

THIRTEENTH CONGRESS OF THE REPUBLIC)
OF THE PHILIPPINES)
First Regular Session)

'04 NOV 30 P2:09

SENATE

S. No. 1867

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Introduced by Senator Franklin M. Drilon

EXPLANATORY NOTE

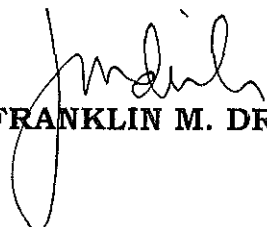
Today our government is vigorously focusing on finding solutions to the country's serious financial difficulties. All sectors are enjoined to contribute their share in order to avert an impending fiscal crisis. One of the measures that could help address this problem is re-imposition of the franchise tax on telephone and television broadcasting companies.

Telecommunications is an industry characterized by extremely rapid changes. It is considered to be one of the fastest growing industries in recent years. For the last five years (1998 to 2002), the total gross revenue for the industry amounted to P576.7 billion or an annual average of P115.3 billion. The dramatic and substantial increase in telcos revenue can be attributed to the growing usage of mobile phones which has a strong appeal to both the upper and lower classes.

Under the present system, services rendered locally by telcos are subjected to the value-added tax (VAT) and classified as exempt, zero-rated or taxable at ten (10) percent of gross receipts. Overseas dispatches, messages and communications transmitted by telcos are, however, charged with an overseas communications tax (OCT) at the rate of 10% on the amount paid for such services. This set-up creates an opportunity for tax evasion as receipts from higher tax products/services can be shifted to the lower taxed group, thereby reducing the tax liability of the company. Another factor that cuts down the liability of telcos is the amount of inputs tax credits claimed on capital expenditures. The broadcast industry, on the other hand, has a different set-up. Large broadcast companies are subject to the VAT while small broadcast networks who have not opted to be subject to the VAT, pay the franchise tax.

This very diverse taxation scheme for both the telcos and the broadcast industry not only creates unequal tax treatment for similarly situated companies but likewise spawn complexities in tax administration. To correct these inequities and at the same time address the administrative difficulties of the BIR, this Bill seeks to remove franchise grantees of telcos and broadcast services from the coverage of the VAT and subject them instead to the franchise tax at the rate of seven percent (7%)

In view of the foregoing, approval of the Bill is earnestly sought.



FRANKLIN M. DRILON

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AN ACT PROVIDING FOR THE REIMPOSITION OF THE FRANCHISE TAX ON TELEPHONE AND TELEGRAPH COMPANIES, AND RADIO AND TELEVISION BROADCASTING COMPANIES, AMENDING FOR THE PURPOSE SECTIONS 108 AND 119 OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES

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

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

"SEC. 108. Value added Tax on Sale of Service and Use or Lease of Properties.

(A) *Rate and Base of Tax* - There shall be levied, assessed and collected a value-added tax equivalent to ten percent (10%) of gross receipts derived from the sale or exchange of services, including the use or lease of properties.

"The phrase 'sale or exchange of services' means the performance of all kinds of services in the Philippines for others for a fee, remuneration or consideration, including those performed or rendered by construction and service contractors; stock, real estate, commercial, customs and immigration brokers; lessors of property, whether personal or real; warehousing services; lessors or distributors of cinematographic films; persons engaged in milling, processing, manufacturing or repacking goods for others; proprietors, operators or keepers of hotels, motels, resthouses, pension houses, inns, resorts; proprietors or operators of restaurants, refreshment parlors, cafes and other eating places, including clubs and caterers; dealers in securities; lending investors; transportation contractors on their transportation contractors on their transport of goods or cargoes, including persons who transport goods or cargoes for hire another domestic common carriers by land, air and water relative to their transport of goods or cargoes;

services of [franchise grantees of telephone and telegraph, radio and television broadcasting and other] franchise grantees except those under Section 119 of this Code; SERVICES OF [and] non-life insurance companies (except their crop insurances), including surety, fidelity, indemnity and bonding companies; and similar services regardless of whether or not the performance thereof calls for the exercise or use of the physical or mental faculties. The phrase **'sale or exchange of services'** shall likewise include:

x x x”

Section 2. Section 119 of the National Internal Revenue Code, is hereby further amended to read as follows:

“SEC. 119. *Tax on Franchises.* Any provision of general or special law to the contrary notwithstanding, there shall be levied, assessed and collected in respect to all franchises [on radio and/or television broadcasting companies whose annual gross receipts of the proceeding year does not exceed Ten million pesos (P10,000,000.00), subject to Section 236 of this Code, a tax of three percent (3%) and on electric, gas and water utilities, a tax of two percent (2%) on] UPON the gross receipts derived from the business covered by the law granting the franchise, A TAX IN ACCORDANCE WITH THE SCHEDULE PRESCRIBED HEREUNDER:

- (A) ON ELECTRIC, GAS AND WATER UTILITESTWO PERCENT (2%)
- (B) ON TELEPHONE AND/OR TELEGRAPH SYSTEMS, AND RADIO AND/OR TELEVISION BROADCASTING COMPANIESSEVEN PERCENT (7%)

[*Provided, however,* That radio and television broadcasting companies referred to in this Section shall have an option to be registered as a value-added taxpayer and pay the tax due thereon: *Provided, further,* That once the option is exercised, it shall not be revoked.]

Section 3. *Separability Clause.* If any provision of this Act shall be held to be unconstitutional or not valid, no other provision shall be affected thereby.

Section 4. *Repealing Clause.* All laws, decrees, executive orders, administrative orders, regulations or parts thereof which are inconsistent with this Act are hereby repealed, amended or modified accordingly.

Section 5. Effectivity. This Act shall take effect fifteen (15) days after its publication in the Official Gazette or in any two (2) newspapers of general circulation.

Approved,