

REPUBLIC OF THE PHILIPPINES

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Tuesday, April 12, 2005

**THIRTEENTH CONGRESS
FIRST REGULAR SESSION**

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CALL TO ORDER

At 3:12 p.m., the Senate President, Hon. Franklin M. Drilon, called the session to order.

PRAYER

Sen. Miriam Defensor Santiago quoted the following prayer written by Anne Bronte, one of the very famous Bronte sisters, the most famous of whom was Emily Bronte:

Oppressed with sin and woe,
A burdened heart I hear;
Oppressed by many a mighty foe,
Yet I will not despair.

With this polluted heart,
I dare to come to thee—
Holy and might as thou art—
For thou wilt pardon me.

I feel that I am weak,
And prone to every sin;
But thou, who giv'st
to those who seek,
Will give me strength within.

I need not fear my foes;
I need not yield to care;
I need not sink beneath my woes,
For thou wilt answer prayer.

In my Redeemer's name,
I give myself to thee;
And, all unworthy as I am,
My God will cherish me.

Amen.

**DEFERMENT OF
THE ROLL CALL**

Upon motion of Senator Pangilinan, there being no objection, the Body deferred the roll call to a later hour.

**ACKNOWLEDGMENT OF
THE PRESENCE OF GUESTS**

At this juncture, Senator Pangilinan acknowledged the presence of the members of the Union of Local Authorities of the Philippines (ULAP) headed by Governor Miguel Dominguez representing the ULAP President, Governor Erico Aumentado.

PRIVILEGE SPEECH OF SENATOR LIM

Availing himself of the privilege hour, Senator Lim delivered the following speech:

Katatapos lang po ng Mahal na Araw at ginunita natin ang kalbaryo, ang pahirap na ginawa sa ating Panginoong Hesukristo. Ngunit mayroon pong nangyayari sa ating kapaligiran na ang kalbaryo ay hindi pa po natatapos because of a gross injustice committed on an innocent person who has no influence, connections, money. Ang kasalanan lang po niya ay siya ay isang mahirap na tao, isang barbeque vendor.

Human life compels reverence because it is God-given, a sacred and inimitable miracle. Yet, to those who are not God-fearing, human life other than their own, other than of their flesh and blood, is nothing but a commodity with little value, dispensable and disposable.

In this jungle created by the godless, only the rich, the famous, and the powerful have the right to enjoy life, to breathe freely, to be left alone. The poor, the destitute, those without means have no such right. Their life has little value, human dignity means nothing, what matters is money. Only wealth, fame and power are respected.

The poor, the destitute, the downtrodden are deprived not only of food and other necessities but also of their human dignity. #

16

No wonder the poor see justice not as a lady with a blindfold, favoring no one, but as a masked woman, blinded by money. They see justice as a mirage unreachable for them, a myth of hope which seems to forever elude them and to turn into a nightmare of fear and desperation.

For one of the poor and his family, this nightmare began when Police Colonel Manolo Martinez was gunned down, not in some dark alleyway but in broad daylight and in the premises of his own command at Police Station No. 8 in Sta. Mesa, Manila.

Everyone was aghast, terrified, and perplexed at the manner of the killing: a swift, accurate and precise execution of a mission. It mimicked an ambush seen in a first-rate Hollywood action movie. But unlike in the world of the movies where the ambushed hero survives, Police Colonel Manolo Martinez succumbed to his gunshot wounds. It was tragic and outrageous, particularly to me as he was once my comrade-in-arms in Manila's Finest. The killing was an abominable disgrace, an indignant mockery of his peers, a bold defiance of both the local and the national authorities.

As expected, his murder triggered a frantic and frenetic response from the authorities, furious at being insulted. The mission was clear: to nab the killers swiftly and give these daring criminals a taste of justice. These cop killers would have to suffer the fate due them: incarceration and even lethal punishment. Nothing was to be insuperable for this mission.

As proclaimed through the media, the hunt for the killers was immediately successful, with the arrest of two alleged assassins living in the squatters area of Caloocan City. Gullibly, the public applauded the quick announcement in the media, as they wished an end to the vicious lawlessness prevailing in the metropolis. Unfortunately, before the fanfare of the press releases subsided, the capability of the purported assassins to kill in such a systematic and professional fashion was put into doubt.

One of the captives, a youngster, a 15-year old young person, was released from custody. In so doing, the police were admitting not just having made a mistake of arresting the wrong suspects but also having made a reckless announcement of proclaiming the guilt of an innocent man before the world. The depicted credibility of the arrests of the purported criminals, without warrant, thereby vanished and evaporated.

The remaining lone suspect, Mr. Jun Felizardo, please remember the name, Jun Felizardo, has not been released and continues to languish in jail. He was grilled, pointed to by an alleged witness, and charged with the heinous crime of slaying a police officer. However, Felizardo protests his innocence, but to no avail, because nobody wants to listen to him. The poor man is in disbelief and aghast at the prospect of incarceration for the rest of his life or lethal punishment for the murder of a man whom he claims he has never seen.

His relatives have come to me and appealed for help, the poor wife and the mother, saying that Jun Felizardo has been made a fall guy. A distinct impartial probe appears to show that he is an ambulant banana cue peddler, a man without a criminal record, a man living in abject poverty. He was confirmed, and I had this personally verified, to have been vending in a neighborhood of San Jose Del Monte, Bulacan, at the exact time and date when the late Police Colonel Manolo Martinez was assassinated some 60 kilometers away in Manila. Significantly, the alleged witness who identified him as the assassin has retracted his testimony. The hoax witness has retracted his testimony implicating this innocent fall guy, Jun Felizardo. His motive in retracting his testimony was that he was not given his share of the promised reward money of half a million pesos. Just imagine, for half a million pesos he will point to a person who is innocent of the crime.

Mr. Felizardo states that he became aware of the brutal slaying only when swarming armed men with high-powered guns manacled him in the darkness of the

night. In a state of shock, he was rushed to Manila and presented before the Mayor and several high-ranking police officers where he was placed in the spotlight by the media and fingered as the mastermind.

With the retraction of the testimony of the loan hoax witness, the accusation against him appears to be groundless, without any basis. The charge by his family that he has been made a fall guy appears to be true. Indeed, there is raw information circulating in the grapevine that the alleged killers belong to an elite group of rich, influential, and a powerful faction who are, thus, untouchables. Under these circumstances, there was apprehension that harm would come to him, that he will be liquidated before his case is tried in the courts.

An appeal was, therefore, made to the police authorities to transfer him from the city jail and to place him in the custody of PACER where he could be guaranteed safety. But the response was incredibly slow until an attempt was made on his life on December 13 within the confines of the Manila City Jail, where he was stabbed on the neck. He was slashed in the throat but he miraculously survived this attempt on his life. He was transferred out but not to a safe place.

