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

April 22, 2008

REVENUE REGULATIONS NO. 6-2008

SUBJECT : CONSOLIDATED REGULATIONS PRESCRIBING THE RULES ON THE TAXATION OF SALE, BARTER, EXCHANGE OR OTHER DISPOSITION OF SHARES OF STOCK HELD AS CAPITAL ASSETS.

TO : ALL INTERNAL REVENUE OFFICERS AND OTHERS CONCERNED.

SECTION 1. SCOPE. — Pursuant to Section 244, in relation to Sections 24(C), 25(A)(3), 25(B),27(D)(2), 28(A)(7)(c), 28(B)(5)(c), 34(D)(4)(5), 38, 40, and Section 127(A) and (B) of the 1997 National Internal Revenue Code (Tax Code), as amended, these Regulations are hereby promulgated in order to harmonize and consolidate the rules relative to the imposition of tax for the sale, barter, exchange or other disposition of shares of stock of domestic corporation that are listed and traded through the Local Stock Exchange, or disposition of shares through Initial Public Offering (IPO) or disposition of shares not traded through the Local Stock Exchange.

SEC.2. DEFINITION OF TERMS. — For purposes of these Regulations, the following definitions of words and phrases are hereby adopted:

(a) "Stock Classified As Capital Assets" means all stocks and securities held by taxpayers other than dealers in securities.

(b) "Dealer in securities" means a merchant of stocks or securities, whether an individual, partnership or corporation, with an established place of business, regularly engaged in the purchase of securities and the resale thereof to customers; that is one, who as merchant buys securities and re-sells them to customers with a view to the gains and profits that may be derived therefrom. “Dealer in securities” means any person who buys and sells securities for his/her own account in the ordinary course of business (Sec. 3.4, SRC).

(c) "Shares of Stock" shall include shares of stock of a corporation; warrants and/or options to purchase shares of stock; as well as units of participation in a partnership (except general professional partnerships), joint stock companies, joint accounts, joint ventures taxable as corporations, associations, and recreation or amusement clubs (such as golf, polo or similar clubs); and mutual fund certificates.

(d) "Option" refers to an option to acquire stock or an option to acquire such an option and each one of a series of options to acquire stock. "Options" are contracts that give the buyer the right, but not the obligation, to buy or sell an underlying security at a predetermined price, called the exercise or strike price, on or before a predetermined date, called the expiry date, which can only be extended by the Commission upon stockholders' approval. (SRC Rule3 (1)(F)(1)

(e) "Shareholder" shall include holders of a share/s of stock, warrants and/or options to purchase shares of stock of a corporation, as well as a holder of a unit of participation in a partnership (except general professional partnerships), in a joint stock company, a joint account, a taxable joint venture, a member of an association, recreation or amusement club (such as golf, polo or similar clubs) and a holder of a mutual fund certificate, a member in an association, joint stock company or insurance company.

(f) "Stockbroker" includes all persons whose business it is, for other brokers, to negotiate purchases or sales of stocks, or engaged in the business of effecting transactions in securities for the account of others but does not include a bank or underwriters for one or more investment companies as defined in the Investment Company Act. "Broker" is a person engaged in the business of buying and selling securities for the account of others. (Sec. 3.3, SRC)

(g) "Local Stock Exchange" refers to any domestic organization, association, or group of persons, whether incorporated or unincorporated, licensed or unlicensed, which constitutes, maintains, or provides a market place or facilities for bringing together purchasers and sellers of stocks, and includes the market place and the market facilities maintained by such exchange. "Exchange" is an organized domestic marketplace or facility that brings together buyers and sellers and executes trades of securities and/or commodities, duly registered with the Securities and Exchange Commission. (Sec. 3.7, SRC)

(h) "Gross selling price" refers to the total amount of money or its equivalent which the purchaser pays the seller as consideration for the shares of stock.

(i) "Gross value in money" means the "fair market value". In the case of shares traded thru the stock exchange, "fair market value" shall consist of the actual selling price at which the transaction was executed in the trading system and/or facilities of the Local Stock Exchange.

(j) "Initial Public Offering (IPO)" refers to a public offering of shares of stock made for the first time in the Local Stock Exchange.

(k) "Primary Offering" refers to the original sale made to the investing public by the issuer corporation of its unissued Shares of Stock.

(l) "Secondary Offering" refers to an offer for sale to the investing public by the existing shareholders of their securities which is conducted during an IPO or a follow-on/follow-through offering.

(m) "Follow-on/Follow-through Offering of Shares" refers to an offering of shares to the investing public subsequent to an IPO.

(n) "Shares Listed and Traded through the Local Stock Exchange", for purposes of these Regulations, refers to all sales, trades or transactions of listed Shares of Stock executed through the trading system and/or facilities of the Local Stock Exchange. This term includes block sale or other types of sales, trades or transactions in the Local Stock Exchange and executed through the trading system and/or facilities of the Local Stock Exchange in accordance with the rules of the Local Stock Exchange as approved by the Securities and Exchange Commission.

(o) "Net Capital Gain" means the excess of the gains from sales or exchanges of capital assets over the losses from such sales or exchanges.

