[BIR REVENUE MEMORANDUM CIRCULAR NO. 5-2001, February 19, 2001]

GROUNDS AND PROCEDURES FOR THE IMPLEMENTATION OF SECTION 206 OF THE TAX CODE OF 1997 ON CONSTRUCTIVE DISTRAINT

Pursuant to the provisions of Section 4, in relation to Section 246 of the Tax Code of 1997 (Code), this Circular is hereby issued to clarify the grounds and procedures for the implementation of Section 206 of the Code on constructive distraint.

SECTION 1. When to Issue Notice or Warrant of Constructive Distraint on the Property of a Taxpayer- In order to safeguard the interest of the government, the Commissioner, may place under constructive distraint the personal or movable property/ies of -

a) a delinquent taxpayer, or

b) any taxpayer who, in his opinion, is retiring from any business subject to tax, or intending to leave the Philippines, or intending to remove his property/ies from the Philippines, or intending to hide or conceal his property/ies, or intending to perform any act tending to obstruct the proceedings for collecting the tax due or which may be due from him.

SEC. 2. Specific Cases When a Notice or Warrant of Constructive Distraint over the Property/ies of a Taxpayer may be Issued

a) When a taxpayer who applies for retirement from business has a huge amount of assessment pending with the Bureau of Internal Revenue (BIR). An assessment is huge if the amount thereof is equal to or bigger than the networth or equity of the taxpayer;

b) When a taxpayer who is under tax investigation has a record of leaving the Philippines at least twice a year, unless such trips are justified and/or connected with his business, profession or employment;

c) When a taxpayer, other than a banking institution, who is under tax investigation has a record, of transferring his bank deposits and other valuable personal property/ies from the Philippines to any foreign country;

d) When the taxpayer uses aliases in bank accounts, other than the name for which he is legally and/or popularly known;

e) When the taxpayer keeps bank deposits and owns other property/ies under the name of other persons, whether or not related to him, and the