



13 JUL -4 AIO :24

SENATE

S. No. 460

RECEIVED BY: *Jai*

Introduced by Senator Ralph G. Recto

Explanatory Note

This measure provides for the inclusion of services of tollway operators to the transactions that are exempt from the Value-Added Tax (VAT). Lawmakers, renowned tax experts and economists consistently maintained that the legislative intent is to exempt tollway fee from VAT in the passage of the Expanded Value-Added Tax Law in 1994.

However, the BIR in 2010 ruled that tollway operators are liable for VAT,¹ since the services of tollway operators are not listed among exempt transactions. Likewise, the Supreme Court said : "Tax exemptions must be justified by clear statutory grant and based on language in the law too plain to be mistaken."²

For 18 years, the Bureau of Internal Revenue (BIR) never collected VAT from the tollway operation industry on the assumption that it is VAT-exempt. Further, no revenue projections referred to VAT on tollway fee collection in the budget deliberations of the previous administrations. Nor, was it identified as a source of funding in any budget presentation by the Department of Finance. Only lately had the BIR announced that VAT collection on tollway operations is expected to generate from around Php1.3 Billion³ to Php3.3 Billion.⁴

To collect VAT on tollway operations is a breach of the campaign promise that the Aquino administration shall not impose new taxes amid incessant fuel price hikes. This bill reiterates that campaign promise that rightfully took into consideration the need to secure the welfare of consumers, among who are users of tollways.

The imposition of VAT will trigger increases in prices of basic goods and services ferried through the tollways. The Department of Trade and Industry stressed that a 10 percent rise in transport cost results to a one percent increase in food prices, in the Philippines.⁵ Similarly, the cost of operations of the various manufacturing, Business Process Outsourcing, passenger and cargo transport hub operators and others will incur huge transport expenditures and experience disruptions in their business expectations considering that the tollways link up freeports, special economic zones, regional food production areas and financial centers with the population centers in rural, urban and highly-urbanized areas. Among these are the Subic Clark Tarlac Expressway, North Luzon Expressway, Star Tollway, and South Luzon Expressway, among others.

Furthermore, VAT on services of tollway operators had never formed part of the contracts or agreements between the Government and investors under the various Public-Private-Partnership--Build-Operate-Transfer programs, the core of the government's economic resiliency plan.

¹ Memorandum Circular No. 63-2010 dated July 10, 2010

² G. R. No. 193007 (Renato B. Diaz and Aurora Ma. F. Timbol vs. The Secretary of Finance and the Commissioner of Internal Revenue), July 19, 2011

³ http://ftp.bir.gov.ph/webadmin1/pdf/primer_on_tollway.pdf (Accessed on March 21, 2013)

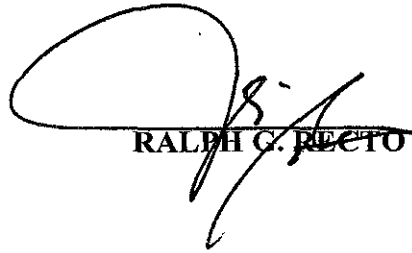
⁴ <http://www.sunstar.com.ph/manila/local-news/2011/10/01/palace-warns-profiteers-vat-tollways-starts-182592> (Accessed on March 21, 2013)

⁵ <http://www.bloomberg.com/news/print/2011-01-27/philippine-food-prices-may-rise-1-on-transport-costs-correct.html> (Accessed on March 21, 2013)

Tollway operation is an inherent component of PPP in order to build the necessary road infrastructures that government cannot fund by itself. Privately-built toll facilities through the various modes of PPP consequently become publicly-owned at the conclusion / termination / expiration of the contract or agreement. As such, they should not be subject to VAT considering that tollway operators are merely stepping into the shoes of government in constructing these roads for public convenience for a reasonable rate of return on their investments.

Through the amendments to Sections 108 and 109 of the National Internal Revenue Code of 1997, the bill underscores the legislative policy of exempting tollway operators from VAT and complies with the SC exhortation that the exemption must be expressly provided for by law.

Hence, the passage of this bill is earnestly sought.



