**Redemption period in cases of foreclosure of real estate reckoned on the date the certificate of sale issued*

REVENUE MEMORANDUM CIRCULAR No. 58-2008

The Bureau of Internal Revenue (BIR) issued Revenue Memorandum Circular No. 58-2008 (hereinafter "RMC"), on August 15, 2008. It deals with the foreclosure of real estate mortgages by banks, those engaged in quasi-banking activities and trust companies. The RMC was issued with a purpose of clarifying when to reckon the redemption period of foreclosed assets. It likewise provides for the time and place for the payment of 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).

Under the RMC, the redemption period shall be reckoned from the date of confirmation of the auction sale, which is the date when the certificate of sale is issued. This rule will apply regardless of whether the mortgagor is an individual or a juridical person.

The RMC quoted and used as basis Section 47 of General Banking Law of 2000. However, the interpretation of the BIR contradicts the provision of law cited. While the General Banking Law of 2000 does not state that the redemption period of foreclosed assets shall be reckoned from the date the certificate of sale is issued, the RMC expressly provides for the same.

The changing of the reckoning date of the redemption period from registration of the certificate of foreclosure with the Register of Deeds to the issuance of the certificate of sale does not seem to have basis, considering that there has been no change in the law or jurisprudence which would justify it. In fact, the Supreme Court previously issued A. M No. 99-10-05-0 entitled Procedure in Extra- Judicial Foreclosure of Mortgages. It reiterates the rulings of the Supreme Court in a number of cases that the redemption period shall be reckoned from the date of registration of the certificate of sale with the Register of Deeds.

Moreover, writer Malou Lim criticized the RMC and she says:

“By reckoning the redemption period from the date of issuance of the certificate of sale, the BIR has in effect created a situation where a winning bidder/ purchaser is required to pay taxes even when there is no obligation to do, since the redemption period has not yet expired. Hence, in the event that the mortgagor subsequently redeems the property within the redemption period, in which case no taxes should have been due, the RMC does not

provide for a mechanism on how the winning bidder can recover the taxes prematurely paid to the BIR. While we recognize the mandate of the BIR to enhance its collection efforts, its programs should be made with due regard and in accordance with the prevailing law. We earnestly appeal that the BIR will revise the RMC to rectify this error".[1]

**Official Receipt constitutes sufficient payment of VAT*
**Claim for refund was filed out of time*

COMMISSIONER OF INTERNAL REVENUE V. MIRANT PAGBILAO CORP.
September 12, 2008

Facts:

Mirant Pagbilao Corporation (hereinafter " MPC ") is a domestic firm engaged in the generation of power which it sells to the National Power Corporation (hereinafter "NPC"). For the construction of the electrical and mechanical equipment portion of its Pagbilao, Quezon Plant, which appears to have been undertaken from 1993 to 1996, MPC secured the services of Mitsubishi Corporation (hereinafter " Mitsubishi") of Japan. It was only on April 14, 1998 that MPC paid Mitsubishi the VAT component for the progress billings from April 1993 to September 1996, and for which Mitsubishi issued Official Receipt No. 0189 (hereinafter "Official Receipt"). In accordance with a VAT Ruling No. 052-99 issued on May 13, 1999, the supply of electricity by MPC to the NPC, shall be subject to zero percent VAT.

MPC filed on December 20, 1999 an administrative claim for refund of unutilized input VAT. It is the allegation of MPC that since its sales to NPC is subject to zero percent VAT, then the input VAT must be refunded.

Issues:

1. Whether or not the 1998 Official Receipt can evidence payment of input VAT corresponding to a 1993 to 1996 transaction?

2. Whether or not the claim for VAT refund of MPC was filed within the reglementary period?

[1] Malou Lim, RMC 58-2008:another case of BIR Legislation? , Tax or Otherwise, Business World, September 18, 2008, page 8/ S1.

Ruling:

1. The Supreme Court ruled that the Official Receipt constituted sufficient proof of payment of creditable input VAT for the progress billings from Mitsubishi for the period covering April 7, 1993 to September 6, 1996. As the Court distinctly notes, the law considers a duly- vexecuted VAT invoice or Official Receipt as sufficient evidence to support a claim for input tax credit.

2. The claim for refund or tax credit for the creditable input VAT payment made by MPC embodied in the Official Receipt was filed beyond the period provided by law for such claim.

   The unutilized input VAT payments not otherwise used for any internal revenue tax due the taxpayer must be claimed within two years reckoned from the close of the taxable quarter when the relevant sales were made pertaining to the input VAT regardless of whether said tax was paid or not.

Given that the last creditable input VAT due for the period covering the progress billing of September 6, 1996 is the third quarter of 1996 ending on September 30, 1996, any claim for unutilized creditable input VAT refund or tax credit for said quarter prescribed two years after September 30, 1996 or, to be precise, on September 30, 1998. Consequently, MPC's claim for refund or tax credit filed on December 10, 1999 had already prescribed.