(p) "Net Capital Loss" means the excess of the losses from sales or exchanges of capital assets over the gains from such sales or exchanges.

(q) "Closely-held Corporation" means corporation at least fifty percent (50%) in value of the outstanding capital stock or at least fifty percent (50%) of the total combined voting power of all classes of stock entitled to vote is owned directly or indirectly by or for not more than twenty (20) individuals.

Rules in Determining Whether the Corporation is a Closely-Held Corporation insofar as such Determination is based on Stock Ownership:

(q.1) Stock not owned by individuals. — Stock owned directly or indirectly by or for a corporation, partnership, estate, or trust shall be considered as being owned proportionately by its shareholders, partners, or beneficiaries.

(q.2) Family and partnership ownerships. — An individual shall be considered as owning the stock owned, directly or indirectly, by or for family, or by or for his partner. For purposes of this paragraph, the family of an individual includes only his brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants.

(q.3) Option. — If any person has an option to acquire stock, such stock shall be considered as owned by such person. For purposes of this paragraph, an option to acquire such an option and each one of a series of options shall be considered as an option to acquire such stock.

(q.4) Constructive ownership as actual ownership.—Stock constructively-owned by reason of the application of paragraph (q.1) or (q.3) shall, for

purposes of applying paragraph (q.1) or (q.2), be treated as actually owned by such person; but stock constructively owned by the individual by reason of the application of paragraph (q.2) hereof shall not be treated as owned by him for purposes of again applying such paragraph in order to make another constructive owner of such stock.

(r) "Family of an individual" includes only his brothers and sisters (whether by the whole or half-blood), spouse, ancestors, and lineal descendants.

(s) "Mutual Fund Company" means an open-end and close-end investment company as defined under the Investment Company Act.

(t) "Acquired" as used in Sec. 7(c.6) of these Regulations when dealing with wash sales of shares of stock, means acquired by purchase or by an exchange upon which the entire amount of gain or loss was recognized by law, and comprehends cases where the taxpayer has entered into a contract or option within the sixty-one-day period to acquire by purchase or by such an exchange.

(u) "Capital Asset" means property held by the taxpayer (whether or not connected with his trade or business), but does not include stock in trade of the taxpayer or other property of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the taxable year, or property held by the taxpayer primarily for sale to customers in the ordinary course of his trade or business, or property used in the trade or business of a character which is subject to the allowance for depreciation provided in Subsection (F) of Section 34 of the Tax Code, as amended, or real property used in trade or business of the taxpayer.

(v) "Book Value per Share" refers to the value per share computed by dividing the total Stockholders' Equity of a corporation or net assets of the company by the number of outstanding shares or units of participation in a company. In case there are preferred shares as well as common shares, the book value per common share is computed by deducting the liquidation value of the preferred shares from the total equity of the corporation and dividing the result by the number of common shares outstanding as of balance sheet date. The liquidation value of the preferred shares is equal to the redemption price as of balance sheet date, including any premium and cumulative preferred dividends in arrears.

(w) "Treasury Shares" are shares of stock which have been issued and fully paid for, but subsequently reacquired by the issuing corporation by purchase, redemption which is not for cancellation, donation or through some other lawful means. Such shares may again be disposed of for a reasonable price fixed by the board of directors.

(x) "Redeemed Shares" are shares bought back by the issuing corporation for the purpose of retirement or cancellation.

(y) "Acquisition Cost" shall include the purchase price, tax assumed and the commission paid.

(z) "Shares Considered as Worthless" refers to shares when offered for sale or requested for share redemption, no amount can be realized by the owner of the share.

SEC. 3. PERSONS LIABLE TO THE TAX. — The following sellers or transferors of stock are liable to the tax provided for in Sec. 5 of these Regulations:

(a) Individual taxpayer, whether citizen or alien;

(b) Corporate taxpayer, whether domestic or foreign; and

(c) Other taxpayers not falling under (a) and (b) above, such as estate, trust, trust funds and pension funds, among others.

SEC. 4. PERSONS NOT LIABLE TO THE TAX. — The taxes imposed herein shall not apply to the following:

(a) Dealers in securities;

(b) Investor in shares of stock in a mutual fund company, as defined in Section 22 (BB) of the Tax Code, as amended, and Sec. 2(s) of these Regulations, in connection with the gains realized by said investor upon redemption of said shares of stock in a mutual fund company ; and

(c) All other persons, whether natural or juridical, who are specifically exempt from national internal revenue taxes under existing investment incentives and other special laws.

SEC. 5. SALE, BARTER OR EXCHANGE OF SHARES OF STOCK LISTED AND TRADED THROUGH THE LOCAL STOCK EXCHANGE. — There shall be levied, assessed and collected on every sale, barter, exchange or other disposition of Shares of Stock Listed and Traded through the Local Stock Exchange other than the sale by a dealer of securities, under the following rules:

(a) **Tax Rate** . — A stock transaction tax at the rate of one-half of one percent (1/2 of 1%) based on the amount determined in subsection (b) hereunder.

(b) **Tax Base**. — Gross selling price or gross value in money of the shares of stock sold, bartered, exchanged or otherwise disposed which shall be assumed and paid by the seller or transferor through the remittance of the stock transaction tax by the seller or transferor's broker.

