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

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| Sections 2 and 58 (E) of the NIRC of 1997, as amended | | 369-2018 |

Person to Contact: Chief, Law Division
Tel. Nos. 926-55-36 / 927-09-63

Date: March 8, 2018

**PHILIPPINE INVESTMENT ONE (SPV-AMC), INC.**
Unit 1615-1616, Ayala Tower One & Exchange Plaza,
cor. Ayala Avenue & Paseo de Roxas,
Makati City

**Attention:** **CARLOS M. MAÑALAC**
General Manager

Gentlemen:

This refers to your letter dated March 31, 2017 requesting for the issuance of Certificates Authorizing Registration (CARs) on Transfer Certificates of Title (TCTs) Nos. and Tax Declaration (TD) No. in relation to the Foreclosure Sale of the said lots owned by Sps. Luis and Emmie Estrella and Sps. Eugene and Corazon Tamayo.

**Background:**

Philippine Investment One (SPV-AMC), Inc. ("PIONE" for brevity) is the assignee of United Coconut Planters Banks's ("UCPB" for brevity) non-performing loans secured by Real Estate Mortgages with Sps. Luis and Emmie Estrella and Sps. Eugene and Corazon Tamayo, as borrowers and mortgagors. The annotated loans appeared on the above seven (7) titles started on March 6, 1995 with a Php loan payable. It followed by a Php loan, Php loan, and Php loan. PIONE acquired the non-performing loans from UCPB through a Deed of Assignment dated March 14, 2008, including the properties mortgaged as security of the loans.

On September 23, 2008, creditor Metropolitan Bank and Trust Company ("MBTC" for brevity) filed S.P. PROC CASE NO. M-6682 *(IN THE MATTER OF PETITION FOR REHABILITATION WITH PRAYER FOR STAYING ALL CLAIMS, ACTIONS AND PROCEEDINGS AGAINST PHILIPPINE INVESTMENT ONE (SPV-AMC), INC.)* against PIONE before the Regional Trial Court (RTC) of Makati City, Branch 149. A Stay Order was then issued by the said court on the same date. Thus, all the loans of UCPB transferred to PIONE by way of the Deed of Assignment became under the principle of custodial legis including all the mortgaged properties secured by the loans of Sps. Estrella.

On July 4, 2016, PIONE applied for the issuance of the appropriate CARs after payment of all the necessary taxes assessed against PIONE for the above subject properties, before Revenue District Office (RDO) No. 71, Kalibo Aklan. However, before the release of the appropriate CARs, Sps. Estrella presented and submitted to Alexander P. Laroza, Revenue District Officer of RDO No. 71, Kalibo Aklan, a Certificate of Redemption (with Cancellation of Certificate of Release of Mortgage), dated March 3, 2016, issued by the Office of the Provincial Sherriff in favor of Luis Estrella, Jr., his heirs, assigns, successors, administrators.

The said Certificates were issued before the lapse of the one-year redemption period. Thus, RDO Alexander P. Laroza requested for a ruling or legal opinion on whether or not his office will hold the release of the CARs in favor of PIONE.

On December 16, 2016, the Deputy Commissioner of the Legal Group, Jesus Clint O. Aranas, issued Memorandum No. 034-2016, which states that:

> *"In reply, please be informed that timely redemption of mortgaged real property involves restoration of the property to the mortgagor-debtor from the purchaser. Considering that a Certificate of Redemption (with Cancellation of Certificate of Release of Mortgage dated March 3, 2016) was issued by the Office of the Provincial Sherriff in favor of Luis Estrella, Jr., his heirs, assigns, successors, administrators, the rights of Sps. Luis and Emmie Estrella and Sps. Eugene and Corazon Tamayo over the properties have been restored as the same were actually reverted to them. Thus, the CAR should not be issued in favor of Philippine Investment One (SPV-AMC), Inc.*
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> *Please take note, however, that it was Luis Estrella, Jr. who redeemed the mortgaged real properties. Thus, please determine if there was an agreement to convey the properties in favor of Luis Estrella, Jr. by reason of his redemption, or if there was merely a loan agreement between the landowners and Luis Estrella, Jr., so that appropriate taxes may be collected therefrom."*

In view of the above Memorandum, RDO Alexander P. Laroza did not issue the appropriate CARs in favor of PIONE.