**Piercing the veil of corporate fiction to determine tax liability*
**Final Assessment Notice is important for tax assessments*

COMMISSIONER OF INTERNAL REVENUE V. DOMINADOR MENGUITO SEPTEMBER 17, 2008

Facts:

Respondent is married to Jeanne Menguito and is engaged in the restaurant and/or cafeteria business. The spouses owned Copper Kettle Cafeteria Specialist (hereinafter "CKCS") located at Kalayaan Bar, Departure Area, Ninoy Aquino International Airport, Pasay City. They are also the owners of a business named Copper Kettle Catering Services, Inc. (hereinafter "CKCS, Inc.") located at Club John Hay, Baguio City with which Texas Instruments Phil., Inc. and Club John Hay had a contract.

Subsequently, BIR Baguio received information that respondent has undeclared income from Texas Instruments Phil., Inc. and Club John Hay. On September 2, 1997, after due investigation, the BIR issued assessment notices stating therein that there is due from respondent deficiency income and percentage tax covering the years 1991,1992 and 1993. Ms. Jeane Menguito protested the assessments. Respondent thereafter filed the present case praying for the cancellation and withdrawal of the deficiency income tax and percentage tax assessments. The Court of Tax Appeals ordered respondent to pay the Commissioner of Internal Revenue the deficiency income, percentage taxes and delinquency interest. However the Court of Appeals reversed the decision.

Issues:

1. Whether or not CKCS, Inc. and CKCS are one and the same taxable entity with the same tax base and liability?

2. Whether or not the respondent was denied due process for failure of petitioner to validly serve respondent with the post-reporting and pre-assessment notices as required by law?

Ruling:

1. CKCS, Inc. and CKCS are one and the same taxable entity with the same tax base and liability. The Court considers the presence of the following circumstances to wit; when the owner of one directs and controls the operations of the other, and the payments effected or received by one are for the accounts due from or payable to the other, or when the properties or products of one are all sold to the other, which in turn immediately sells them to the public as substantial evidence in support of the finding that the two are actually one juridical taxable personality. All the circumstances are present in this case.

   The Supreme Court held that based on evidence presented, respondent's CKCS is also known and referred to as CKCS, Inc. Moreover, respondent and his wife own, manage and act as proprietors of CKCS, and that through said business, respondent also had taxable transactions with Texas Instruments Phil., Inc. and Club John Hay. CKCS and CKCS, Inc. are merely employing the fiction of their separate corporate existence to evade payment of proper taxes.

2. Respondent was not denied due process. A post-reporting notice and pre-assessment notice do not bear the gravity of a formal assessment notice. The post-

reporting notice and pre-assessment notice merely hint at the initial findings of the BIR against a taxpayer and invites the latter to an "informal" conference or clarificatory meeting. Neither notice contains a declaration of the tax liability of the taxpayer or a demand for payment thereof. Hence, the lack of such notices inflicts no prejudice on the taxpayer for as long as the latter is properly served a formal assessment notice. In the case of respondent, a formal assessment notice was received by him as acknowledged in his Petition for Review and Joint Stipulation; and, on the basis thereof, he filed a protest with the BIR, Baguio City and eventually a petition with the CTA.

**Regulations pertaining to minimum wage earners*

REVENUE REGULATIONS NO. 10- 2008

THE BIR issued Revenue Regulations No. 10-2008 (hereinafter "RR 10-2008") last September 24, 2008. It implements the provisions of Republic Act No. 9504 relative to the income tax requirements of minimum wage earners among others.

The term 'statutory minimum wage' earner shall refer to rate fixed by the Regional Tripartite Wage and Productivity Board, as defined by the Bureau of Labor and Employment Statistics (BLES) of the Department of Labor and Employment (DOLE).[2]

The term 'minimum wage earner' (hereinafter "MWE") shall refer to a worker in the private sector paid the statutory minimum wage, or to an employee in the public sector with compensation income of not more than the statutory minimum wage in the non-agricultural sector where he/she is assigned.[3]

The following are the relative provisions of the said RR:

1. Scope of income tax exemption of MWEs. The income tax exemption of minimum wage earners covers the statutory minimum wage, holiday pay, overtime pay, night-shift differential pay and hazard pay. However, if a MWE earns additional compensation as such commissions, honoraria, fringe benefits and other benefits in excess of the allowable statutory minimum of P 30,000, the taxpayer shall no longer enjoy the privilege of being a MWE, and therefore, the

[2] Section 1 of Republic Act No. 9504.
[3] Ibid.

entire income is subject to income tax, and consequently, from withholding tax.

2. Pro-rating of personal and additional exemption allowances. For the 2008 Calendar Year, the applicable personal and additional exemptions shall be prorated as follows:

	January 1 to July 5	July 6 to December 31	Total
Personal Exemption			
Single	P 10,000	P 25,000	P 35,000
Head of Family	12,500	25,000	37,500
Married	16,000	25,000	41,000
Additional Exemption for every Qualified Dependent	4,000	12,500	16,500

Employers are required to undertake final year adjustments consolidating their employees' compensation for 2008 taking into consideration the transitory exemption allowances.

