


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

5 AUG -3 P4 32

SENATE  
S.B. No. 2075

RECEIVED BY: 

**Introduced by Sen. Juan Ponce Enrile**

**EXPLANATORY NOTE**

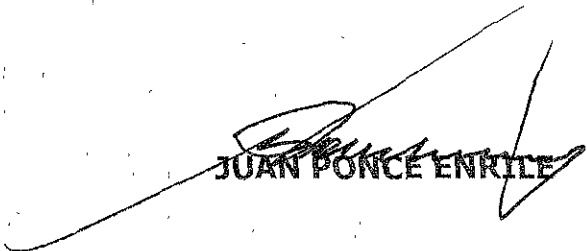
Republic Act 9337 was recently enacted by Congress to expand the coverage of the Value Added Tax (VAT). One of the salient provisions of the said law is to impose a ten percent (10%) VAT on the "sales of electricity by generation companies, transmission, and distribution companies", the effect of which will increase electricity cost by P0.59 per kilowatt hour, based on estimates made by the Department of Finance.

Prior to the enactment of RA 9337, cost of electricity in the Philippines was already one of the highest in Asia and such fact crowds out investment. Therefore, the government is faced with foregone opportunities caused by lost investments such as employment, higher domestic income, among others.

However, the ones that will be most affected by the VAT, particularly on electricity, are the household consumers. What most do not realize is that the government will soon undertake the payment of stranded debts previously incurred by the National Power Corporation and distribution utilities which will form part of the universal charge that is already being borne by the consuming public. This, plus the VAT on power will make the cost of electricity more burdensome for the household consumers.

This bill, therefore, proposes to further amend the National Internal Revenue Code to exempt power from the Value Added Tax. Under this proposal, power generation companies shall likewise not be VAT zero-rated. With this, not only will the household consumers be spared from higher cost of electricity, but the government also stands to gain approximately P23 billion as compared to the P6.35 billion that the government is expected to earn under RA 9337, where VAT is imposed on power.

In view of all these, the passage of this bill is earnestly sought.

  
JUAN PONCE ENRILE

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**AN ACT  
FURTHER AMENDING SECTIONS 108 AND 109 OF THE NATIONAL INTERNAL  
REVENUE CODE OF 1997, AND FOR OTHER PURPOSES**

Be it enacted by the Senate and the 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. *Valued-added Tax on Sale of Services 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: Provided, That the President, upon the recommendation of the Secretary of Finance, shall, effective January 1, 2006, raise the rate of value-added tax to twelve percent (12%), after any of the following conditions has been satisfied:

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

"(ii) National government deficit as a percentage of GDP of the previous year exceeds one and one-half percent (1 1/2%).

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 distributor 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 transport of goods or cargoes, including persons who transport goods or cargoes for hire and other domestic common carriers by land relative to their transport of goods or cargoes; common carriers by air and sea relative to their transport of passengers, goods or cargoes

from one place in the Philippines to another place in the Philippines; **[SALES OF ELECTRICITY BY GENERATION COMPANIES, TRANSMISSION, AND DISTRIBUTION COMPANIES]**; services of franchise grantees of electric utilities, telephone and telegraph, radio and television broadcasting and all other franchise grantees of electric utilities, telephone and telegraph, radio and television broadcasting and all other franchise grantees except those under Section 119 of this Code 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:

"(1) The lease or the use of or the right or privilege to use any copyright, patent, design or model, plan, secret formula or process, goodwill, trademark, trade brand or other like property or right;

"(2) The lease or the use of, or the right to use of any industrial, commercial or scientific equipment;

"(3) The supply of scientific, technical, industrial or commercial knowledge or information;

"(4) The supply of any assistance that is ancillary and subsidiary to and is furnished as a means of enabling the application or enjoyment of any such property, or right as is mentioned in subparagraph (2) or any knowledge or information as is mentioned in subparagraph (3);

"(5) The supply of services by a nonresident person or his employee in connection with the use of property or rights belonging to, or the installation or operation of any brand, machinery or other apparatus purchased from such nonresident person;

"(6) The supply of technical advice, assistance or services rendered in connection with technical management or administration of any scientific, industrial or commercial undertaking, venture, project or scheme;

"(7) The lease of motion picture films, films, tapes and discs; and

"(8) The lease or the use or the right to use radio, television, satellite transmission and cable television time.