SEC.6. SALE, BARTER OR EXCHANGE, OR ISSUANCE OF SHARES OF STOCK THROUGH IPO. — There shall be levied, assessed and collected on every sale, barter, exchange or other disposition through initial public offering (IPO) of shares of stock in closely held corporations, as defined in Sec. 2(q) hereof, under the following rules:

(a) Tax Rates. — A tax at the rates provided hereunder shall be imposed based on subsection (b) hereof in accordance with the proportion of shares of stock sold, bartered, exchanged or otherwise disposed to the total outstanding shares of stock after the listing in the Local Stock Exchange:

Proportion of Disposed Shares to Outstanding Shares	Tax Rate
Up to twenty-five percent (25%)	4%
Over twenty-five percent (25%) but not over thirty three and one-third percent (33 1/3%)	2%
Over thirty-three and one third percent (33 1/3%)	1%

(b) Tax Base. — Gross selling price or gross value in money of the shares of stock sold, bartered, exchanged or otherwise disposed of.

(c) Determination Of The Persons Liable To Pay The Tax. —

(c.1) Primary Offering. — The tax herein imposed shall be paid by the issuer corporation with respect to the Shares of Stock corresponding to the Primary Offering.

(c.2) Secondary Offering. — The tax herein imposed shall be paid by the selling shareholder(s) with respect to the Shares of Stock corresponding to the Secondary Offering.

(c.3) Illustration. — RFB Corporation, a closely-held corporation, has an authorized capital stock of 100,000,000 shares with par value of Php1.00/share as of January 1, 2008.

Of the 100,000,000 authorized shares, 25,000,000 thereof is subscribed and fully paid up by the following stockholders:

Mr. Estoy B. Zabala	5,000,000
Mrs. Rowena V. Posadas	5,000,000
Mr. Conrado G. Cruz	5,000,000
Mr. Benedict O. Sison	5,000,000
Mrs. Linda O. Evangelista	5,000,000
Total Shares Outstanding	**25,000,000**

RFB Corporation finally decides to conduct an IPO and initially offers 25,000,000 of its unissued shares to the investing public. After the IPO in March 2008, RFB Corporation's total issued shares increased from 25,000,000 to 50,000,000 shares.

At the IPO, one of the existing stockholders, Mrs. Linda O. Evangelista, has likewise decided to sell her entire 5,000,000 shares to the public. Thus, 25,000,000 shares have been offered in the primary offering and 5,000,000 shares in the secondary offering.

Computation of the percentage to be used. —

(i) Total Number of Shares Outstanding

Number of Shares issued by RFB prior to IPO	25,000,000 shares
Add: Number of Additional Shares Through Primary Offering for IPO	25,000,000 shares
Total Shares Outstanding after Listing at the Stock Exchange or IPO	**50,000,000 shares**

(ii) Computation of Percentage Ratio to the Total Outstanding Shares

(ii.a) For Primary Offering:

Number of Shares offered by RFB Corporation to the public	25,000,000 shares
Divide by the number of shares outstanding after the Listing at the Stock Exchange	50,000,000 shares
Ratio of Percentage	**50%**

Percentage Ratio is 50% which is over 33 1/3% so the Rate of Tax to be used for Primary Offering (IPO) of shares is 1%.

(ii.b) For Secondary Offering:

Number of Shares offered by existing Stockholder of RFB Corporation to the public	5,000,000 shares
Divide by the number of shares outstanding after the Listing at the Stock Exchange	50,000,000 shares
Ratio of Percentage	**10%**

Percentage Ratio is 10% which is under 25% so the Rate of Tax to be used for Secondary Offering (IPO) of shares is 4%.

(iii) Computation of the Tax

(iii.a) RFB Corporation newly issued shares

(25,000,000 shares x Php 1.50/share x 1%) = **Php 375,000**

(iii.b) Mrs. Linda O. Evangelista's shares

(5,000,000 shares x Php 1.50/share x 4%) = **Php 300,000**

If in June 2008, RFB Corporation again decides to increase capitalization by offering another 30,000,000 of unissued shares to the public at Php 2.00/share consequently bringing the total issued shares to 80,000,000 shares, such follow-on/follow-through sale which are shares issued subsequent to IPO shall no longer be taxed pursuant to Section 6 hereof. The transaction, however, is subject to Documentary Stamp Tax similar to the transaction covered by Primary Offering as well as Secondary Offering of shares of stock.

Nonetheless, in case another existing shareholder decides to offer his existing shares to the public subsequent to IPO, as in the above illustration, if Mr. Benedict O. Sison ever decides to sell his 5,000,000 shares to the public at Php 2.00 per share (for the Php 10,000,000 he received as consideration for the shares he sold), he shall be taxed pursuant to Section 127(A) of the Tax Code as implemented by Sec. 5 of these Regulations which is ½ of 1% of the gross selling price or Php P50,000 (i.e., 5,000,000 shares x Php 2.00/share = Php10,000,000 x ½ of 1%).