When the recent crisis arose in Bicutan because of the jailbreak attempt by the Abu Sayyaf, he was one of those placed in the same cell with the Abu Sayyaf. *Ang malas naman nitong taong ito. Inosente na, isinama pa doon sa mga Abu Sayyaf criminals.* That crisis ended with the death of the notorious leaders of the Abu Sayyaf and some 23 inmates. He was one of those seriously injured, with wounds all over his body because he had to crawl on the ground where there was shattered glass.

Jun Felizardo still languishes in jail in Bicutan, protesting his innocence and cursing his misfortune of being poor. I can completely vouch for his innocence but I cannot blame him for his remonstrance that "My only crime is being poor." Indeed, is his protest true that under our present

system of justice, ironically, "The poor cannot get justice while the rich man cannot be brought to justice"? Yet, the ideals will be, as proclaimed by the late President Ramon Magsaysay that, "Those who have less in life should have more in law," and should have more protection from the laws.

I can only commiserate with his burden as he languishes even now in an overcrowded jail under inhumane conditions, deprived of his freedom and spending the best years of his life away from his family and love ones, forlorn and miserable, and seemingly without any hope that justice will be speedy as guaranteed by our Constitution.

Indeed, it appears that no one cares for the fate of a poor man like Jun Felizardo, whose existence on this face of the earth seems largely insignificant. So many are like him languishing in jail, whose lives are wasted, the wasted years never to return to them. The statistics show that those detained remain in jail for an average of three years and that 60% of them are finally released without conviction. The great majority of them are poor, forced to bear their pain in silence. They are easy targets to any plot to arrive at a feigned solution to sensational crimes. The perception is that their lives are expendable, the media unquestioning, and the public apathetic and uncaring.

Yet, Jun Felizardo retains a flickering hope that justice will be done, that someday, the blinded eyes of Lady Justice will open and see the proof of his innocence, especially the retraction of the crucial witness who pinned guilt on a fall guy, just to put a hurried and feigned solution to the brutal murder of a police officer.

As a senator of the Republic of the Philippines, I have to keep the faith that justice will be done and I put my trust in the commitment that Chief Justice Hilario Davide, Jr. made in his article "The Judiciary at the Threshold of the New Millenium," and I quote: "The Supreme Court promises to be the people's bulwark of justice for the years to come. The present Supreme Court—your Supreme Court—is leaving nothing to

chance, and is performing everything necessary to fulfill this pledge.... We in the Court will neither weaken nor fail in the quest and pursuit of this pledge for justice."

Tell that to Jun Felizardo, his wife, his two children, and relatives.

I call upon Justice Secretary Raul Gonzales, Manila City Prosecutor Ramon Garcia, and Assistant City Prosecutor Armando Velasco, as the prosecuting arm of the government in the case against Jun Felizardo, to make sure that only the guilty will be prosecuted and punished, and the innocent will be set free. I also appeal to them to take the proper steps to ensure the safety of Jun Felizardo.

Dalawang beses na pong nakaligtas sa kamatayan si Jun Felizardo. Once, at the Manila City Jail, when he was stabbed in the neck on orders of some officials of the Western Police District. The second time, he was incarcerated, together with the Abu Sayyaf, and because of the siege at Bicutan, 23 of the cellmates died in the assault. Fortunately for Jun Felizardo, he survived that siege.

I am apprehensive that the third time around, Jun Felizardo will not survive another attempt to his life.

Apropos to this, I would like to commend Sec. Angelo Reyes of the DILG who, apprised of the peril that Felizardo faced while detained in the city jail, swiftly took action in transferring him to Bicutan through NCRPO Chief Avelino Razon Jr.

Unfortunately, when I made this personal representation with Secretary Reyes and General Ricardo de Leon, and some top brass of the PNP sometime in November, Secretary Reyes gave specific orders to ensure the safety of Jun Felizardo and ordered then Director General Edgardo Aglipay to ensure that he be transferred to a safe place. In turn, General Aglipay ordered General Avelino Razon Jr., NCRPO commander.

Well, to be fair to General Razon, he complied with the order because on November 5 he wrote the presiding judge of the Regional Trial Court in Manila, the Honorable Judge Tacuma, requesting that Jun Felizardo be transferred to Bicutan. Unfortunately, the papers slept in the sala of the honorable judge. And so, on November 13, the first attempt on the life of Felizardo was made. Then the judge, on December 18, issued the order transferring him to Bicutan.

We can see how the bureaucratic red tape takes place in the commission of an injustice. In the same vein, PNP Chief Arturo Lomibao, on learning of the precarious condition of the personal safety of Felizardo, had issued instructions to appropriate offices and units of the PNP to ensure that Felizardo shall be given ample protection from possible harm for as long as his case is being heard and resolved.

I had a meeting this morning with Secretary Angelo Reyes and General Arturo Lomibao to ensure the safety of Felizardo.

While there is every reason to acknowledge the efforts of police agencies to hale to court those responsible for the commission of crimes, it is equally recognized that such enthusiasm must not disregard the fundamental right of a suspect to due process guaranteed in Section 14, paragraph 1 and his presumption of innocence provided for in Section 14, paragraph 2 of Article III of the Constitution.

Jun Felizardo remains innocent till this date and; thus, is entitled to protection and humane treatment. Because he is poor, unlike suspects coming from high society circles or billionaires' clubs, his basic human needs may simply be disregarded or overlooked; and if the Executive arm of the government merely pays lip service to the fundamental human rights of an accused, it commits a blatant transgression of the constitutionally declared principle enshrined in Section 5, Article II of the Constitution which states: "The maintenance of peace

15

and order, the protection of life, liberty and property, and the promotion of the general welfare are essential to the enjoyment by all the people of the blessing of democracy.”

I have taken up the cudgels for Felizardo because I know the pain, heartache and torture that he had undergone and continues to undergo merely because he was implicated and pointed to as the man who killed Col. Manolo Martinez.

While I do not wish to pass judgment on the merits of the case, nonetheless, I had given his case special attention because I know that he is the epitome of the hundreds or even thousands of detainees innocently languishing in our jails.

The ruling in *Dela Cruz vs. People*, 436 SCRA 629, where an accused was detained for four years but was acquitted by the High Court for having been found innocent, comes to fore where the High Court said: “Upon the prosecution’s failure to meet this test, acquittal becomes the constitutional duty of the court, lest its mind be tortured with the thought that it has imprisoned an innocent man for the rest of his life.”

In this connection, I wish to recommend that the justice committee of the Senate subpoena the appropriate authorities of the Executive department to determine, in aid of legislation, whether it is desirable and necessary to enact a law to provide guidelines and procedures on how reward money should be used and paid. I say this because it is that P500,000 which was the basis for the false implication of this innocent person. Also, this committee should look into the problem of the congestion of our jails, which involves a violation by our own government of basic human rights.

