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

March 19, 2005

REVENUE REGULATIONS NO. 9-2005

SUBJECT : **Amending Pertinent Provisions of Revenue Regulations (RR) No. 06-04 Relative to the Tax Exemptions and Privileges Granted Under Republic Act No. 9182, Otherwise Known As "The Special Purpose Vehicle (SPV) Act of 2002 (the "Act")"**

TO : **All Revenue Officers and Others Concerned**

SECTION 1. Scope – Pursuant to Section 244 of the Tax Code of 1997, in relation to Section 22 of the Act, these Regulations are hereby promulgated in order to revise the applicable period during which transactions must occur to be covered by the tax exempt provisions of the Act.

SECTION 2. Purpose of regulations – The purpose of these Regulations is to clarify the applicable period during which transactions must occur in order to be covered by the tax exempt provisions of the Act. Under the Act, all sales or transfers of Non-Performing Assets (NPAs) from financial institutions ("FI") to an SPV, or transfers by way of dation in payment (*dacion en pago*) by the borrower or by a third party to the FI, shall be entitled to the tax and fee privileges for a period of not more than two (2) years from the date of effectivity of the Implementing Rules and Regulations (IRR). The IRR, in turn, provides that the tax exemptions and reduction of fees on the foregoing transactions shall apply if the transaction occurred within a period of two (2) years from the date of the effectivity of the said IRR. The IRR was published on 28 March 2003 hence, it became effective on 12 April 2003.

SECTION 3. Tax-exempt transactions – Section 7(c) of RR No. 06-04 is hereby amended to read as follows:

> **"SEC. 7. Tax-exempt transactions.** –
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> (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:
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> 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 April 17, 2003 to April 12, 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 April 12, 2003 to April 12, 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 April 12, 2003 to April 12, 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 the dation in payment must have occurred within the period of five (5) years from the date of said acquisition.

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SECTION 4. Additonal tax exemptions for an SPV. – Section 8 of RR No. 06-04 is hereby amended to read as follows:

"**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 April 12, 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 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 April 12, 2003, shall be exempt from DST.

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SECTION 5. Privileges of an FI. – Section 9 of RR No. 06-04 is hereby amended to read as follows:

"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 April 12, 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 its 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.

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SECTION 6. Repealing clause. – The provisions of any revenue regulations, revenue memorandum order, revenue memorandum circular or any other issuances of the Bureau of Internal Revenue inconsistent with these Regulations are hereby amended, repealed or modified accordingly.

SECTION 7. Effectivity – These Regulations shall take effect immediately.

(Original Signed)
CESAR V. PURISIMA
Secretary of Finance

Recommending Approval:

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