REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

Quezon City

March 25, 2008

REVENUE REGULATIONS NO. 7-2008

SUBJECT : TAXATION ON THE SALE TO THE BANGKO SENTRAL NG PILIPINAS OF GOLD AND OTHER METALLIC MINERAL PRODUCTS EXTRACTED OR PRODUCED BY SMALL-SCALE MINERS, AND FURTHER AMENDING SECTION 2.57.2(T) OF REVENUE REGULATIONS NO. 2-98, AS AMENDED

TO : BANGKO SENTRAL NG PILIPINAS, ALL INTERNAL REVENUE OFFICERS AND OTHERS CONCERNED

SECTION 1. Scope. –

Pursuant to Secs. 244 and 245 of the National Internal Revenue Code, as amended, in relation to Secs. 57 to 59 and 151(A)(3)(b) thereof, these regulations are hereby promulgated to implement Section 13(d) of Republic Act (RA) No. 7076, otherwise known as the People's Small-Scale Mining Act of 1991 and shall cover only transactions between small-scale miners and Bangko Sentral ng Pilipinas (BSP). These regulations further amend Section 2.57.2(T) of Revenue Regulations (Rev. Regs.) No. 2-98, as amended by Rev. Regs. No. 17-2003.

SECTION 2. Background. -

In 1980's, the advent of inflation, volatile commodity prices, increases of oil and fuel prices, stringent environmental control measures and high cost of capital caused economic pain for even the large operators in the mineral industry. During that time, small-scale mining has significantly contributed to the mineral industry and national economy with the gold rush in Davao and the sporadic panning activities that followed in thirty seven (37) other provinces. Production from small-scale and panning activities was higher than that of primary and secondary producers while 500 miners and their households were directly benefited.

This ensued the promulgation of Presidential Decree (PD) No. 1899 on January 23, 1984, purposely, to promote small-scale mining in view of its capacity to generate income for the rural poor.

On June 17, 1991, to further develop, protect and rationalize small-scale mining activities, RA No. 7076 (also known as the People's Small-Scale Mining Act of 1991) was passed into law. The law was principally intended to generate more employment opportunities in small-scale mining, and to bring about equitable sharing of wealth and natural resources of the country through the implementation of People's Small-Scale Mining Program.

Small-scale mining, like large mining operations, is part of the mineral industry which is expected to extract resources in an environmentally acceptable manner as it continuously contributes to the national economy in spite of the difficulties it faces in addressing environmental issues. Community and government pressures and environmental issues such as rehabilitation tend to be viewed as costs which impact unfairly on the economics of the operation. Many small to medium mines are having difficulty surviving in this economic climate.

RA No. 7076 has relatively addressed this issue through the establishment of People's Small-Scale Mining Program.[1] The Program is designed to achieve an orderly, systematic and rational scheme for the small-scale development and utilization of mineral resources in certain mineral areas in order to address the social, economic, technical and environmental problems connected with small-scale mining activities.

The implementation of these small-scale mining laws have provided a means of livelihood to subsistence miners. They eased the unemployment situation in the country alleviating the living conditions in the rural areas where the active mining area is contiguously or geologically located. However, small to medium mining operations have and are continuously facing a number of challenges in addition to those faced by large operations in achieving acceptable environmental performance.

RA No. 7076 also identifies suitable land for prospecting and mining activities.[2] It, however, proscribes declaration of ancestral land as a people's small scale mining area without the prior consent of the cultural communities concerned.[3]

SECTION 3. Small-scale Mining. –

a) *Definition.*

Section 1 of PD 1899, as amended by RA No. 7076 defines "Small-scale mining" as any single unit mining operation having an annual production of not more than 50,000 metric tons of ore and satisfying the following requisites:

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[1] Section 4, RA 7076, *supra.*
[2] Sections 5 and 6, RA 7076
[3] Section 7, RA 7076

1. The working is artisanal, either open cast or shallow underground mining, without use of sophisticated mining equipment;
2. Minimal investment on infrastructures and processing plant;
3. Heavy reliance on manual labor; and
4. Owned, managed or controlled by an individual or entity qualified under existing mining laws, rules and regulations.

Notwithstanding the foregoing, mining activities which rely heavily on manual labor using simple implements and do not use explosives or heavy mining equipment are considered small scale mining.

b) *Qualification under the Program* -

RA No. 7076 requires person/s undertaking small scale mining activities to register with the Board and may organize themselves into a cooperative in order to qualify for the awarding of people's small scale mining contract.[4]

The law defines small miners as Filipino citizens who, individually or in tandem with others, voluntarily form a cooperative, duly licensed by the Department of Environment and Natural Resources, to engage in the extraction or removal of minerals or ore-bearing materials from the ground.[5]

SECTION 4. Duties and Obligations (*Payment of Taxes*).-

Section 13(d) of RA No. 7076 amending Section 4 of PD 1899 defines the duties and obligations of the holder of a small-scale mining contract, and one of which is to "[p]*ay all taxes, royalties or government production share as are now or as may hereafter be provided by law.*"

In relation thereto and consistent with the provisions of the Tax Code of 1997, as amended, a holder of small-scale mining contract is liable to pay the following national internal revenue taxes, to wit:

a) Excise Tax at the rate of two percent (2%) prescribed under Section 151(A)(3)(b) of the same Tax Code on every sale of gold to BSP, based on actual market value.