Finally, I appeal to no less than Her Excellency President Gloria Macapagal Arroyo to look into this matter because the first duty of government is to protect the life, liberty and freedom of Filipino citizens. This is guaranteed in the very first section of the Bill of Rights. This section also provides that no person shall be denied the

equal protection of the laws (Article III of the Constitution). The fundamental question then is whether this government can provide justice to our people as demanded in our very first People Power and also in the second People Power. The President should give serious attention to this question because it forms the basis of the social contract between a government and its people.

REFERRAL OF SPEECH TO COMMITTEE

Upon motion of Senator Pangilinan, there being no objection, the Chair referred the privilege speech of Senator Lim to the Committee on Justice and Human Rights.

ROLL CALL

Upon direction of the Chair, the Secretary of the Senate, Oscar G. Yabes, called the roll, to which the following senators responded:

Cayetano, C. P. S.	Gordon, R. J.
Defensor Santiago, M.	Lim, A. S.
Drilon, F. M.	Magsaysay Jr., R. B.
Ejercito Estrada, J.	Pangilinan, F. N.
Ejercito Estrada, L. L. P.	Recto, R. G.
Enrile, J. P.	Revilla Jr., R. B.
Flavier, J. M.	Roxas, M.

With 14 senators present, the Chair declared the presence of a quorum.

Senators Angara, Arroyo, Biazon, Madrigal, Osmeña, Pimentel and Villar arrived after the roll call.

Senator Lacson was on official mission.

Senator Lapid was also on official mission abroad.

PRIVILEGE SPEECH OF SENATOR GORDON

Also availing himself of privilege hour, Senator Gordon delivered the following speech:

I stand before you today on a matter of personal and collective privilege to examine an issue of utmost importance, safety at sea.

The Rescue

Last April 6, while we were in the thick of the Inter-Parliamentary Union Assembly, I received an urgent visit from Mr. Florante Rosales informing me that four Filipino fishermen, Pedro Pialan, Ronald Mercado, Zaldy Takatane and Jimmy Francis, have been lost at sea since March 24, of this year. These fishermen left Subic Bay aboard a motorized banca, F/BCA Maria Emelyn 2 on March 24, towed by their mother boat, FB GUAMENIA. After four hours of sailing, the weather turned bad and waters became choppy. The four fishermen asked the mother boat to sever the rope attaching them to the mother boat, as they ran a greater risk of capsizing while being pulled by FB GUAMENIA. After severing the rope, the mother boat then went on its course, leaving the motorized banca on its own, and it eventually ran out of fuel. Unfortunately, the motorized banca underestimated the strength of the current, which carried them all the way to South China Sea, with no food to eat and very little potable water to drink, and no fuel to sail back to shore. The four fishermen desperately tried to reestablished contact with their mother boat, to tow them back to shore. However, the mother boat was not able to come back for them, and instead chose to bring back the fish that they had on board, to shore. These fishermen were left at the mercy of the currents of the sea, with nothing but a prayer that someone, somehow, would realize that they were missing and come to their rescue. They had to use *palara* to catch squid at night and drink radiator water just to survive.

An Expression of Gratitude

The answer to their prayer came through Mr. Xerman Baja from Cagayan de Oro, a *kababayan* of my esteemed colleague, Senator Pimentel, who was performing his functions as a volunteer of the Dekada Siete Communications Group. He heard the SOS of the four fishermen through his transceiver radio, and immediately relayed to fellow Dekada Siete Member Capt. Benjie Escobal, who is also the pilot of the Eye in the Sky helicopter of DZRH.

DZRH then reported the matter to this Representation as Chairman of Red Cross for urgent action.

Realizing the urgency of the situation as the lack of food and water of the four fishermen was aggravated as well by the fact that one of them was suffering from ulcers, and they had already been adrift for 13 days when I received the report, this Representation immediately help coordinate a rescue operation.

This Representation spoke with the Philippine Coast Guard Commodore Tamayo immediately and got fax including the single-side band frequency and relayed the matter to the Assistant to the Ambassador of the United States of America, Mr. Andy Ball, who immediately responded to the request for assistance by mobilizing a P3 Orion, an aircraft that is equipped with the communication and surveillance equipment to local vessels and coordinate with rescue vessels at sea, to facilitate the recovery of the four fishermen. Lt. Col. Kelvin Clark of JUSMAG, served as the point person, who coordinated with this Representation, the Philippine Coast Guard and Capt. Escobal of DZRH. On the other hand, Red Cross teams based in Zambales immediately established contact with the families of the four fishermen to keep them informed regarding the rescue operations in order to ease their minds of worry.

Let us keep in mind that these four fishermen were lost in a vast sea. As such the P3 Orion was sent four times with a different crew each time to search the area quadrant by quadrant, grid by grid to pinpoint the location of the fishermen. When the P3 Orion crew finally spotted the four fishermen at around 5:00 p.m. on April 9, they dropped flares to mark the location of the motorized banca and requested a Chinese vessel in the area to pick them up. Unfortunately, probably due to some miscommunication, the Chinese vessel never came. Hence, it was eventually the Philippine Navy who sent a ship, and utilized a rubber boat to finally reach the motorized banca at around 7:00 a.m. on April 10, after being adrift for eighteen (18) days.

AS

18

I would also like to cite Capt. Leno Dabi, Mission Officer of the Philippine Coast Guard in Puerto Princesa of Palawan, Mr. Aaron Reconquista, the pilot of Islander 251 also of the Philippine Coast guard, Commodore Wilfredo Tamayo of the Coast Guard, and their head Vice-Admiral Arthur Gosingan, for the role that they played in the rescue operations. On the part of the Philippine Navy, this Representation would like to cite Vice-Admiral Ernesto de Leon, officers and enlisted personnel of BRP General Mariano Alvarez, headed by Lt. Commander Alberto B. Carlos, and the officers and crew of the Cota Island Naval Forces.

The Coast Guard only has two planes, two Islanders that were based in Manila and they were able to find this boat in an area twice the size of the island of Luzon, and the ship, Mariano Alvarez is the most modern vessel of the Philippine Navy.

This is a dramatic story of coordination cooperation between the Philippine Coast Guard, the Philippine Navy, DZRH, and the U.S. Embassy and Asia Pacific Command as well as volunteers of our country such as the Dekada Siyete that led to a successful rescue of our countrymen. The joint effort is truly a noteworthy example of the long-standing friendship and cooperation between *countries and between our armed forces.*

Hence, for their prompt and whole-hearted assistance, the four fishermen are extremely grateful as we also should be, to all the parties who took part in this rescue operation.