"Lease of properties shall be subject to the tax herein imposed irrespective of the place where the contract of lease or licensing agreement was executed if the property is leased or used in the Philippines.

"The term **'gross receipts'** means the total amount of money or its equivalent representing the contract price, compensation, service fee, rental or royalty, including the amount charged for materials supplied with the services and deposits and advanced payments actually or constructively received during the taxable quarter for the services performed or to be performed for another person, excluding value-added tax.

"(B) *Transactions Subject to Zero Percent (0%) Rate.* – The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate:

"(1) Processing, manufacturing or repacking of goods for other persons doing business outside the Philippines which goods are subsequently exported, where the services are paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas;

"(2) Services other than those mentioned in the preceding paragraph rendered to a person engaged in business conducted outside the Philippines or to a nonresident person not engaged in business who is outside the Philippines when the services were performed, the consideration for which is paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);

"(3) Services rendered to persons or entities whose exemption under special laws or international agreements to which the Philippines is a signatory effectively subjects the supply of such services to zero percent (0%) rate;

"(4) Services rendered to persons engaged in international shipping or international air transport operations, including leases of property for use thereof;

"(5) Services performed by subcontractors and/or contractors in processing, converting, or manufacturing goods for enterprise whose export sales exceed seventy percent (70%) of total annual production;

"(6) Transport of passengers and cargo by air or sea vessels from the Philippines to a foreign country; and

"(7) Sale of power or fuel generated through renewable sources of energy such as, but not limited to, biomass, solar, wind hydropower, geothermal, ocean energy, and other emerging energy sources using technologies such as fuel cells and hydrogen fuels."

**SEC. 2.** Section 109 of the same Code, as amended, is hereby further amended to read as follows:

"SEC. 109. *Exempt Transactions.* – (1) Subject to the provisions of Subsection (2) hereof, the following transactions shall be exempt from the valued-added tax:

"(A) Sale or importation of agricultural and marine food products in their original state, livestock and poultry of a kind generally used as, or yielding or producing foods for human consumption; and breeding stock and genetic materials therefor.

"Products classified under this paragraph shall be considered in their original state even if they have undergone the simple processes of preparation or preservation for the market, such as freezing, drying, salting, broiling, roasting, smoking or stripping. Polished and/or husked

rice, corn grits, raw cane sugar and molasses, ordinary salt, and copra shall be considered in their original state;

"(B) Sale or importation of fertilizers; seeds, seedlings and fingerlings; fish prawn, livestock and poultry feeds, including ingredients, whether locally produced or imported, used in the manufacture of finished feeds (except specialty feeds for race horses, fighting cocks, aquarium fish, zoo animals and other animals generally considered as pets);

"(C) Importation of personal and household effects belonging to the residents of the Philippines returning from abroad and non-resident citizens coming to resettle in the Philippines: *Provided*, That such goods are exempt from customs duties under the Tariff and Customs Code of the Philippines;

"(D) Importation of professional instruments and implements, wearing apparel, domestic animals, and personal household effects (except any vehicle, vessel, aircraft, machinery, other goods for use in the manufacture and merchandise of any kind in commercial quantity) belonging to persons coming to settle in the Philippines, for their own use and not for sale, barter or exchange, accompanying such persons, or arriving within ninety (90) days before or after their arrival, upon the production of evidence satisfactory to the Commissioner, that such persons are actually coming to settle in the Philippines and that the change of residence is bona fide;

"(E) Services subject to percentage tax under Title V;

"(F) Services by agricultural contract growers and milling for others of palay into rice, corn into grits and sugar cane into raw sugar;

"(G) Medical, dental, hospital and veterinary services except those rendered by professionals;

"(H) Educational services rendered by private educational institutions, duly accredited by the Department of Education (DepEd), the Commission on Higher Education (CHED), the Technical Education and Skills Development Authority (TESDA) and those rendered by government educational institutions;

"(I) Services rendered by individuals pursuant to an employer-employee relationship;