SEC. 7. SALE, BARTER OR EXCHANGE OF SHARES OF STOCK NOT TRADED THROUGH A LOCAL STOCK EXCHANGE PURSUANT TO SECS. 24(C), 25(A)(3), 25(B), 27(D)(2), 28(A)(7)(c), 28(B)(5)(c) OF THE TAX CODE, AS AMENDED. —

(a) Tax Rate. — The provisions of Sec. 39(B) of the Tax Code, as amended, notwithstanding, a final tax at the rates prescribed below is hereby imposed on the sale, barter or exchange of shares of stock not traded through the Local Stock Exchange pursuant to Secs. 24(C), 25(A)(3), 25(B), 27(D)(2), 28(A)(7)(c) , 28(b)(5)(c) of the said Tax Code, as amended.

Amount of Capital Gain	Tax Rate
Not over Php 100,000…….…… ……	5%
On any amount in excess of Php 100,000 …….	10%

(b) Tax Base. — The tax imposed in Subsection (a) above shall be upon the net capital gains realized during the taxable year from the sale, barter, exchange or disposition of shares of stock, except shares sold or disposed of through the Local Stock Exchange which is covered by the provisions of Secs. 5 and 6 above.

(c) Determination of Amount and Recognition of Gain or Loss. —

(c.1) Determination of Selling Price. — In determining the selling price, the following rules shall apply:

(c.1.1) In the case of cash sale, the selling price shall be the total consideration per deed of sale.

(c.1.2) If the total consideration of the sale or disposition consists partly in money and partly in kind, the selling price shall be sum of money and the fair market value of the property received.

(c.1.3) In the case of exchange, the selling price shall be the fair market value of the property received.

(c.1.4) In case the fair market value of the shares of stock sold, bartered, or exchanged is greater than the amount of money and/or fair market value of the property received, the excess of the fair market value of the shares of stock sold, bartered or exchanged over the amount of money and the fair market value of the property, if any, received as consideration shall be deemed a gift subject to the donor's tax under Sec. 100 of the Tax Code, as amended.

(c.2) Definition of "fair market value" of the Shares of Stock. — For purposes of this Section, "fair market value" of the share of stock sold shall be:

(c.2.1) In the case of listed shares which were sold, transferred, or exchanged outside of the trading system and/or facilities of the Local Stock Exchange, the closing price on the day when the shares are sold, transferred, or exchanged. When no sale is made in the Local Stock Exchange on the day when the listed shares are sold, transferred, or exchanged, the closing price on the day nearest to the date of sale, transfer or exchange of the shares shall be the fair market value.

(c.2.2) In the case of shares of stock not listed and traded in the local stock exchanges, the book value of the shares of stock as shown in the financial statements duly certified by an independent certified public accountant nearest to the date of sale shall be the fair market value.

Illustrations. —

(i) Assume that Ms. Girl Cantillep sold on October 31, 2008, 100 shares of stock of "A Corporation". The corporation's accounting period consistently employed in keeping its books of accounts is on a calendar year basis. In this case, the book value of the shares of stock of "A Corporation" shall be determined based on its audited financial statements for the calendar year 2007 since its audited financial statements for the calendar year 2008 is yet non-existent as of the date of sale.

(ii) Assume that Ms. Mape Sison sold on March 31, 2008, 100 shares of stock of "B Corporation". The corporation likewise uses calendar year basis accounting period. In this case, the books of accounts of " B Corporation" have already been closed and adjusted for Calendar Year 2007, but the independent Certified Public Accountant has yet to issue the audited financial statements for said calendar year 2007 which financial statements together with the annual income tax returns are due to be filed on or before April 15, 2008.

In this particular case, the book value of the shares of stock of "B Corporation" shall tentatively be based on the financial statements for Calendar Year 2007 yet to be audited and not on the audited financial statements of Calendar Year 2006. Once the 2007 audited financial statements have been issued, adjustment to the book value shall be made for the difference.

(c.2.3) In the case of a unit of participation in any association, recreation or amusement club (such as golf, polo, or similar clubs), the fair market value thereof shall be its selling price or the bid price nearest to the date of sale as published in any newspaper or publication of general circulation, whichever is higher.

(c.3) Determination of Gain or Loss from Sale or Disposition of Shares of Stock. — The gain from the sale or other disposition of shares of stock shall be the excess of the amount realized therefrom over the basis or adjusted basis for determining gain, and the loss shall be the excess of the basis or adjusted basis for determining loss over the amount realized. The amount realized from the sale or other disposition of property shall be the sum of money received plus the fair market value of the property (other than money) received, if any.

(c.3.1) Basis for Determining Gain or Loss from Sale or Disposition of Shares of Stock. — Gain or loss from the sale, barter or exchange of property, for a valuable consideration, shall be determined by deducting from the amount of consideration contracted to be paid, the vendor/transferor's basis for the property sold or disposed plus expenses of sale/disposition, if any.

(c.3.1.1) Acquired by Purchase. — If the property is acquired by purchase, the basis is the cost of such property.

Determination of the Cost. — The cost basis for determining the capital gains or losses for shares of stock acquired through purchase shall be governed by the following rules:

(i) If the shares of stock can be identified, then the cost shall be the actual purchase price plus all costs of acquisition, such as commissions, documentary stamp taxes, transfer fees, etc.