Let us also laud the survival skills of the four fishermen who were trying to make an honest living. These people lost their jobs in a factory in Laguna and they decided not to steal, not to kidnap anybody, but decided to work as fishermen in Zambales. So if they learned creative honest work, they earn an earning only a hundred pesos a day, each. In the direst of circumstances, they helped each other by sharing food and water and never losing hope that they would survive this ordeal, exhibiting the resilience that

marks every true Filipino, buoyed by the fact that the entire Philippine Navy, Coast Guard and U.S. Pacific Command were searching for them.

However, the real value of this experience lies in the realities and the lessons that it has to teach us as a nation. The most valuable lesson that we must learn from this ordeal is the danger of the non-observance of safety requirements at sea. First, the mother boat should have come back for the banca, knowing it was not strong enough to handle the currents that far out at sea. Second, if it could not come back, the mother boat should have at least immediately reported the missing boat at once, which they did not do. They did so, 3.5 days later. Third, every vessel that later goes out to sea should have a Global Positioning System, which you can buy now for P2,000 to ensure that they can be located if they get lost at sea. These fishermen did not even have wristwatches. Fourth, these fishermen got lost because there was no record of them leaving our shores. All crews that leave our shores must by law report to the Coast Guard, specifically the members of the crew and their sailing destination. Fifth, the difficulty in rescuing these fishermen stemmed from the lack of assets in the arsenal of the Philippine Navy and Coast Guard as well as the Philippine Air Force. Hence, it is imperative that we sufficiently equip our Armed Forces, the Navy, the Air Force and the Coast Guard to be able to do their job efficiently well.

This is not the first time that our countrymen have been lost at sea, and have needed the assistance of the State to come to their rescue. But, to this day, every time still feels like the first time, every emergency bares our sense of helplessness and our need to rely on external assistance or extraordinary effort from our people.

The Prime Duty of the Government

As leaders of the government, let us remember that our primary duty is stated in the first part of Section 4, Article II of the Constitution: "The prime duty of the government is to serve and protect the

people.” Section 5 of the same article clarifies what we have to accomplish for our people and I quote, “The maintenance of peace and order, the protection of life, liberty, and property, and the promotion of the general welfare are essential for the enjoyment by all the people of the blessings of democracy.” It is the responsibility of government to create a secure environment for its people and to ensure that it is capable of defending and protecting them from external and internal threats.

Safety at Sea

In this day and age, threats are no longer limited to enemies from within or without who would wage war against our good nation. By now, our experience must already have taught us that threats include natural man-made disasters that could wipe away life and property in a single momentous thrust, or the ravages of inadequate economic opportunities that is slowly draining the life, spirit and hope of our people. This, my dear friends, is our greatest weakness, our inability as the government to do our constitutionally mandated duty to protect our people from people and forces that would do them harm. Why? Because we woefully lack resources. That is always the excuse. Thus, our institutions are not properly equipped to perform duties for which they were created and we are not able to provide our people with the requisite safety for their life and property.

We must remember that our country is an archipelago with a maritime area of 2,795,962 square kilometers. Compared to our land area of only 299,404 square kilometers, the water-to-land area ratio of our country comes out 9 to 1. Our coastline is 35,000 kilometers which is twice as long as the coastline of the United States. Our coral reefs and mangrove forests are at 150,000 hectares with 58 out of 77 provinces, 914 out of 1,385 municipalities and more than 11,000 barangays considered as maritime zones with their economy primarily based on the sea.

These sea-based industries include fishing, tourism and sea transport of raw

materials, products, commodities and people. As of the end of 2003, domestic ships made a total of 291,914 port calls while foreign ships had a total of 9,814 port calls carrying 51.72 million passengers and 146.66 million metric tons of cargo to and from our ports. Our fishing industry alone contributed P113.2 billion to the economy. The industry provided jobs to 990,872 Filipinos as of 2002 which translated to about 5% of the national labor force in terms of contribution to direct employment. This does not even factor in the additional employment that it generates in terms of tourism, the distribution of sales of the cargo that these ships carry.

In Singapore, in recognition of the invaluable contribution of these industries to the national economy, they established a U.S. \$100 million Maritime Innovation and Technology (MINT) Fund to support technology programmes and to ensure its capability to protect its maritime industries from threats.

Lack of Resources

In the case of the Armed Forces of the Philippines, for example, RA 7898, the Armed Forces of the Philippines Modernization Act was passed into law to enable our Armed Forces to procure the necessary equipment to enable them to fulfill its duties. The objectives of this law were to:

- a) develop new doctrines relevant to new security needs in relation to external threats, maintenance of law and order, disaster response and relief operations;
- b) require the drafting of a modernization plan in line with new doctrines in relation to training, base location, equipment and manpower deployment and equipment procurement;
- c) fund the modernization plan through annual appropriations with P50 billion for the first five years (up to 2001) savings/proceeds under RA No. 7227; and
- d) granting Congress the power to approve the plan and receive annual reports. *HR*

Let us take a good look at the objectives of this law and carefully assess if we have met them. The objectives of this law clearly recognize the expanding role and scope of duties of the Armed Forces of the Philippines in terms of protecting the people. In light of this latest incident involving four of our countrymen, we must seriously examine how far we have gone out in ensuring that these objectives are met, because time and again, the need for a modernized and well-equipped Philippine Armed Forces has made itself felt, and time and again, we have fallen short of meeting it on our own.

The AFP Modernization Act has created the policy environment and set the mechanisms to enable the Armed Forces to procure the necessary equipment to meet the expanding role that it has to play in protecting the security of the nation and the welfare of our people. Our neighbors in Southeast Asia, which are equally prone to the threats that we face, including terrorism, maritime incursions and natural disasters, have been procuring equipment to ensure their capability to address these threats. Both Thailand and Malaysia have several squadrons of F-16s and all-weather tornadoes. If we are to compare the naval equipment of our country to our South East Asian neighbors, we only have a total of 19 boats for surface combatants and 12 amphibious ships and auxiliaries, which already include the presidential yacht, *Ang Pangulo*. In comparison, Indonesia has 68 surface combatants, Thailand has 52 and even Vietnam has 31. In terms of amphibious ships and auxiliaries, our neighbors have ships and several auxiliary vessels including mine countermeasure vessels, submarines and military sealift commands, aside from standard patrol boats.

The Philippines used to have the most advanced military force in Southeast Asia in the 1960s. If we cannot restore our military to its former glory, let us at least endeavor to equip them with what they need to be efficient.

In fact, when I asked the Philippine Air Force how many jet planes are flying today

on our arsenal, they told me that none of the F-5s are flying. In short, our Air Force has totally become all air and no force. And our Coast Guard and Navy have totally become all coast and no guard.

Lack of Safety

We cannot even adequately guard our waters from poachers. If we had the equipment to patrol our exclusive economic zones, we would be able to stop poachers from fishing our waters. But, because we do not have, we have to rely on diplomacy. Unfortunately, diplomacy without the force to back it up is akin to ferry boat diplomacy. Henry Cabot Lodge in the book "*First Great Triumph*" by Walter Zimmerman stated this succinctly as he "ridiculed those who proposed to meet the encroachments of a foreign power by diplomats on a ferry boat." Truly, this does not inspire much fear or command any compliance. Certainly, the country has no credibility when it faces incursions by great powers like China or Taiwan or any other.

