAT returns and Percentage Tax Returns (GRT) during the transition period shall be released by the Bureau of Internal Revenue through a Revenue Memorandum Circular.

(5) Excess Input Tax Credits - Excess input tax credits on hand of taxpayers whose status has changed from VAT to Non-VAT taxpayers shall be governed by Section 112 of the Tax Code.

(6.) Period Within Which Erroneously-Paid VAT of Customers May Be Refunded from the Financial Institutions-payee –For transactions entered into starting January 1, 2004 up to February 13, 2004 (the last working day before the publication of R.A. 9238) for which VAT receipts were issued, clients may refund from the financial institution-payee, on or before June 30, 2004, erroneously paid VAT provided the issued VAT receipts are surrendered to the financial institution and the latter cancels the same upon issuance of non-VAT receipts in place thereof.

(7) Period Within Which Financial Institutions May Credit against GRT Liability Erroneously Collected and Remitted VAT Subsequently Refunded to Clients –The financial institutions are allowed to credit against GRT liability reflected in either the March 2004 GRT return or the April 2004 GRT return erroneously collected and remitted VAT subsequently refunded to clients. Provided, said credit shall be substantiated by attaching to their March 2004 GRT return or the April 2004 GRT return a summary schedule of the cancelled VAT receipt reflecting the VAT Receipt Number, Date of Issuance, Name of Customer, and the Non-VAT Receipt Number of the Non-VAT Receipt Issued as Substitute. The cancelled VAT Receipt should clearly show and bear on the face thereof the word "cancelled".

(8.) Amendment of VAT Returns and Percentage Tax Returns Already Due and Filed Prior to Release of These Regulations.- VAT Returns and Percentage Tax Returns Already Due and Filed Prior to Release of These Regulations that need to be amended as a result of the issuance and requirements hereof may be filed without penalty until July 31, 2004.

SEC. 8. SEPARABILITY CLAUSE.- If any provision of this Regulations is held unconstitutional or invalid, all other provisions not affected thereby shall remain valid.

SEC 9. REPEALING CLAUSE. - Revenue Regulations No. 18-99, Revenue Regulations No. 12-2003, and Revenue Regulations No. 20-2003 are hereby expressly repealed. Provisions of all other revenue issuances, or portions thereof which are inconsistent with the provisions of these Regulations are hereby likewise amended, modified or revoked accordingly.

SEC. 10. EFFECTIVITY CLAUSE. - These Regulations shall take effect immediately unless otherwise provided in R.A. 9238.

(Original Signed)
JUANITA D. AMATONG
Secretary of Finance

Recommending Approval:

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