

SENATE
S. No. 3378

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INTRODUCED BY SENATOR FRANKLIN M. DRILON

EXPLANATORY NOTE

The provision of tax incentives is one of the fiscal strategies to encourage desired economic activities or social behaviors. In the Philippines, tax incentives are used to promote investments that are deemed to have a significant impact on economic growth and development. Several Investment Promotion Agencies (IPAs) administer tax incentives provided under various investment incentive laws, to registered investors, domestic or foreign, and located within or outside designated economic zones.

Similarly, there are a number of special laws that provide tax incentives to non-investment activities. These activities are being encouraged with the hope of enhancing the welfare of certain groups or sectors in the society. In fact, countries in different stages of development use tax incentives, when necessary, to satisfy the government's socio-economic goals.

Considering the beneficial purposes of tax incentives, it is of prime importance to ensure that the same are met or fulfilled. It is therefore critical to instill transparency in the system of tax incentives, an undertaking that is aligned with the present Administration's battle cry of open and good governance.

Transparency, in itself, is a factor in creating a better fiscal and investment environment. It empowers all stakeholders -- the government, the business sector, and civil society in general -- by allowing for greater public scrutiny of the government's actions, which, in turn, enhances the certainty and predictability of government policy formulation and implementation.

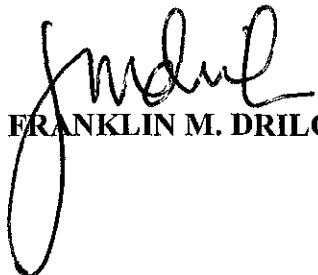
In the Philippines, the effectiveness of tax incentives as a fiscal tool to promote economic and social objectives is yet to be determined. The lack of empirical evidence that directly links incentives to intended benefits results in protracted debates on their true worth. Nonetheless, in terms of their fiscal cost, there are numerous findings from local and

international studies and literature on how much tax incentives cost to the government. Reside (2004) found that the Income Tax Holiday (ITH) incentive administered by the Board of Investments, by itself, represents around one percent (1%) of the country's Gross Domestic Product (GDP). In his 2011 research on non-investment tax incentives, on the other hand, Reside partially estimated the cost of non-investment tax incentives at 1.3 percent of GDP.

The concept of tax expenditure accounting or producing a tax expenditure statement improves the transparency of the tax system. It is noted, however, that the present system of accounting for tax expenditures in the annual budget or the General Appropriations Act (GAA) only includes tax incentives granted to National Government Agencies and Government-Owned or -Controlled Corporations (GOCCs) The bulk of tax incentives which are those granted to private individuals and corporations, are not accounted for; hence, the magnitude of these incentives remain largely unknown.

The proposed measure aims to address this serious information gap without posing additional administrative burden to investors. For the most part, the bill will create a Tax Expenditure Account (TEA) in the annual national budget to reflect the amount of tax incentives granted to private individuals and corporations to foster transparency in the present system of granting tax incentives.

Considering the significant benefits of this measure, utmost consideration and passage of this bill is earnestly sought.



FRANKLIN M. DRILON

FIFTEENTH CONGRESS OF THE)
REPUBLIC OF THE PHILIPPINES)
Third Regular Session)

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**AN ACT ESTABLISHING A SYSTEM FOR TAX INCENTIVES
MANAGEMENT AND TRANSPARENCY, AND FOR OTHER PURPOSES**

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

SECTION 1. Title. – This Act shall be known as “The Tax Incentives Management and Transparency Act.”

SECTION 2. Declaration of Policy. – It is hereby declared the policy of the State to promote fiscal prudence and transparency in the proper management and grant of tax incentives by developing means to measure the government’s fiscal exposure from these expenditures and to enable the government to analyze and rationalize the fiscal cost and at the same time optimize the economic impact and benefit incidence of such incentives.

SECTION 3. Definition of Terms. – As used herein,

a. “*Investment Promotions Agencies (IPAs)*” shall refer to government entities created by law, executive order, decree or other issuance, in charge of promoting investments, administering tax and non-tax incentives, and/or overseeing the operations of the different economic zones and freeports in accordance with their respective charters. These include the Board of Investments (BOI), Philippine Economic Zone Authority (PEZA), Bases Conversion Development Authority (BCDA), Subic Bay Metropolitan Authority (SBMA), Clark Development Corporation (CDC), Poro Point Management Corporation (PPMC), Bataan Technology Park, Inc. (BTPI), Cagayan Economic Zone Authority (CEZA), Zamboanga City Special Economic Zone Authority (ZCSEZA), Phividec Industrial Authority (PIA), Aurora Pacific Economic Zone and Freeport Authority (APECO), Authority of the Freeport Area of Bataan (AFAB), Tourism Infrastructure And Enterprise Zone Authority (TIEZA), and all other similar authorities that may be created by law in the future.

b. *“Other Government Agencies”* shall refer to government agencies other than IPAs which administer tax exemptions of any kind to any specific entities and/or class of persons by reason of any law.

c. *“Tax Expenditures”* shall refer to grants of tax incentives or those special provisions that give tax exemptions or preferential tax treatment to qualified firms in their registered investment activities or to special groups or individuals as a form of assistance for the purpose of encouraging certain economic behavior or for other public interest purposes or policies declared by law.