RALPH C. RECTO



13 JUL -4 AIO :24

SENATE

S. No. 460

RECEIVED BY: *ji*

Introduced by Senator Ralph G. Recto

AN ACT
EXEMPTING TOLLWAY OPERATIONS FROM THE TWELVE PERCENT (12%)
VALUE ADDED TAX, AMENDING FOR THE PURPOSE SECTIONS 108 AND 109 OF
THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED BY
REPUBLIC ACT NO. 9337, AND FOR OTHER PURPOSES

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

1 **SECTION. 1.** Section 108 of the National Internal Revenue Code of 1997, as amended,
2 is hereby further amended to read as follows:

3 **“SEC. 108. Value-Added Tax on Sale of Services and Use or Lease of Properties. –**

4 **“(A) Rate and Base of Tax. –** There shall be levied, assessed and collected, a
5 value-added tax equivalent to ten percent (10%) of gross receipts derived from the
6 sale or exchange of services, including the use or lease of properties: Provided,
7 That the President, upon the recommendation of the Secretary of Finance, shall,
8 effective January 1, 2006, raise the rate of value-added tax to twelve percent
9 (12%), after any of the following conditions has been satisfied:

10 **“(i) Value-added tax collection as a percentage of Gross Domestic Product (GDP)**
11 **of the previous year exceeds two and four-fifth percent (2 4/5%); or**

12 **“(ii) National government deficit as a percentage of GDP of the previous year**
13 **exceeds one and one-half percent (1 ½%).**

14 **“The phrase 'sale or exchange of services' means the performance of all kinds of**
15 **services in the Philippines for others for a fee, remuneration or consideration,**
16 **including those performed or rendered by construction and service contractors;**
17 **stock, real estate, commercial, customs and immigration brokers; lessors of**
18 **property, whether personal or real; warehousing services; lessors or distributors of**
19 **cinematographic films; persons engaged in milling, processing, manufacturing or**
20 **repacking goods for others; proprietors, operators or keepers of hotels, motels,**
21 **rest-houses, pension houses, inns, resorts; proprietors or operators of restaurants,**
22 **refreshment parlors, cafes and other eating places, including clubs and caterers;**
23 **dealers in securities; lending investors; transportation contractors on their**
24 **transport of goods or cargoes, including persons who transport goods or cargoes**

1 for hire and other domestic common carriers by land relative to their transport of
2 goods or cargoes; common carriers by air and sea relative to their transport of
3 passengers, goods or cargoes from one place in the Philippines to another place in
4 the Philippines; sales of electricity by generation companies, transmission, and
5 distribution companies; services of franchise grantees of electric utilities,
6 telephone and telegraph, radio and television broadcasting and all other franchise
7 grantees except SERVICES OF TOLLWAY OPERATORS WITH TOLLWAY
8 OPERATION CERTIFICATE ISSUED BY THE TOLL REGULATORY
9 BOARD AND those under Section 119 of this Code and non-life insurance
10 companies (except their crop insurances), including surety, fidelity, indemnity and
11 bonding companies; and similar services regardless of whether or not the
12 performance thereof calls for the exercise or use of the physical or mental
13 faculties. The phrase 'sale or exchange of services' shall likewise include:

14 "xxx."

15 **SEC. 2.** Section 109 of the National Internal Revenue Code of 1997, as amended, is
16 hereby further amended to read as follows:

17 "**SEC. 109. Exempt Transactions.** –

18 "(1) Subject to the provisions of Subsection (2) hereof, the following transactions shall be
19 exempt from the value-added tax:

20 "(A) xxx;

21 "xxx;

22 (U) Services of banks, non-bank financial intermediaries performing quasi-banking
23 functions, other non-bank financial intermediaries; [and]

24 "(V) SERVICES OF TOLLWAY OPERATORS WITH TOLLWAY OPERATION
25 CERTIFICATE ISSUED BY THE TOLL REGULATORY BOARD; AND

26 "(W) [V] Sale or lease of goods or properties or the performance of services other
27 than the transactions mentioned in the preceding paragraphs, the gross annual sales and/or
28 receipts do not exceed the amount of One million five hundred thousand pesos (P1,500,000):
29 Provided, That not later than January 31, 2009 and every three (3) years thereafter, the
30 amount herein stated shall be adjusted to its present value using the Consumer Price Index, as
31 published by the National Statistics Office (NSO).

32 "(2) xxx."

33 **SEC. 3. Implementing Rules and Regulations (IRR).** – Within sixty (60) days upon
34 approval of this Act, the Secretary of Finance shall issue the IRR for the effective
35 implementation of this Act.

36 **SEC. 4. Separability Clause.** – Any portion or provision of this Act that may be declared
37 unconstitutional or invalid shall not have the effect of nullifying other portions or provisions

1 hereof, as long as such remaining portions or provisions can still subsist and be given effect in
2 their entirety.

3 **SEC. 5. Repealing Clause.** - All laws, acts, decrees, executive orders, issuances, and
4 rules and regulations or parts thereof which are contrary to and inconsistent with this Act are
5 hereby repealed, amended or modified accordingly.

6 **SEC. 6. Effectivity.** - This Act shall take effect fifteen (15) days after its complete
7 publication in the Official Gazette or in at least two (2) newspapers of general circulation.

Approved,