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13th CONGRESS OF THE REPUBLIC)
OF THE PHILIPPINES)
First Regular Session)

SENATE

S. BILL NO. 1339

Introduced by Senator Ralph G. Recto

Explanatory Note

In light of the global economic slowdown that has adversely affected world economies, it becomes all the more imperative to extend the period during which net operating losses ("NOL") can be taken as a deduction from gross income, thereby serving to cushion the impact of the global economic slowdown on the Philippine economy. "NOL" refers to the excess of allowable deductions over gross income of the business in a given taxable year.

The National Internal Revenue Code of 1997 (the "Tax Code"), provided specified conditions are met, allows NOL to be carried-over for a period of three (3) consecutive taxable years immediately following the year in which the loss was incurred.

Giving businesses five (5) years (instead of 3 years) within which to carry-over and offset the NOL it has incurred against the income of the succeeding 5 years will effectively breathe life to the animating spirit behind the Tax Code provisions on deductibility of NOL, *i.e.*, to minimize the inequity that may result if a taxpayer were taxed on all income of good years without being allowed any substantial benefit from the NOL sustained during bad years.

Furthermore, the amendments to the Tax Code provisions in this proposed measure are designed to address the reality that the present 3-year period to carry-over the NOL is too short to derive substantial benefits from the carry-over of the NOL.

It is in this light that immediate approval of this bill is earnestly sought.

RALPH G. RECTO

13th CONGRESS OF THE REPUBLIC OF THE PHILIPPINES)
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S. BILL NO. 1339

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AN ACT
AMENDING SECTION 34 OF REPUBLIC ACT OF 8424, OTHERWISE KNOWN AS THE NATIONAL INTERNAL REVENUE CODE OF 1997

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

SECTION 1. Section 34 of Republic Act 8424, otherwise known as the National Internal Revenue Code of 1997, is hereby amended to read as follows:

"SEC. 34. *Deductions from Gross Income.* — Except for taxpayers earning compensation income arising from personal services rendered under an employer-employee relationship where no deductions shall be allowed under this Section other than under Subsection (M) hereof, in computing taxable income subject to income tax under Sections 24(A); 25(A); 26; 27(A), (B) and (C); and 28(A) (1), there shall be allowed the following deductions from gross income:

XXX

(D) Losses. –

XXX

(3) *Net Operating Loss Carry-over.* – The net operating loss of the business or enterprise for any taxable year immediately

preceding the current taxable year, which had not been previously offset as deduction from gross income shall be carried over as a deduction from gross income for the next [three (3)] FIVE (5) consecutive taxable years immediately following the year of such loss: *Provided, however,* That any net loss incurred in a taxable year during which the taxpayer was exempt from income tax shall not be allowed as a deduction under this Subsection: *Provided,* further, That a net operating loss carry-over shall be allowed only if there has been no substantial change in the ownership of the business or enterprise in that —

(i) Not less than seventy-five percent (75%) in nominal value of the outstanding issued shares, if the business is in the name of a corporation, is held by or on behalf of the same persons; or

(ii) Not less than seventy-five percent (75%) of the paid up capital of the corporation, if the business is in the name of a corporation, is held by or on behalf of the same persons.

For purposes of this Subsection, the term 'net operating loss' shall mean the excess of allowable deduction over gross income of the business in a taxable year;

Provided, That for mines other than oil and gas wells, a net operating loss without the benefit of incentives provided for under Executive Order No. 226, as amended, otherwise known as the Omnibus Investments Code of 1987, incurred in any of the first ten (10) years of operation may be carried over as a deduction from taxable income for the next five (5) years immediately following the year of such loss. The entire amount of the loss shall be carried over to the first of the five (5) taxable years following the loss, and all portion of such loss which exceeds the taxable income of such first year shall be deducted in like manner from the taxable income of *the next remaining four (4) years.*

X X X

SEC. 2. *Repealing Clause.* -- All laws, acts, presidential decrees, executive orders, proclamation and/or administrative regulations that are inconsistent with the provisions of this Act are hereby amended, modified, superseded or repealed accordingly.

SEC. 3. *Effectivity.* – This Act shall take effect fifteen (15) days after its publication in at least two (2) newspapers of general circulation.

Approved,