SECTION 4. *Accounting and Claiming of Tax Incentives.* – The amounts pertaining to tax incentives administered by IPAs and other government agencies to private individuals and corporations, and specified in accordance with a schedule to be prepared by the Department of Finance (DOF), shall be treated as both revenue and expenditure of the General Fund. Revenues of all persons, whether natural or juridical, shall be subject to the regular tax rate, and the incentives to which they are entitled shall be administered by the relevant IPA and/or other government agency by way of utilization of the Tax Expenditure Account provided in the succeeding section.

Registered enterprises qualified for tax incentives shall submit their claim for incentives to their respective tax incentive administering body. After review and approval of the claim, the IPA or government agency concerned shall be responsible for requesting the approved amount from the Department of Budget and Management (DBM).

SECTION 5. *Tax Expenditure Account (TEA).* – An account shall be created in the annual General Appropriations Act (GAA), from which tax incentives, as may be determined by the IPAs and other government agencies in accordance with law, are accounted. Notwithstanding the provisions of their respective charters, IPAs and other government agencies concerned shall account in the TEA all tax incentives that they grant.

SECTION 6. *Automatic Appropriation.* – Tax expenditures for purposes of this Act are deemed automatically appropriated, provided, that no obligations shall be incurred or payments made from the TEA thus automatically appropriated except as issued in the form of regular budgetary allotments.

Notwithstanding the provision under this Section, the Commissioner of Internal Revenue shall exercise his/her power to make assessments and prescribe additional requirements for tax administration and enforcement as specified under Section 6 of the National Internal Revenue Code (NIRC) of 1997, as amended.

Revenues accounted for by way of the TEA under this Act shall not be included in the base for computation of any other budget appropriation such as those for the internal revenue allotment of local government units under the Local Government Code of 1991 and for the rewards and incentives under the Attrition Act of 2005.

SECTION 7. *Administration, Implementation and Monitoring of Tax Incentives.* –

The IPAs and other government agencies concerned shall be responsible for the administration and implementation of tax incentives granted to registered enterprises. They shall submit to the DOF their respective annual tax expenditures based on computed cost in terms of revenue foregone on the tax incentives granted to their registered enterprises or to special groups, as the case may be, and other data related to the grant of such incentives as may be required by the DOF.

In fulfilling the foregoing requirements, the IPAs and other government agencies shall also be subject to the power of the Commissioner to obtain information and to summon, examine and take testimony of persons under Section 5 of the NIRC of 1997, as amended.

The DOF, together with the Bureau of Internal Revenue (BIR) and the Bureau of Customs (BOC), shall create a single database of all tax incentives granted by the IPAs and other government agencies, monitor the incentives granted, and submit an annual Tax Expenditure Report to the President and to the Chairman of the Committee on Appropriations/Finance of both houses of Congress as part of the annual GAA.

SECTION 8. *Non-compliance with Reportorial Requirements; Penalties.* – The failure of an IPA or other government agency to submit the tax expenditure report and other data required herein, by reason of the fault or failure of any registered enterprise, shall be a ground for the suspension of the incentives being enjoyed by such registered enterprise or special group for the particular taxable year, due to violation of the terms and conditions of its registration. Repeated violation shall be penalized with the cancellation of the enterprise's registration.

The DOF shall issue to the concerned IPA or other government agency a notice of non-compliance with this Act and its implementing rules and regulations, and direct the latter to explain its failure to comply and the actions it took to address such failure. The concerned IPA or other government agency, if its failure be attributable to the fault or failure of a registered enterprise, shall state such fact in its explanation, attach supporting documents (such as official requests for submission), and cause the issuance of a notice of violation of registration terms and conditions against the registered enterprise.

The erring registered enterprise shall then be subject to the aforementioned penalties the terms of and procedure for which shall be prepared by the IPAs and other government agencies for inclusion in the implementing rules and regulations of this Act, in addition to the applicable penalties provided for under the NIRC of 1997, as amended.

SECTION 9. *Joint Congressional Oversight Committee.* – A Joint Congressional Oversight Committee, herein referred to as the Oversight Committee, shall be constituted in accordance with the provisions of this Act. The Oversight Committee shall be composed of the Chairperson of the Committee on Appropriations of the House of Representatives, the Chairperson of the Committee on Finance of the Senate and three (3) additional members

from each House to be designated by the Senate President and the Speaker of the House of Representatives.

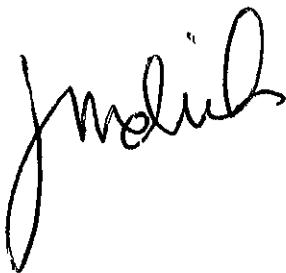
The Secretaries of Budget and Management, Trade and Industry and Finance shall report to the Oversight Committee on an annual basis the investment performance and the corresponding tax expenditures and other relevant data.

SECTION 10. *Implementing Rules and Regulations.* – The DOF, in coordination with the DBM, BIR and BOC, and in consultation with all IPAs and other concerned government agencies, shall, within sixty (60) days from the effectivity of this Act, jointly promulgate rules and regulations to implement the intent and provisions of this Act.

SECTION 11. *Separability Clause.* – In the event that any provision of this Act is declared invalid, the other provisions of the Act which are not affected thereby shall remain in force and effect.

SECTION 12. *Effectivity.* – This Act shall take effect fifteen (15) days after its publication in a newspaper of general circulation in the Philippines.

Approved,

A handwritten signature in black ink, appearing to be 'J. M. L. L.', is written below the word 'Approved,'.