3. Compliance requirements under RR 10-08. The regulation imposes new and additional compliance requirements, which should be complied with to ensure that the employees receive the full benefits of the law.

These requirements are as follows:

a) Monthly submission of list of MWEs to Department of Labor and Employment receiving hazard pay;
b) Submission of BIR Form 1902 with attached documents for new employees;
c) Submission of BIR Form 2305 for updating of exemption status;
d) Issuance of employers of BIR Form No. 2316, showing sum of

all income earned by the MWEs and;

e) Registration of employees receiving purely compensation income at the revenue district office (hereinafter "RDO") having jurisdiction over the employee's place of assignment or in the RDO of the main employer, in case of multiple employment and;

f) For taxable year 2008, accomplishment and filing of BIR Form No. 2305 by employees with changes in the exemptions not later than October 31, 2008.[4]

For those with no change of status and number of qualified dependents, the employer should be responsible for reflecting the new exemption allowances of their employees in their records. Moreover the requirement to submit the quarterly alphalist of MWE contained under the draft of regulations has been removed in the RR 10-2008.

RR 10-2008 does not provide for any retroactive effect, hence the tax relief under Republic Act 9504 shall be enjoyed starting only on July 6, 2008. In this connection, Senator Mar Roxas, the prime author of Republic Act No. 9504, along with various labor groups, has gone to the Supreme Court seeking the full implementation of the law, beginning January this year and not only starting July as stated in RR 10-2008. He also questioned before the tribunal the limitations imposed by the BIR, among them the non-inclusion of minimum wage earners who get additional financial benefits, like rice and transportation allowance, from their employers.[5]

**Amended rule increasing the number of associate justices in CTA*

A.M. No. 05-11-07-CTA

The Proposed Amendments to the Revised Rules of the Court of Tax Appeals (hereinafter "amended rule") has been approved by the High Court. The said amendment was brought about by Republic Act No. 9503 entitled An Act Enlarging the Organizational Structure of the Court of Tax Appeals, Amending for the purpose Certain Sections of the Law Creating the Court Of Tax Appeals, and for other purposes. The amended rule shall take effect on October 15, 2008 following its publication in two (2) newspapers of general circulation. The same was published in Manila Bulletin on October 2, 2008.

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[4] Nerissa Ching, Finally, the new withholding tax regulations, Tax or otherwise, Business World, October 3, 2008.

[5] BIR asked to apply tax law to entire year, Manila Bulletin, October 8, 2008, page 7.

The amended rule provides for eight (8) associate justices in contrast with the previous rule, which provides for five (5) associate justices. Moreover, the Court of Tax Appeals under the amended rule sits in three (3) divisions of three justices each as compared with the previous rule having two (2) divisions.

The amended rule likewise provides for a provision not found in the old rule. A provision pertaining to the disqualification of clerk of court, assistant clerk of court, division clerk of court and assistant division clerk of court has been added. It is contained in Section 8, Rule 2 of the amended rule. The disqualification under the first paragraph, Section 1, Rule 137 of the Rules of Court shall apply to the clerk of court, assistant clerk of court, division clerk of court and assistant division clerk of court insofar as it is relevant to them in the performance of their respective functions and duties.

**ABS-CBN must pay franchise tax*

ABS-CBN NOT EXEMPT FROM PAYING FRANCHISE TAX

Facts:

ABS-CBN Broadcasting Corporation (hereinafter "ABS-CBN") seeks to refund the Php 22.7 million local franchise tax it had paid to Quezon City government under protest. ABS-CBN claim that it is exempted from paying the tax collected from 1995 to 1997 by virtue of its franchise, Republic Act No. 9766 (hereinafter " Republic Act") . Its franchise imposes on the firm a franchise tax equivalent to three percent of all gross receipts of the radio/television business transacted under the franchise and the franchise tax shall be "in lieu of all taxes" on the franchise or earnings thereof. ABS-CBN alleges that the phrase "in lieu of all taxes" covers local taxes.

Issue:

Whether or not ABS-CBN is liable to pay the local franchise tax?

Ruling:

It is liable to pay the local franchise tax. The phrase "in lieu of all taxes" provision in the franchise of ABS-CBN firm does not expressly exempt it from the payment of franchise tax due the local government. The Republic Act could not override a constitutional mandate that assures self- sufficiency for local governments. The phrase "in lieu of all taxes" does not expressly provide what kind of taxes ABS-CBN is exempted from. It is

not clear whether the exemption would include both local, whether municipal, city or provincial, and national tax. What is clear is that ABS-CBN shall be liable to pay three percent franchise tax and income taxes. But whether the phrase “in lieu of all taxes” would include exemption from local tax is not unequivocal.[6]

[6] Rey G. Panaligan, Manila Bulletin, October 8,2008, SC says ABS-CBN not exempt from paying franchise tax, page 12.