(ii) If the shares of stock cannot be properly identified, then the cost to be assigned shall be computed on the basis of the first-in first-out (FIFO) method.

(iii) If books of accounts are maintained by the seller where every transaction of a particular stock is recorded, then the moving average method shall be applied rather than the FIFO method.

(iv) In general, stock dividend received shall be assigned with a cost basis which shall be determined by allocating the cost of the original shares of stock to the total number shares held after receipt of stock dividends (i.e., the original shares plus the shares of stock received as stock dividends).

Illustration of cost allocated to stock dividends declared. — Five (5) shares of stock in XYX Company were acquired at a total cost of Php 1,000.00 or at two hundred pesos per share (Php 200/share). XYX Company declared and issued five (5) shares of stock as stock dividend. In this case, the cost basis for each of the ten (10) shares of stock shall be computed by dividing the cost basis of the original shares by ten (10) shares, or one thousand pesos (Php 1,000.00) divided by ten (10) shares equals one hundred pesos (Php 100.00) per share.

(c.3.1.2) Acquired by Devise, Bequest or Inheritance. — If the property was acquired by devise, bequest or inheritance, the basis shall be the fair market value of such property at the time of death of the decedent.

The term "property acquired by bequest, devise or inheritance" as used herein means acquisition through testamentary or intestate succession and includes, among others:

(i) Property interests that the taxpayer received as a result of a transfer, or creation of a trust, in contemplation of or intended to take effect in possession or enjoyment at or after death; and

(ii) Such property interests as the taxpayer has received as the result of the exercise by a person of a general power of appointment by will or by deed executed in contemplation of or intended to take effect in possession or enjoyment at or after death, otherwise known as a donation *mortis causa* or a donation in contemplation of death.

(c.3.1.3) Acquired by Gift. — If the property was acquired by gift, the basis shall be the same as it would be in the hands of the donor or the last preceding owner by whom it was not acquired by gift, except that if such basis is greater than the fair market value of the property at the time of the gift, then for the purpose of determining the loss, the basis shall be such fair market value.

Illustration. — Assume that "Mr. Era" bought shares of stock in 1970 at a cost of Php 100,000. He donated these shares to "Mr. Aio" on January 1, 1998, during which time, the said shares has a fair market value of Php 1,000,000 and on the basis of such fair market value, "Mr. Era" paid the corresponding donor's tax. "Mr. Aio", the donee, sold the shares on January 1, 1999 for a consideration of PhP 2,000,000. In this case, the basis of "Mr. Aio" in computing his gain from the sale shall be at the historical cost basis thereof in the hands of "Mr. Era", the donor, or at Php 100,000. The gain from the sale in the hands of "Mr. Aio" is Php1,900,000 (i.e., selling price of Php 2,000,000 less historical cost thereof in the hands of "Mr. Era" the donor, at Php 100,000 equals gain from the sale made by "Mr. Aio" in the amount of Php 1,900,000.

(c.3.1.4) Acquired for Inadequate Consideration. — If the property was acquired for less than an adequate consideration in money or money's worth, the basis of such property is the amount paid by the transferee for the property.

Illustration. — Assume that "Mr. Esq" sold to "Mr. Nma", shares of stock for a consideration of Php 1,000,000. At the time of the sale, its fair market value is Php 3,000,000. If "Mr. Nma" later on sells this property and he is taxable on his gain derived from the sale, his gain from the sale shall be determined by deducting from the amount of consideration received his purchase price thereof at Php 1,000,000. However, at the time of sale by "Mr. Esq" to "Mr. Nma", the former should pay Capital Gains Tax and Documentary Stamp Tax on the over-the-counter sale transactions of shares and at the same time Donor's Tax on the indirect gift which is the difference between fair market value of shares/stocks sold and the actual consideration for the sold shares of stock.

(c.3.2) Rules on Substituted Basis in cases of Tax-Free Exchanges of Shares of Stock under Section 40(C)(2) of the Tax Code, as Amended. -

(c.3.2.1) Substituted Basis of Stock or Securities Received by the Transferor. — The substituted basis of the stock or securities received by the transferor on a tax-free exchange shall be as follows:

(i) The original basis of the property, stock or securities transferred;

(ii) Less: (a) money received, if any, and (b) the fair market value of the other property received, if any;

(iii) Plus: (a) the amount treated as dividend of the shareholder, if any, and (b) the amount of any gain that was recognized on the exchange, if any. However, the property received as 'boot' shall have as basis its fair market value. The term "boot" refers to the money received and other property received in excess of the stock or securities received by the transferor on a tax-free exchange.

If the transferee of property assumes, as part of the consideration to the transferor, a liability of the transferor or acquires from the latter property subject to a liability, such assumption or acquisition (in the amount of the liability) shall, for purposes of computing the substituted basis, be treated as money received by the transferor on the exchange.

Finally, if the transferor receives several kinds of stock or securities, the Commissioner is authorized to allocate the basis among the several classes of stocks or securities.