"(J) Services rendered by regional or area headquarters established in the Philippines by multinational corporations which act as supervisory, communications and coordinating centers for their affiliates, subsidiaries or branches in the Asia-Pacific Region and do not earn or derive income from the Philippines;

"(K) Transactions which are exempt under international agreements to which the Philippines is a signatory or under special laws, except those under Presidential Decree No. 529;

"(L) Sales by agricultural cooperatives duly registered with the Cooperative Development Authority to their members as well as sale of

their produce, whether in its original state or processed form, to non-members; their importation of direct farm inputs, machineries and equipment, including spare parts thereof, to be used directly and exclusively in the production and/or processing of their produce;

**"(M) POWER GENERATION COMPANIES AND THE ELECTRICITY SOLD BY THEM TO THEIR CUSTOMERS AS WELL AS THE TRANSMISSION OF ELECTRICITY BY THE NATIONAL TRANSMISSION COMPANY AND ITS DISTRIBUTION BY A DISTRIBUTION UTILITY COMPANY: PROVIDED, HOWEVER, THAT ANY LAW TO THE CONTRARY NOTWITHSTANDING, INCLUDING SECTION (B) OF REPUBLIC ACT NO. 9136, POWER GENERATION COMPANIES SHALL IN NO CASE BE VALUE ADDED TAX ZERO-RATED;**

**"(N) [M]** Gross receipts from lending activities by credit or multi-purpose cooperatives duly registered with the Cooperative Development Authority;

**"(O) [N]** Sales by non-agricultural, non-electric and non-credit cooperatives duly registered with the Cooperative Development Authority: *Provided*, That the share capital contribution of each member does not exceed Fifteen thousand pesos (P15,000) and regardless of the aggregate capital and net surplus ratably distributed among the members;

**"(P) [O]** Export sales by persons who are not VAT-registered;

**"(Q) [P]** Sale of real properties not primarily held for sale to customers or held for lease in the ordinary course of trade or business, or real property utilized for low-cost and socialized housing as defined by Republic Act No. 7279, otherwise known as the Urban Development and Housing Act of 1992, and other related laws, residential lot valued at One million five hundred thousand pesos (P1,500,000) and below, house and lot, and other residential dwellings valued at Two million five hundred thousand pesos (P2,500,000) and below: *Provided*, That not later than January 31, 2009 and every three (3) years thereafter, the amounts herein stated shall be adjusted to their present values using the Consumer Price Index, as published by the National Statistics Office (NSO);

**"(R) [Q]** Lease of a residential unit with a monthly rental not exceeding Ten thousand pesos (P10,000): *Provided*, That not later than January 31, 2009 and every three (3) years thereafter, the amount herein stated shall be adjusted to its present value using the Consumer Price Index, as published by the National Statistics Office (NSO);

**"(S) [R]** Sale, importation, printing or publication of books and any newspaper, magazine, review or bulletin which appears at regular intervals with fixed prices for subscription and sale and which is not devoted principally to the publication of paid advertisements;

**"(T) [S]** Sale, importation or lease of passenger or cargo vessels and aircraft, including engine, equipment and spare parts thereof for domestic or international transport operations;

"(U) [T] Importation of fuel, goods and supplies by persons engaged in international shipping or air transport operations;

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

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

"(2) A VAT-registered person may elect that Subsection (1) not apply to its sale of goods or properties or services: *Provided*, That an election made under this Subsection shall be irrevocable for a period of three (3) years from the quarter the election was made."

**SEC. 3. *Implementing Rules and Regulations.*** -- The Secretary of Finance shall, upon the recommendation of the Commissioner of Internal Revenue, promulgate the necessary rules and regulations for the effective implementation of this Act. Upon issuance of the said rules and regulations, all former rules and regulations pertaining to value-added tax shall be deemed revoked.

**Sec. 4. *Repealing Clause.*** - All laws, or provisions of laws, which are inconsistent herewith, are hereby repealed or amended accordingly.

**Sec. 5. *Separability Clause.*** - If any provision of this Act is subsequently declared unconstitutional, the validity of the remaining provisions hereof shall remain in full force and effect.

**Sec. 6. *Effectivity Clause.*** -- This Act shall take effect fifteen (15) days following its publication in the Official Gazette or in any newspaper of general circulation.

Approved,