We are also unable to guard against the entry of vessels that smuggle drugs and arms into the country, or smuggle escaped prisoners or wanted persons in and out of the country. According to Assistant Secretary of Defense Alejandro Melchor III, one of the most significant threats facing Asia today is the growth of transnational terrorist groups, with the Al-Qaida and the Lashkar e-Tayyiba, focusing on Southeast Asia as a safe, operational training and planning base and area for recruitment. Threats of this nature render it imperative for the country to have the capability to guard its shores against the entry of these terrorists.

Commercial liners routinely sink within our waters and pose the need for rescue operations. Our lack of equipment and capability to respond quickly results in the loss of lives. In the past 10 years, 288 motor ships, fishing vessels and barges have sunk off our coasts due to storms, collisions or overloading, taking numerous lives and millions of property. Our fishermen, just like this latest incident, have gotten lost at sea, *MS*

MS

needing to rely on the capacity of the State to come to their rescue. In fact, in Baler, Quezon, there were three fishermen who lost their lives at the same time we were looking for the four fishermen during that event.

Call to Action

Given these realities, this Representation calls for two specific courses of action.

One, we must implement the provisions of the UN Convention on the Law of the Sea and other conventions, specifically Article 98 of the UNCLOS, which states that the State has the duty to render assistance and effect an adequate and effective search and rescue service regarding safety on and over the sea, and cooperate with neighboring states for this purpose.

Last night, I spoke with the Chinese Chargé d' Affaires about the fact that one of their vessels did not respond to the request for assistance made by the P3 Orion and the Philippine Coast Guard because there were only two-and-a-half hours away from the vessel that was out of the sea. Unfortunately, they did not come. And it was charged to miscommunication.

I think that the DFA should inform the Chinese Embassy of their duties under the United Nations' UNCLOS, Article 98 thereof, particularly.

During the recently concluded 112th Inter-Parliamentary Union, the Assembly took a positive step in adopting this provision by recognizing the importance of addressing natural disasters at sea and others as a global community, when it passed the resolution, entitled "Natural Disasters: The Role of Parliaments in Prevention, Rehabilitation, Reconstruction and the Protection of Vulnerable Groups," which this Representation took an active role in drafting. We now have a foundation upon which to build an active initiative to reaffirm every nation's commitment to provide steadfast support to countries in need of assistance during times of extreme emergency, to preserve the sanctity of life, alleviate human

suffering, and uplift the dignity of all peoples – a position that this Representation took 11 years again in Malaysia during a Red Cross Conference.

Second, let us establish the necessary facilities to conduct effective search and rescue operations. We must also exert every effort and resource to strengthen the capabilities and equipment of our national coast guard as well as the Armed Forces to promote safety at sea.

To implement this, one model that we can adopt is the National Sea Rescue Institute of South Africa, which is a completely independent organization that relies on volunteers to finance and conduct its operations for the purpose of saving lives on South African waters and promote water and boating safety. Our version of this organization can be attached to the Philippine National Red Cross, in coordination with the Coast Guard and other relevant government agencies, in line with the mission of the PNRG to alleviate human suffering and constant practice of conducting emergency and disaster relief.

It is even unfortunate that we have the ideal location for this institution, which can also serve as a Regional Disaster, Logistics and Training Center which the International Red Cross is now considering — Subic Bay. It is strategically located in the Asia-Pacific region and it has the infrastructure, namely, a seaport and an airport, to serve as an ideal transshipment point for aircrafts and vessels for rescue operations, as well as life-saving equipment. It can also serve as a training facility for Disaster Reaction Teams. Its location ensures that rescue operations will be conducted promptly to minimize, if not avoid, the loss of lives and damage to property.

Predict, Prepare, Plan, Practice

Simply put, we must be able to predict the needs of our country, prepare the resources to meet them, plan our course of action to address emergencies, and practice these procedures to ensure that we are capable of protecting our people from

whatever threat, to ensure that we are ready to come to their aid at any given time.

Call for Legislation

This incident involving our four fishermen bares the need for a law reinforcing the safety standards and requirement regarding maritime vessels such as installing a Global Positioning System in very maritime vessel, big or small, to ensure that they can be located if they become lost at sea, and ensuring that every crew leaving Philippine shores must report the names of their crew members and their sailing destination to the Coast Guard, to ensure that they can be monitored and located and that the Coast Guard enforce it.

There is also a need to investigate in aid of legislation whether the mother ship should be held liable for abandoning the motorized *banca* in the high seas.

Finally, this incident calls for an investigation in aid of legislation of the capability of the Philippine Coast Guard to implement and enforce maritime safety rules and regulations governing the safe operations of vessels in our seas, as well as the ability of the Philippine Armed Forces, the Navy and the Air Force, particularly, to protect our territorial integrity from poachers and intrusions by foreign powers as well as natural disasters. There is a need to examine the sufficiency of existing policies regarding maritime safety procedures to determine if there is a need for further legislation on this matter.

In closing, I would like to reiterate our mandated duty of protecting the nation from all that would threaten its welfare and security. Our experience has shown us that threats now come with many faces, both natural and man-made. Let us learn the lessons from our experiences, lest our lack of learning force us to repeat the tragedies that could have been avoided.

Let us approach the security and safety of our nation in a holistic manner so that no Filipino need ever fall through the cracks created by inefficiency and lack of preparedness. In times of disasters and

emergencies, the difference between life and death can be spelled by the quickness of our response. The four Filipino fishermen were saved by human intervention – the quick response of private citizens, media practitioners and foreign allies, and the provision of the essential rescue equipment – the P3 Orion, the Filipino Islander, all these together with the Philippine Navy and the Coast Guard, participated in the successful conclusion. The bottom line is, the surest way to overcome any disaster, any threat, is to be equipped with the necessary resources and capability to meet it, and today, that is my call.

I would like to end by quoting a stanza of the Navy hymn “Eternal Father.”

Eternal Father, strong to save
Whose arm hath bound the restless wave,
Who bidd’st the mighty ocean deep
Its own appointed limits keep
O hear us when we cry to thee
For those in peril on the sea

REFERRAL OF SPEECH TO COMMITTEE

Upon motion of Senator Pangilinan, there being no objection, the Chair referred the privilege speech of Senator Gordon to the Committee on National Defense and Security.

ACKNOWLEDGMENT OF THE PRESENCE OF GUESTS

At this juncture, Senator Pangilinan acknowledged the presence of student-interns participating in the Summer sa Senado Internship Program of the Office of Senator Miriam Defensor Santiago.

