
INTRODUCED BY SEN. JINGGOY EJERCITO ESTRADA

RESOLUTION

CALLING ON THE PROPER COMMITTEE TO CONDUCT AN INQUIRY, IN AID OF LEGISLATION, ON THE BUREAU OF INTERNAL REVENUE'S (BIR'S) PLAN TO REVISE EXISTING INCOME TAX FORMS, WHICH IN EFFECT WILL INCLUDE INFORMATION UNDER THE PREVIOUSLY PROPOSED AND HIGHLY CONTESTED ANNUAL INFORMATION RETURNS (AIR), WHERE TAXPAYERS ARE REQUIRED TO SUBMIT THEIR EARNINGS AND INCOME SOURCES, INCLUDING INTEREST INCOME, ROYALTIES, DIVIDENDS AND GAINS FROM REAL PROPERTIES, AMONG OTHERS, IN VIEW OF THE STRONG OPPOSITION OF DIFFERENT SECTORS AND EVEN GOVERNMENT OFFICIALS DUE TO ITS ALLEGED VIOLATION OF THE CONSTITUTION, THE NATIONAL INTERNAL REVENUE CODE, THE BANK SECRECY LAW AND OTHER PERTINENT LAWS.

WHEREAS, Section 3 (1) Article 3 of the Philippine Constitution provides that a person's privacy of communication and correspondence shall be inviolable except upon lawful order of the court, or when public safety or order requires otherwise, as prescribed by law;

WHEREAS, Section 2 of the Tax Code specifically dictates that the Bureau of Internal Revenue shall give effect to and administer the powers conferred to it by law. Hence, it can only act within the bounds of authority conferred to it by the Tax Code and other applicable laws. Any act not stated in the law shall therefore require a legislative action and may not be resorted through the exercise of the Bureau's administrative authority;

WHEREAS, Section 6 (F) of the Tax Code states that the BIR Commissioner may be authorized to inquire into bank deposits (a form of Passive income) of any taxpayer when he has filed an application for compromise of his tax liability under Section 204(A)(2) of the Tax Code by reason of financial incapacity to pay his tax liability;

WHEREAS, Section 2 of the Bank Secrecy Law (RA 1405 as amended) provides that deposits and other forms of investments in banks are absolutely confidential and may not be inquired into by any person, government official, bureau or office, except upon written permission of the depositor, or upon order of a competent court or when the money deposited or invested is the subject of litigation;

WHEREAS, the Bureau of Internal Revenue issued Revenue Regulation 2-2011 last March 1, 2011, entitled "Filing of Income Tax Return (ITR) and/or Annual Information Return (AIR) by Individuals, including Estates and Trusts," which requires the filing of Form No. 1705 (AIR) by individuals earning pure compensation income (exceeding P500,000 per annum), those whose income are subject to final withholding tax, including Passive income such as interest in bank deposits, royalties, dividends, among others (exceeding P125,000) and those whose income are exempt from income tax (exceeding P500,000). On the other hand, those who are qualified for substituted filing, are required to file an ITR for purposes of loans, foreign travel requirements, etc., attaching therewith a fully accomplished AIR;

WHEREAS, Congress conducted an inquiry on March 15, 2011, to look into the regulation's possible infringement of the Constitutional right to privacy of individual taxpayers, the alleged contravention of the Bank Secrecy Law and its legal basis under the Tax Code;

WHEREAS, lawmakers insisted that the BIR's measure is without legal basis and violates the aforementioned laws;

WHEREAS, during the hearing, BIR Commissioner Kim Jacinto-Henares was quoted in saying that she will recommend to Finance Secretary Cesar Purisima the withdrawal of Revenue Regulation No. 2-2011;

WHEREAS, Finance Secretary Cesar Purisima issued on March 10, 2011, Revenue Regulation No. 6-2011 suspending the implementation of Revenue Regulation No. 2-2011;

WHEREAS, on September 5, 2011, BIR Commissioner Kim Jacinto-Henares issued Revenue Memorandum Circular (RMC) No. 40-2011, requiring the use of new income tax forms for taxable year 2011, to be filed on April 15, 2012. It appears that all information, such as income from all sources, which the BIR proposed to be included under the strongly opposed AIR, is now mandated to be provided by taxpayers as "Supplemental Information" in the new Annual Income Tax Return;

WHEREAS, Section 51 (2) of the Tax Code exempts certain individuals from filing Income Tax Returns (ITRs). It appears that under RMC 40-2011, the same category of individuals are required to file ITRs, with the Supplemental Information form as Part IV, consequently amending said provision in the Tax Code;

WHEREAS, the use of the new income tax forms was alleged to be equivalent to the filing of Statement of Assets, Liabilities and Net worth (SALN), presently required from government officials and employees only and not from private income earners;


WHEREAS, there is a necessity for the BIR to explain why it resorted to amending income tax forms directing taxpayers to divulge all sources of income, including passive income from banks, in effect reiterating the implementation of Form No. 1705 (AIR) required under the highly criticized and now suspended Revenue Regulation No. 2-2011;

WHEREAS, the BIR must enlighten the legislature on the legal basis of its action and prove that it does not infringe any constitutional provision or statute;

WHEREAS, there is a need to determine if the BIR's move is tantamount to defiance/circumvention of the directive of Congress to withdraw the previous revenue regulation requiring the filing of AIR as well as a violation of the Tax Code and all pertinent laws;

NOW, THEREFORE, BE IT RESOLVED, AS IT IS HEREBY RESOLVED by the **Senate**, to direct the proper Senate committee to conduct an inquiry, in aid of legislation, on the Bureau of Internal Revenue's (BIR's) plan to revise the existing Income tax returns, with the end view of determining its impact on our present tax system, to ensure that said action is with legal basis and would not contravene rights and laws, and if necessary, the amendment of Tax Code or other applicable laws.

Adopted,


JINGGOY EJERCITO ESTRADA
Senator