   For this purpose, actual market value shall refer to *the prices competitive with those prevailing in the world market regardless of the volume or weight by which the BSP has agreed to buy the gold.*[6]

b) Value-added tax at the rate of zero percent (0%) as prescribed under Section 106(A)(2)(a)(4) of the Tax Code on every sale of gold to BSP.

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[4] Sections 8 and 9, RA 7076. *supra.*
[5] Section 3(c), RA 7076, *Ibid.*
[6] Section 17, RA 7076 mandates BSP to buy the gold at prices competitive as those prevailing in the world market. *Supra.*

c) Income Tax at the rate prescribed under Sec. 24 (A) in case of individual taxpayers, and under Sec. 27 (A) in the case of corporations. Further, contract holder shall be subject to the Creditable Withholding Tax (CWT) at the rate of ten percent (10%).

Section 2.57.2(T) of Rev. Regs. No. 2-98, as amended by Rev. Regs. No. 17-2003, is hereby further amended to read as follows:

> *"(T) Income payments on purchases of minerals, mineral products and quarry resources as defined and discussed in Section 151 of the Code.* – Income payments on purchases of minerals, mineral products and quarry resources such as but not limited to silver, gold, marble, granite, gravel, sand, boulders and other materials/products – Ten percent (10%)"

SECTION 5. Mode of Collection and Payment of Taxes.-

Consistent with Section 17 of RA No. 7076, all gold produced by small-scale miners in any mineral area shall be sold to the Central Bank[7] or its duly authorized representatives which shall buy it at prices competitive with those prevailing in the world market regardless of volume weight.

For purposes hereof, the BSP shall be constituted as agent for the collection of the 2% excise tax on sale of gold by the small-scale miner. As such, it shall, upon payment to the small-scale miner of its purchase of gold, deduct from such payment the corresponding excise tax due thereon. Such deduction shall be in addition to the ***10 % CWT*** required to be withheld on income payments or purchases of minerals and mineral products.

SECTION 6. Time and Manner of Filing and Payment of Taxes Withheld.-

All excise taxes collected from payments made to small-scale miners on their sale of gold to BSP for the month shall be remitted by the BSP by filing the corresponding Excise Tax Return ((BIR Form No. 2200-M) and paying the amount of tax it collected to the Accredited Agent Bank (AAB) having jurisdiction over its principal place of business on or before the tenth (10th) day of the following month.

Illustration:

Selling price of 10 ounces of gold sold by a small-scale miner to BSP with market value of P900.00/ounce based on provisional assay	P 9,000.00

[7] Now Bangko Sentral ng Pilipinas.

Partial payment by BSP on date of receipt of gold purchased (90% of the provisional value)	P 8,100.00
Full payment of gold purchased by BSP upon determination of final value after three (3) months from date of sale	P 800.00

Taxes to be withheld:

1. At the time of partial payment	
(a) Excise tax ([P8,100 ÷ 1.02] x 2%)	P 158.82
(b) Income Tax (P8,100 x 10%)	810.00
2. At the time of full payment	
(a) Excise tax (P800 ÷ 1.02) x 2%	15.69
(b) Income tax (P800 x 10%)	80.00

Moreover, in accordance with Sec. 2.58 of Rev. Regs. No. 2-98, as amended, the CWT withheld by BSP under Sec. 2.57.2(T) shall be remitted by indicating the following, among others: the phrase "Gold miners/suppliers under PD 1899, as amended by RA No. 7076", in lieu of the individual names and Taxpayer Identification Numbers (TINs) of the Gold Sellers, the tax base and, the amount withheld, as one line item, in the Monthly Remittance Return of Creditable Withholding Taxes Withheld (BIR Form No. 1601-E) with Monthly/Annual Alphalist of Payees (MAP/AAP) periodically accomplished and filed by BSP as a duly constituted withholding agent.

To illustrate:

Name	TIN	Tax Base	Amount
Gold miners/suppliers under PD 1899, as amended by RA No. 7076		P100,000,000.00	P2,000,000

The withholding tax return shall be filed and payment shall be made within ten (10) days after the end of each month, except for taxes withheld for the month of December, which shall be filed on or before January 15 of the following year.

However, if the BSP availed of the electronic filing and payment system (EFPS), the deadline for electronic filing of the applicable withholding tax returns (BIR Form No. 1601-E) and payment of taxes due thereon remains on the 15th day of the following month.

SECTION 7. Repealing Clause. –

All regulations, rules, order or portion thereof which are inconsistent with the provisions of these Regulations are hereby amended, modified or repealed accordingly.

SECTION 8. 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