(c.3.2.2) Substituted Basis of the Transferred Property in the Hands of the Transferee. — The substituted basis of the property transferred in the hands of the transferee shall be as follows:

(i) The original basis in the hands of the transferor;

(ii) Plus: the amount of the gain recognized to the transferor on the transfer.

(c.3.2.3) The Original Basis of Property to be Transferred. — The original basis of the property to be transferred shall be the following, as may be appropriate:

(i) The cost of the property, if acquired by purchase on or after March 1, 1913;

(ii) The fair market price or value as of the moment of death of the decedent, if acquired by inheritance;

(iii) The basis in the hands of the donor or the last preceding owner by whom the property was not acquired by gift, if the property was acquired by donation. If the basis, however, is greater than the fair market value of the property at the time of donation, then, for purposes of determining loss, the basis shall be such fair market value; or,

(iv) The amount paid by the transferee for the property, if the property was acquired for less than an adequate consideration in money or money's worth.

(v) The adjusted basis of (i) to (iv) above, if the acquisition cost of the property is increased by the amount of improvements that materially add to the value of the property or appreciably prolong its life less accumulated depreciation.

(vi) The substituted basis, if the property was acquired in a previous tax-free exchange under Section 40(C)(2) of the Tax Code, as amended.

(c.3.2.4) Basis for Determining Gain or Loss on a Subsequent Sale or Disposition of Property Subject of the Tax-free Exchange. — The substituted basis as defined in Section 40(C)(5) of the Tax Code as amended, and implemented in Section (c.3.2.1) and (c.3.2.2) above, shall be the basis for determining gain or loss on a subsequent sale or disposition of property subject of the tax- free exchange.

(c.4) Limitation of Capital Losses. — For sale, barter, exchange or other forms of disposition of shares of stock subject to the 5%/10% capital gains tax on the net capital gain during the taxable year, the capital losses realized from this type of transaction during the taxable year are deductible only to the extent of capital gains from the same type of transaction during the same period. If the transferor of the shares is an individual, the rule on holding period and capital loss carry-over will not apply, notwithstanding the provisions of Section 39 of the Tax Code as amended.

(c.5) Shares of Stock Becoming Worthless. — Losses from shares of stock, held as capital asset, which have become worthless during the taxable year shall be treated as capital loss as of the end of the year. However, this loss is not deductible against the capital gains realized from the sale, barter, exchange or other forms of disposition of shares of stock during the taxable year, but must be claimed against other capital gains to the extent provided for under Section 34 of the Tax Code, as amended. For the 5% and 10% net capital gains tax to apply, there must be an actual disposition of shares of stock held as capital asset, and the capital gain and capital loss used as the basis in determining net capital gain, must be derived and incurred respectively, from a sale, barter, exchange or other disposition of shares of stock.

(c.6) Losses from Wash Sales of Shares of Stock. — The following rules shall apply with respect to losses from wash sales of shares of stock:

(c.6.1) A taxpayer cannot deduct any loss claimed to have been sustained from the sale or other disposition of stock, if, within a period beginning thirty (30) days before the date of such sale or disposition and ending thirty (30) days after such date (referred to in this section as the sixty-one-day (61) period), he has acquired (by purchase or by an exchange upon which the entire amount of gain or loss was recognized by law), or has entered into a contract or option so to acquire, substantially identical stock. However, this prohibition does not apply in the case of a dealer in stock if the sale or other disposition of stock is made in the ordinary course of the business of such dealer.

(c.6.2) Where more than one loss is claimed to have been sustained within the taxable year from the sale or other disposition of stock or securities, the provisions of this Section shall be applied to the losses in the order in which the stock the disposition of which resulted in the respective losses were disposed of (beginning with the earliest disposition). If the order of disposition of stock disposed of at a loss on the same day cannot be determined, the stock or securities will be considered to have been disposed of in the order in which they were originally acquired (beginning with earliest acquisition).

(c.6.3) Where the amount of stock or securities acquired within the sixty-one (61) day period is less than the amount of stock or securities sold or otherwise disposed of, then the particular shares of stock or securities the loss from the sale or other disposition of which is not deductible shall be those with which the stock or securities acquired are matched in accordance with this rule: The stock or securities sold will be matched in accordance with the order of their acquisition (beginning with the earliest acquisition) with an equal number of the shares of stock or securities sold or otherwise disposed of.

(c.6.4) Where the amount of stock or securities acquired within the sixty-one day period is not less than the amount of stock or securities sold or otherwise disposed of, then the particular shares of stock or securities the acquisition of which resulted in the non-deductibility of the loss shall be those with which the stock or securities disposed of are matched in accordance with this rule: The stock or securities sold or otherwise disposed of will be matched with an equal number of the shares of stock or securities acquired in accordance with the order of acquisition (beginning with the earliest acquisition) of the stock or securities acquired.

(c.6.5) The acquisition of any share of stock or any security which results in the non-deductibility of a loss under the provisions of this Section shall be disregarded in determining the deductibility of any other loss.

(c.6.6) As provided in Sec. 2 of these Regulations, the word **"acquired"** as used in this Section means acquired by purchase or by an exchange upon which the entire amount of gain or loss was recognized by law, and comprehends cases where the taxpayer has entered into a contract or option within the sixty-one-day period to acquire by purchase or by such an exchange the subject shares of stock.