However, the RTC of Makati City, Branch 149, in its Resolution dated March 23, 2017, declared the Certificate of Release of Mortgage dated March 3, 2016 and the Certificate of Redemption with Cancellation of Certificate of Release of Mortgage dated March 3, 2016 executed on March 31, 2016 to be null and without force and legal effect. The dispositive portion of the said Resolution provides that:

> *"WHEREFORE, the subject* ***Certificate of Release of Mortgage dated March 3, 2016*** *executed by Atty. Arnaldo C. Tejada, Jr., Clerk of Court VI/Ex-Officio Provincial Sherriff, attested by Sheriff IV, Cyril C. Francisco; and the* ***Certificate of Redemption with Cancellation of Certificate of Release of Mortgage dated March 3, 2016 executed on March 31, 2016*** *by Atty. Arnaldo C. Tejada, Jr., Clerk of Court VI/Ex-Officio Provincial Sherriff, attested by Sheriff IV, Cyril C. Francisco, are hereby declared in violation of the said Circular and Law and Jurisprudence, hence, these are declared a nullity, without force and legal effect.*
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> *Atty. Arnaldo C. Tejada, Jr., Clerk of Court VI/Ex-Officio Provincial Sherriff, and Sheriff IV, Cyril C. Francisco of the Regional Trial Court of Kalibo, Aklan are hereby ordered to implement immediately upon receipt: the* ***cancellation of said Certificate of Release of Mortgage dated March 3, 2016,*** *notarized by Atty. Jerald I. Iledan, as Doc. No. 346, Page No. 71, Book No. 14, Series of 2006; and* ***Certificate of Redemption dated March 31, 2016,*** *notarized by Atty. Higino C. Macabales, as Doc. No. 7, Page No. 3, Book No. 71, Series of 2016.* ***They are further ordered not to register those documents they have signed and executed with the Registry of Deeds. If the same had been annotated, they are ordered to cancel the same,*** *with notice to this court within fifteen (15) days from receipt of this Order that they have complied with this Order, under pain of sanction.*

*SO ORDERED.*" (Emphasis and underscoring supplied)

In the said Resolution, Atty. Arnaldo C. Tejada, Jr. and Cyril C. Francisco of the RTC of Kalibo, Aklan were ordered to implement immediately the cancellation of the Certificate of Release of Mortgage dated March 3, 2016 and Certificate of Redemption dated March 31, 2016. In the letter dated August 23, 2017 of the Deputy Court Administrator Jenny Lind R. Aldecoa-Delorino to Cyril C. Francisco relative to the query of the latter as to the implementation of the Resolution dated March 23, 2017, the former attached thereto the explanation letter of Presiding Judge Cesar O. Untalan dated August 14, 2017, which partly provides that:

> *"It is worthy note that the subject property was part and subject to the Stay Order issued by this court on September 23, 2008....*
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> *In view of the inclusion of the subject property under the said Stay Order, the subject property becomes automatically under the custody of this court under the principle of custodia legis, hence this court, as Rehabilitation Court for Philippine Investment One, has to protect the assets under rehabilitation which includes the issuance of the subject Resolution dated March 23, 2017 under questioned by Sheriff Cyril C. Francisco. Thus, all persons, regardless of status and position who shall intervene and disturb the smooth and proper distribution of subject assets shall always be subjected to the power and authority of the court."*

In reply, please be informed that Section 2 in relation to Section 58 (E) of the National Internal Revenue Code of 1997, as amended, states that:

> *"SEC. 2. Powers and Duties of the Bureau of Internal Revenue. — The Bureau of Internal Revenue shall be under the supervision and control of the Department of Finance and its powers and duties shall comprehend the assessment and collection of all national internal revenue taxes, fees, and charges, and the enforcement of all forfeitures, penalties, and fines connected therewith, including the execution of judgments in all cases decided in its favor by the Court of Tax Appeals and the ordinary courts. The Bureau shall give effect to and administer the supervisory and police powers conferred to it by this Code or other laws."*
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> *"SEC. 58. Returns and Payment of Taxes Withheld at Source. —*
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> *xxx xxx xxx*
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> *E) Registration with Register of Deeds. — No registration of any document transferring real property shall be effected by the Register of Deeds unless the Commissioner or his duly authorized representative has certified that such transfer has been reported, and the capital gains or creditable withholding tax, if any, has been paid: xxx xxx xxx"*

It is clear from the foregoing provisions that the prime concern of the Bureau of Internal Revenue (BIR) is to collect taxes. In so far as registration of document transferring real property is concerned, the BIR shall ensure that proper taxes have been paid thereon. The BIR shall make a certification, through the issuance of CAR, that the transfer of the real property has been reported, and that the applicable taxes have been duly paid. It must be emphasized that the CAR is nothing more but a certification that applicable taxes on the transaction have been paid. In issuing the CAR, the BIR does not rule on the validity of the transaction as the same does not fall within its jurisdiction.

However, considering that the subject property was part and subject to the Stay Order issued by the RTC of Makati City, Branch 149 dated September 23, 2008, and under the custody of the said Court under the principle of *custodia legis*, a specific Order from the said Court ordering the RDO in Kalibo, Aklan to issue the necessary CARs in favor of PIONE should first be secured.

This ruling is being issued on the basis of the foregoing facts as represented. However, if upon investigation it will be disclosed that the facts are different, then this ruling shall be considered null and void.

Very truly yours,

**CAESAR R. DULAY**
Commissioner of Internal Revenue
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