APPROVAL OF THE JOURNAL

Upon motion of Senator Pangilinan, there being no objection, the Body dispensed with the reading of the Journal of Session Number 73 and considered it approved.

DEFERMENT OF THE READING OF THE REFERENCE OF BUSINESS

At the instance of the Chair, there being no objection, the Reference of Business was deferred to a later hour.

**COMMITTEE REPORT NO. 16
ON SENATE BILL NO. 1950**

(Continuation)

Upon motion of Senator Pangilinan, there being no objection, the Body resumed consideration, on Second Reading, of Senate Bill No. 1950 (Committee Report No. 16), entitled

AN ACT AMENDING SECTIONS 27, 28, 34, 106, 108, 109, 110, 111, 112, 113, 114, 116, 117, 118, 119, 125, 148, 236, 237, AND 288 OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES.

Senator Pangilinan stated that the parliamentary status was still the period of individual amendments.

SUSPENSION OF SESSION

Upon motion of Senator Pangilinan, the session was suspended.

It was 4:05 p.m.

RESUMPTION OF SESSION

At 4:13 p.m., the session was resumed.

Senator Pangilinan suggested that the Body go page-by-page for purposes of the individual amendments.

The Chair said that the Body would be using the copy of the bill with the committee amendments as of April 1, 2005 as the working draft.

**ROXAS AMENDMENT,
AS AMENDED**

On page 1, lines 9 and 10, Senator Roxas proposed the deletion of the proviso "Provided, That effective January 1, 2009 [1998], the rate of income tax shall be THIRTY PERCENT (30%)." He said that from a credibility point of view, the measure intends to raise revenues for government but the particular provision would reduce substantially the rate from 35% to 30% after four years. From an equity point of view, he stated that the VAT, being a consumption tax, would be borne by the ordinary consumer.

Senator Defensor Santiago seconded the proposed amendment.

Senator Villar proposed to amend the proposed amendment by replacing the words and figure "THIRTY PERCENT (30%) with THIRTY-TWO PERCENT (32%).

Senator Roxas accepted the Villar amendment, noting that, in effect, the rate would go down from 35% to 32% after four years. Senator Recto stated that the Philippines has one of the highest corporate income tax rates in the region with China, Indonesia and Thailand at 30%; Malaysia, 28%; and Vietnam, 32%, which is the reason why the Committee recommended, in view of the fiscal crisis, the temporary increase from 32% to 35% for a three-year period and thereafter, its reduction to 30%. Nevertheless, he said that he would be willing to accept the amendment since some of the Senators have come to a compromise.

Accepted by the Sponsor, there being no objection, the Roxas' amendment, as amended by Senator Villar, was approved by the Body.

SUGGESTION OF SENATOR ROXAS

Senator Roxas pointed out that his amendment as amended by Senator Villar would affect provisions on pages 2 and 3. He asked that the conforming amendments be made committee amendments.

Senator Recto said that the amendment would become an omnibus amendment and that the Committee would adjust the rates in the other provisions accordingly.

The Chair noted that line 16 on page 2, line 13 on page 3, and lines 11 and 12 on page 4, would be adjusted accordingly to conform to the amendment.

INQUIRY OF SENATOR ANGARA

Asked by Senator Angara how much in revenues the corporate income tax rate increase would yield, Senator Recto replied that it is P12.3 billion.

Senator Angara feared that by going against the global trend of lowering income tax to allow corporate investments to grow and therefore widen the base, this might, on the contrary, make the tax

base even smaller because there would be much less to invest by the corporate world. He expressed hope that the country would find a way of recouping a very good source of investment, pointing out that government's chance is for the companies to profit so that they could reinvest and create jobs, generating, in the process, income that could be taxed. He registered a negative vote on the particular provision.

REMARKS OF SENATOR ENRILE

Senator Enrile cast a negative vote on the committee amendment, saying that Section 1 is not germane to the very purpose of Senate Bill No. 1950 which is to revise the value-added tax in the Internal Revenue Code which is a business transactional tax. He added that he was also against a similar amendment to Sections 2 and 3.

SUSPENSION OF SESSION

Upon motion of Senator Pangilinan, the session was suspended.

It was 4:26 p.m.

RESUMPTION OF SESSION

At 4:26 p.m., the session was resumed.

MANIFESTATION OF SENATOR GORDON

Senator Gordon registered a negative vote on the committee amendment.

The Chair directed that the negative votes of Senators Angara, Enrile and Gordon be recorded.

INQUIRIES OF SENATOR OSMEÑA

Relative to the committee amendments to Section 106 of the Code, asked by Senator Osmeña whether a person who holds residential property primarily for lease would be subject to VAT when he sells said property, Senator Recto replied that the transaction would be subject to VAT if the property is primarily for sale to customers, held for lease in the ordinary course of trade and business, and falls within the threshold.

On whether a company would be subject to VAT when it purchases a warehouse for its own

use, Senator Recto said that it is subject to VAT if the person who sold the warehouse is VAT-registered and he built his warehouses in the course of trade or business.

Asked whether a person who does not build warehouses in the course of trade or business would be subject to VAT if he sells his warehouse, Senator Recto replied in the negative.

Asked if the purchase of a real property for use in business should be subject to VAT to allow the person to enjoy also VAT inputs, Senator Recto replied in the affirmative, stating that chances are the buyer of the real property would buy it from a person who is subject to VAT so that he could have a VAT input.

Queried if San Miguel Miguel Corporation would be required to pay or collect VAT on the sale of one or two of its warehouses, Senator Recto also replied in the affirmative, pointing out that since SMC is a VAT-registered entity, all its purchases and sales are subject to VAT.

On whether a VAT-registered developer who constructed an office building and sold the same to PLDT would be required to collect a VAT on said transaction, Senator Recto replied in the affirmative.

Asked if a private person who is not in the construction business but developed a building and sold the same to PLDT could collect a VAT on such transaction, Senator Recto answered in the affirmative.

In regard to lines 1 to 3, page 6, (sale of goods, supplies and fuel to persons engaged exclusively in international shipping or international air transport), Senator Osmeña expressed concern that this provision, along with two other existing provisions in the law, would extend VAT exemption suppliers of raw materials or intermediate goods and all finished products as well as exporters of goods or services. He stated that if Petron and Shell would sell fuel to Cebu Pacific, Northwest or Philippine Airlines, these would be zero-rated.

Senator Recto clarified that if the fuel is sold to PAL or Cebu Pacific, the sale would not be zero-rated because they are not exclusively in international air transport. He added that the transaction would be covered by a different provision so that the BIR would not have difficulty in administering the tax. *JP*

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To the suggestion to simply delete the provision and just limit the zero-rating to the actual exporters themselves and not the suppliers, Senator Recto agreed to the suggestion. However, he reasoned that it would be better not to touch the provision now and just wait for the conference committee.