Examples of losses from wash sales of stock or securities. -

(i) On December 1, 2000, Ms. Rose Miranda whose taxable year is the calendar year, purchased 100 shares of common stock of M company for Php10,000. On December 15, 2000, she purchased 100 additional shares for Php 9,000. On January 2, 2001, she sold the 100 shares purchased on December 1, 2000 for Php 9,000. Because of the provisions of this Section, no loss from the sale is allowable as deduction.

(ii) Ms. Karren Punzalan, whose taxable year is the calendar year, had the following stock transactions:

- On September 21, 2000, purchased 100 shares of the common stock of M Company for Php 5,000 or at Php 50.00/share.
- On December 21, 2000, she purchased 50 shares of substantially identical stock for Php 2,750 or at Php 55/share.
- On December 26, 2000, she purchased 25 additional shares of such stock for Php1,125 or at Php 45/share.
- On January 2, 2001, she sold for Php 4,000 the 100 shares purchased on September 21, 2000 or at Php 40.00/share.

Computation of the Indicated Loss

Proceeds from sale of 100 shares	Php 4,000
Cost of shares bought on September 21, 2000	5,000
Indicated Loss from the sale	(Php 1,000)
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Computation of Non-deductible Loss due to the Sixty-one Day Period of Purchase of Substantially Identical Shares. -

Number of Shares Purchased Within the 61-day period	75 shares
X Cost/ share for shares bought on September 21, 2000	Php 50.00/share
Amount	Php 3,750.00

Less: Proceeds from Sale on January 2, 2001 for 75 shares (i.e. 75 x P40/share)	3,000.00
Non-Deductible Loss	Php 750.00

The loss on the sale of the remaining 25 shares (Php 1,250 less Php1,000 or Php 250) is deductible subject to the limitations provided in items (c.6.3) above and (c.4) above.

(iii) Ms. Ding Cruz, whose taxable year is the calendar year, had the following stock transactions:

- On September 15, 2000, purchased 100 shares of the stock of M Company for Php 5,000.
- On February 1, 2001, she sold these shares for Php 4,000.
- On each of the four days from February 15, 2001 to February 18, 2001, she purchased 50 shares per day of substantially identical stock for Php 2,000 per purchase.

There is an indicated loss of P1,000 from the sale of the 100 shares on February 1, 2001, but since within the sixty-one-day period she purchased not less than 100 shares of substantially identical stock, the loss is not deductible. The particular shares of stock, the purchase of which resulted in the non-deductibility of the loss are the first 100 shares purchased within such period, that is, the 50 shares purchased on February 15, 2001, and the next 50 shares purchased on February 16, 2001.

SEC. 8. TAXATION OF SURRENDER OF SHARES BY THE INVESTOR UPON DISSOLUTION OF THE CORPORATION AND LIQUIDATION OF ASSETS AND LIABILITIES OF SAID CORPORATION. - Upon surrender by the investor of the shares in exchange for cash and property distributed by the issuing corporation upon its dissolution and liquidation of all assets and liabilities, the investor shall recognize either capital gain or capital loss upon such surrender of shares computed by comparing the cash and fair market value of property received against the cost of the investment in shares. The difference between the sum of the cash and the fair market value of property received and the cost of the investment in shares shall represent the capital gain or capital loss from the investment, whichever is applicable. If the investor is an individual, the rule on holding period shall apply and the percentage of taxable capital gain or deductible capital loss shall depend on the number of months or years the shares are held by the investor. Section 39 of the Tax Code, as amended, shall herein apply in all possible situations.

The capital gain or loss derived therefrom shall be subject to the regular income tax rates imposed under the Tax Code, as amended, on individual taxpayers or to the corporate income tax rate, in case of corporations.

SEC. 9. TAXATION OF SHARES REDEEMED FOR CANCELLATION OR RETIREMENT. - When preferred shares are redeemed at a time when the issuing corporation is still in its "going-concern" and is not contemplating in dissolving or liquidating its assets and liabilities, capital gain or capital loss upon redemption shall be recognized on the basis of the difference between the amount/value received at the time of redemption and the cost of the preferred shares.

Similarly, the capital gain or loss derived shall be subject to the regular income tax rates imposed under the Tax Code, as amended, on individual taxpayers or to the corporate income tax rate, in case of corporations.

This section, however, does not cover situations where a corporation voluntarily buys back its own shares, in which it becomes treasury shares. In such cases, the stock transaction tax under Sec. 127(A) of the Tax Code shall apply if the shares are listed and executed through the trading system and/or facilities of the Local Stock Exchange. Otherwise, if the shares are not listed and traded through the Local Stock Exchange, it is subject to the 5% and 10% net capital gains tax.

