

REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

Quezon City

August 15, 2008

REVENUE MEMORANDUM CIRCULAR NO. 58 - 2008

SUBJECT : Clarifying the Time Within Which to Reckon the Redemption Period on the Foreclosed Asset and the Period Within Which to Pay Capital Gains Tax or Creditable Withholding Tax and Documentary Stamp Tax on the Foreclosure of Real Estate Mortgage by Those Governed by the General Banking Law of 2000 (Republic Act No. 8791), as Well as the Venue for the Payment of These Taxes.

TO : All Internal Revenue Officers and Others Concerned

Republic Act No. 8791 (RA 8791), otherwise known as "The General Banking Law of 2000", has provided for the following with respect to the foreclosure of real estate mortgages by banks, those engaged in quasi-banking activities, and trust companies:

"SECTION 47. Foreclosure of Real Estate Mortgage. — In the event of foreclosure, whether judicially or extrajudicially, of any mortgage on real estate which is security for any loan or other credit accommodation granted, the mortgagor or debtor whose real property has been sold for the full or partial payment of his obligation shall have the right within one year after the sale of the real estate, to redeem the property by paying the amount due under the mortgage deed, with interest thereon at the rate specified in the mortgage, and all the costs and expenses incurred by the bank or institution from the sale and custody of said property less the income derived therefrom. However, the purchaser at the auction sale concerned, whether in a judicial or extrajudicial foreclosure, shall have the right to enter upon and take possession of such property immediately after the date of the confirmation of the auction sale and administer the same in accordance with law. Any petition in court to enjoin or restrain the conduct of foreclosure proceedings instituted pursuant to this provision shall be given due course only upon the filing by the petitioner of a bond in an amount fixed by the court conditioned that he will pay all the damages which the bank may suffer by the enjoining or the restraint of the foreclosure proceeding.

“Notwithstanding Act 3135, juridical persons whose property is being sold pursuant to an extrajudicial foreclosure, shall have the right to redeem the property in accordance with this provision until, but not after, the registration of the certificate of foreclosure sale with the applicable Register of Deeds which in no case shall be more than three (3) months after foreclosure, whichever is earlier. Owners of property that has been sold in a foreclosure sale prior to the effectivity of this Act shall retain their redemption rights until their expiration. xxx” (emphasis and underscoring supplied)

For purposes of reckoning the one-year redemption period, in the case of individual mortgagors, or the three-month redemption period for juridical persons/mortgagors, the same shall be reckoned from the date of the confirmation of the auction sale which is the date when the certificate of sale is issued.

In case of non-redemption, the capital gains tax on the foreclosed capital asset of the mortgagor shall become due within thirty (30) days following the expiration of the redemption period referred to in the preceding paragraph. Nonetheless, if the property is an ordinary asset of the mortgagor, the creditable expanded withholding tax shall be due and paid within ten (10) days following the end of the month in which the redemption period expires. If the property foreclosed is under the circumstances which warrant the imposition of the Value-added Tax (VAT) under Section 106 of the Tax Code, as implemented by Revenue Regulations No.4-2007, the VAT must be paid by the mortgagor on or before the 20th day or 25th day, whichever is applicable, of the month following the month when the right of redemption prescribes. Moreover, the payment of the documentary stamp tax and the filing of the return thereof shall have to be made within five (5) days from the end of the month when the redemption period expires. The taxes due on the foreclosure sale must be based on the bid price of the highest bidder pursuant to Revenue Regulations No. 4-99.

The classification of the asset as either ordinary asset or capital asset depends upon the nature of the asset in the hands of the mortgagor.

Under the foregoing circumstances, the mortgagee banks, quasi-banks, and trust companies, are considered the statutory sellers in the foreclosure sales of these foreclosed real properties, and are thus, expected to have paid the aforesaid taxes, within the period provided therefor, once the redemption period thereon has expired, hence, without need to further wait for another or subsequent buyer before taxes on said foreclosed property shall be paid. Generally, the venue for the filing of the returns and payment of taxes on foreclosure sales, except the VAT, shall be at the place where the real property foreclosed is located. The VAT, if applicable, must in all cases involving foreclosure sale of real property, be paid by the VAT-registered mortgagor through the filing of the required return in the Revenue District Office (RDO) where the said mortgagor is registered.

The foregoing rule on venue to the contrary notwithstanding, if the statutory seller (mortgagee-bank/quasi-bank/trust company) is classified as a Large Taxpayer, the venue for the payment of capital gains tax /creditable withholding tax, and documentary stamp

tax on the foreclosure sale of real properties mortgaged with them shall be with the concerned office of the Large Taxpayers Service pursuant to the provisions of Revenue Regulations No.4-2008.

Upon submission of proof that the taxes required to be paid by the statutory seller mentioned herein had been actually paid, the Certificate Authorizing Registration (CAR) must be issued without waiting for the VAT compliance of the mortgagor in all cases where the property is subject to VAT. The BIR Office having jurisdiction over the statutory seller is, nonetheless, required to notify the RDO where the mortgagor is registered to collect the VAT on the said transaction.

All internal revenue officers and others concerned are hereby enjoined to give this Circular as wide a publicity as possible.

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