PROPOSED AMENDMENT OF SENATOR MADRIGAL

On page 7, Senator Madrigal proposed to delete the phrase starting with the word "COMMON" on line 2 up to the word "PHILIPPINES" on line 5.

Senator Recto did not accept the proposed amendment, explaining that it would, in effect, exclude common carriers by air and sea from the coverage of VAT. He asked why airlines and shipping companies with huge income should be exempted while a small "mom and pop" store would be required to account for and pay VAT.

Senator Madrigal recalled that during the period of interpellations, a lot of data were gathered from the DoF on which a matrix showing the total effect of the Recto proposal was based. She said according to the economists whom she consulted:

"The Recto VAT proposal that is nearing its passage in the Senate sneaks in an innocent-looking provision to include airline and shipping passenger business into the VAT-net, resting on the argument that exemptions are minimized and, therefore, VAT revenues increased. The more extended the VAT-net, the more efficient it is supposed to be. But a closer look at the details reveal a totally different picture. Making airline and shipping passenger business VATable will actually result in a net loss of VAT revenue for the government. In short, instead of really taxing rich people, the government will end up giving them money.

Some legislators and economists have expressed reservations over this provision because they fear that it would actually not raise revenue but can instead have a negative effect. They have the right intuition but they do not have the figures. This is because the VAT system zero-rating for export sales makes it possible to have a

net negative VAT credit. After all, VAT output is zero while there is plenty of VAT inputs. In that situation, the net effect is a negative VAT, i.e., subject to refund or credit.

In an industry or firm part where part is domestic revenues and the other supposed to be export revenue, the industry or firm will have a negative VAT if foreign revenues exceed domestic revenues. The negative VAT will be higher, the higher the percentage of foreign revenues to total revenues.

With respect to airlines, Senator Madrigal informed the Body that her staff, along with the economists she consulted, conducted a study and as they put together the financial statements of the *Philippine Airlines, Cebu Pacific and Air Philippines*, which account for probably 99% of the industry, they found out that of the total gross revenues of P49.732 billion, passenger revenues accounted for P41.067 billion which, for VAT purposes, could be considered total output.

She then proceeded to break down the total gross revenues as follows: foreign and domestic passenger revenues. Following the DoF assumptions, she noted that domestic passenger revenues accounted for some 20% of the total gross revenues and the rest (80%) pertained to the foreign passenger revenues. Given the much larger size of the international market, she said that very likely the industry would result in a negative VAT.

Senator Madrigal explained that based on data obtained from concerned agencies like the National Statistics Coordination Board, for 2004 the gross value added (GVA) totalled P1.5 billion, 10% of which pertained to cargo and the remaining P13.705 billion represented the GVA of airline passengers. She said that on the basis of the DoF's 80 to 20 ratio, with VAT inputs of P27.361 billion, VAT due from domestic passengers totalled P274.1 million.

She pointed out that proposals to zero-rate airline shipping industries would mean that the VAT output would be zero while VAT estimates would be counted. She estimated that for the airline industry, using the 2002 financial statements, VAT inputs would be P21.889 billion that would be returned to the industry, far outstretching the P274 million VAT on domestic passenger, resulting therefore in a net loss to the government of P1.915 billion.

She further noted the DoF, using a different methodology, estimated on April 5, 2005 that a P2.64 billion net negative VAT to the government from the airline passenger market would arise.

Senator Madrigal said that she was aware that she and Senator Recto can argue for a long time but they would not still be able to come to an agreement. She then moved that the proposed amendment be put to a vote.

Senator Recto reasoned that the provision that Senator Madrigal wanted to amend subjects domestic passengers and cargo to VAT. He said that if Senator Madrigal had spent three weeks to study the matter, he had studied the tax measure for at least three months and had looked into the experiences of other countries with VAT on international airlines and shipping. He stated that he would stand by the bill and the DoF's presentation that the government stands to generate an annual incremental revenue of P600 million on domestic passengers and cargos alone.

REMARKS OF SENATOR ROXAS

Senator Roxas expressed support for the proposal of Senator Madrigal to delete the provision as he reasoned that retaining it would make travel throughout the country much more expensive and would exacerbate the difficult situation in the Philippines.

INQUIRIES OF SENATOR GORDON

Senator Gordon asked how much the government would be able to generate under the provision. He pointed out that since the government is currently in the process of promoting domestic travel and tourism in all the destinations throughout the country, the addition of 10% to the fare and the removal of 3% franchise tax would benefit the airlines but not the tourism industry. Senator Recto reiterated that the liability to collect or to pay VAT is with the one selling the goods or services.

Senator Recto stated that it does not necessarily mean that if VAT is imposed on the airline industry, it would be passed on to the consumers. In the case of the shipping and the airline industries, depending on the time of the year, he said that the difference in ticket prices between the two sectors is very little. He stressed that a 10% increase in the shipping

rate would mean losing potential passengers to the airline industry.

Asked if transferring the VAT burden to the people would not hurt the tourism industry, Senator Recto replied that taxes would affect consumers and the tourism industry. However, he noted that there was a request from the Executive department to raise as much revenues as possible. A commitment to raise P80 billion was made, he said, and the expected revenues from the airline industry is part of the P80 billion. He cautioned that exempting one sector would eventually mean exempting many others.

SUSPENSION OF SESSION

With the permission of the Body, the Chair suspended the session.

It was 4:52 p.m.

RESUMPTION OF SESSION

At 4:57 p.m., the session was resumed.

Senator Recto explained that at present, domestic cargo is already included in the VAT. The proposed amendment of Senator Madrigal, he said, would take away not only the proposed VAT on passengers but also the existing VAT on cargo.

Senator Madrigal presented the conclusion of the study:

Look at the shipping industry. The situation of the shipping industry is a bit different. The DoF estimates that only 40% of revenues come from international shipping of goods, thus we should expect a positive net VAT. In its April 5, 2005 estimates, the DoF placed domestic passengers as paying some P410.32 million for VAT while a negative VAT of P313.02 million will be credited to international carriers of passengers. Thus, including shipping passengers in VAT will only add to P97.3 million net VAT. In this case too, the estimate gain is so small that an error in methodology or figures could end up negatively for the government. There is no pressing case to include it in VAT.

In conclusion, the above estimates do not include further VAT revenue erosion by zero-rating the transactions of international passenger traffic and their suppliers. This will result again

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in some VAT input credits available to the suppliers. There will be another 50% to 70% of VAT inputs on the airlines and the shipping passenger market. It is even more painful to realize that the ultimate beneficiaries of this committee proposal will be the rich people who own these airlines and shipping companies and suppliers and it certainly adds insult to injury to the poor salaried taxpayers and I think this will be very bad for tourism.