SEC. 10. TIME OF PAYMENT OF TAX AND MANNER OF FILING RETURNS. — The tax imposed under Section 5 of these Regulations shall be collected as follows:

(a) Tax on Sale of Shares of Stock Listed and Traded through the Local Stock Exchange. — The stock broker who effected the sale has the duty to collect the tax from the seller upon issuance of the confirmation of sale, issue the corresponding official receipt thereof and remit the same to the collecting bank/officer of the Revenue District Officers (RDO) where the broker is registered within five (5) banking days from the date of collection thereof and to submit on Mondays of each week to the secretary of the Local Stock Exchange, of which he is a member, a true and complete return, which shall contain a declaration, that he made under the penalties of perjury, of all the transactions effected through him during the preceding week and of taxes collected by him and turned over to the concerned RDO. The secretary of the Local Stock Exchange shall reconcile the records of the Local Stock Exchange with the weekly reports of stockbrokers and in turn transmit to the RDO, on or before the 15th day of the following month, a consolidated return of all transactions effected during the preceding month through the Local Stock Exchange.

(b) Tax on Shares of Stock Sold or Exchanged through IPO. — The corporate issuer in Primary Offering shall file the return and pay the corresponding tax to the RDO which has jurisdiction over said corporate issuer within thirty (30) days from the date of listing of the shares of stock in the Local Stock Exchange. The return shall be accompanied with a copy of the instrument of sale.

In the case of shares of stock sold or exchanged through Secondary Offering at the time of listing at the Local Stock Exchange of shares of closely-held corporations,

the provisions of subsection (a) of this Section shall apply as to the time and manner of the payment of the tax on the sale thereof.

(c) Tax on Shares of Stock Not Traded through the Local Stock Exchange. — Persons deriving capital gains from the sale or exchange of listed shares of stock not traded through the Local Stock Exchange as prescribed by these regulations shall file a return within thirty (30) days after each transaction and a final consolidated return of all transactions during the taxable year on or before the fifteenth (15th) day of the fourth (4th) month following the close of the taxable year.

In the case of an individual taxpayer, the filing of the final consolidated return of all transactions shall be during the calendar year. However, for corporate taxpayers, the filing of the final consolidated return of all transactions shall be in accordance with the accounting period employed by such taxpayer which may either be calendar or fiscal year basis.

SEC.11. EFFECT OF NON-PAYMENT OF TAX. — No sale, exchange, transfer or similar transaction intended to convey ownership of, or title to any share of stock shall be registered in the books of the corporation unless the receipts of payment of the tax herein imposed is filed with and recorded by the stock transfer agent or secretary of the corporation. It shall be the duty of the aforesaid persons to inform the Bureau of Internal Revenue in case of non-payment of tax. Any stock transfer agent or secretary of the corporation or the stockbroker, who caused the registration of transfer of ownership or title on any share of stock in violation of the aforementioned requirements shall be punished in accordance with the provisions of Title X, Chapters I and II of the Tax Code, as amended.

SEC. 12. PENALTIES. — In addition of the civil and criminal liabilities of the taxpayer, for violation of the provisions of these Regulations, the following administrative penalties prescribed under Secs. 248 and 249 of the same Tax Code shall be imposed, which shall be collected at the same time, in the same manner and as part of the tax.

(a) Surcharges. —

(a.1) There shall be imposed, in addition to the tax required to be paid, a penalty equivalent to twenty-five percent (25%) of the amount due, in the following cases:

(a.1.1) Failure to file any return and pay the tax due thereon as required by the provisions of the Tax Code, as amended, and these Regulations, on the date prescribed;

(a.1.2) Unless otherwise authorized by the Commissioner, filing a return with an internal revenue officer other than those with whom the return is required to be filed; or

(a.1.3) Failure to pay the deficiency tax within the time prescribed for its payment in the notice of assessment; or

(a.1.4) Failure to pay the full or part of the amount of the tax shown on any return required to be filed under the provisions of the Tax Code, as amended, and these Regulations, on or before the date prescribed for its payment.

(a.2) In case of willful neglect to file the return within the period prescribed by the Tax Code or these Regulations, or in case a false of fraudulent return is willfully made, the penalty to be imposed shall be fifty percent (50%) of the tax or of the deficiency tax, in case any payment has been made on the basis of such return before the discovery of the falsity or fraud.

(b) Interest. — There shall be assessed and collected on any unpaid amount of tax, interest at the rate of twenty percent (20%) per annum.

(c) Deficiency Interest. — Any deficiency in the tax due shall be subjected to interest at the rate of twenty percent (20%), which interest shall be assessed and collected from the date prescribed for its payment until the full payment thereof.

(d) Delinquency Interest. — In case of failure to pay the amount of the tax due on the return required to be filed, or a deficiency tax, or any surcharge or interest thereon on the due date appearing in the notice and demand of the Commissioner of Internal Revenue, there shall be assessed and collected on the unpaid amount, interest at the rate of twenty percent (20%) per annum until the amount is fully paid, which interest shall form part of the tax.

SEC. 13. REPEALING CLAUSE. — All regulations, rules, order or portion thereof which are inconsistent with the provisions of these Regulations are hereby amended, modified or repealed.

SEC. 14. EFFECTIVITY CLAUSE. — These Regulations shall take effect fifteen (15) days after its publication in any newspaper of general circulation in the Philippines.

(Original Signed)
MARGARITO B. TEVES
Secretary of Finance

Recommending Approval:

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