In response, Senator Recto gave the following figures:

Country	VAT rate for Domestic Air Transport %	VAT rate for International Transport %
Austria	10	0
Belgium	6	0
Finland	6	0
France	5.5	0
Germany	15	0
Greece	8	0
Italy	10	0
Luxembourg	3	0
Netherlands	6	0
Portugal	5	0
Spain	16	0
Sweden	12	0

REMARKS OF SENATOR OSMEÑA

Senator Osmeña stated that if one has a lot of input VAT and was exempted on half-year output VAT, one would always have more input VAT than output VAT and this would mean a loss to the government. He recalled Senator Recto mentioning yesterday a formula by which the BIR computes how much of the input VAT creditable. He requested that Senator Recto put on record what was taken up in the caucus as he shared the concern of Senator Madrigal, except that he believed that better tax administration is needed to remove the leakages that were mentioned in the article that was read.

Senator Recto argued that these industries have no VAT inputs to begin with and if there were VAT inputs then there were zero-rated, in which case, the VAT inputs could be covered.

Senator Osmeña asked if common carriers by air and sea are at present VAT-exempt or VAT zero-rated. Senator Recto replied that their purchases and sales are exempted. Further, he

informed the Body that if an airline company makes a purchase today, it is exempted from paying VAT; if it sells a ticket to a domestic or an international passenger or cargo, it is still exempted from VAT and in effect, it is zero-rated because of its exemption on purchases and sales. He explained that even if it purchases locally and is not exempt from VAT, the effect would be minimal since the biggest item is capital goods or capital equipment.

Senator Osmeña proposed a compromise on the zero-rating for aviation fuel and use it as a concession to the tourism industry and to address the concerns of Senator Madrigal. Senator Recto replied that he would be amenable to some amendments during the discussion of the sections on excise tax.

Senator Osmeña asked how the BIR would tax-administer companies that have partial zero-rating. Senator Recto explained that lines 2 to 5, page 7, refers only to domestic airlines and Senator Madrigal's proposed amendment would take away VAT on domestic passengers and cargo. At present, he said, cargo is already subject to VAT, hence, the proposed amendment would mean a loss of revenue for the government. He stressed that everything consumed domestically should be subject to VAT as this is the general concept of how the VAT should work.

As regards the query of Senator Osmeña, Senator Recto stated that if Cebu Pacific, for instance, had P100-million sales, 70% of which came from international operations, when it makes a purchase, 70% of its cost could be applied to other internal revenue taxes through the tax credit certificate (TCC) while the remaining 30% could be VAT-credited but only with respect to domestic sales. He explained that the credit works VAT-on-VAT so that whatever an airline company collected from passengers and cargo domestically, it can credit to the 30% VAT inputs that they paid for. He confirmed that the BIR can go into the account of an airline company to find out if its particular expenses that were subject to VAT were utilized for domestic or foreign purposes to determine what could be credited.

REMARKS OF SENATOR ARROYO

Senator Arroyo observed that while Senator Madrigal would like to exempt the airline

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and shipping passengers, Senator Recto would like to impose VAT on them.

However, Senator Arroyo stated that the reality is that the VAT would hurt the public, otherwise, the Members have no business discussing taxes. As such, he believed that the Members would have to suffer the consequences of having been given the job of crafting a law which would tax people. He pointed out that continuing the discussions would only lead to an expansion of VAT exemptions that in the end, there would be nothing to discuss at all.

VOTING ON THE PROPOSED AMENDMENT OF SENATOR MADRIGAL

Submitted to a vote, with 7 senators voting in favor and 10 against, the proposed Madrigal amendment was not approved.

PROPOSED AMENDMENT OF SENATOR DEFENSOR SANTIAGO

At the outset, Senator Defensor Santiago stated that Senators Enrile and Roxas are cosponsors of the proposed amendment.

On page 7, Senator Defensor Santiago proposed the deletion of the clause "SALES OF ELECTRICITY BY GENERATION COMPANIES, TRANSMISSION, AND DISTRIBUTION COMPANIES on lines 5 to 7 and the phrase "ELECTRIC UTILITIES" on lines 7 and 8.

Adverting to her debate paper, Senator Defensor Santiago recalled that she had agreed with the proposition that there would be a debt crisis in the country by 2006 unless about P55 billion to P80 billion is raised and that the best way to do it is through the implementation of an expanded VAT. Further, she noted that one option is to raise the VAT from 10% to 12% while another is to remove as many VAT exemptions as possible.

She stressed that she favored VAT as a source of revenue and that she would vote in favor of any measure that might be the result of the Body's deliberation if only to signify her agreement on the need to raise money for the government lest the country find itself in more financial troubles in 2006. However, she wanted to maintain the present VAT exemptions on the power and petroleum sectors.

*Senator Defensor Santiago explained that she favored keeping the exemptions on the power sector on the following grounds: 1) the cost of electricity in the Philippines is now one of the highest in Asia; and 2) there would be a universal charge on electricity under the EPIRA for which reason, it would not be sustainable for the public to pay two new taxes at the same time. On the other hand, she believed that the imposition of VAT on petroleum products should be postponed because the prices of petroleum products are skyrocketing; and because historically, it has been proven that raising the price of gasoline would consequently lead to an increase in the price of all other consumer goods and services.

Moreover, Senator Defensor Santiago cited an advertisement from *The Philippine Daily Inquirer* last April 4, 2005 which had prominent public personalities affirming the necessity of increasing the VAT rate to 12% while plugging most of the exemptions. However, she expressed disagreement to one proposal in the manifesto which opposed keeping the power sector VAT exempt. Not only do current power costs make the Philippines uncompetitive, but the universal levies soon to be imposed to cover the cost of stranded assets may drive away investments, she warned.

Further, Senator Defensor Santiago stated that power and electricity should continue to be exempted from the VAT, although not necessarily for all time. She posited that the imposition of the VAT on these sectors should be made when the public could afford such taxes, possibly three to five years from now.

For his part, Senator Recto explained that the Committee wanted to include power in the VAT chain so that this revenue could be collected at an earlier stage rather than collecting it from thousands of establishments.

He maintained that consumers already pay a VAT on power even if the sector is currently VAT-exempt since a 10% VAT is already imposed on goods and services. This, he pointed out, is why the government is unable to collect much of the VAT because it is only collecting part of it at present. He noted that the incomplete VAT chain is the reason behind the big revenue leakage. Additionally, he averred that the VAT collected by businesses from their consumers is not necessarily remitted to the government which is totally unfair to consumers who are paying a VAT on power and petroleum.

which are not subject to VAT in the first place. Relative thereto, he stated that the VAT output is equivalent to the gross sales divided by 11 while the VAT input is all purchases less depreciation, wages, power and petroleum and interest expenses.

Based on the Committee's calculations, Senator Recto explained that the effect of VAT on non-VAT registered persons would mean that a provincial residential user of an electric cooperative who consumes 35 kwh per month would have to pay an additional P14.00 or P211.55; if his electric consumption goes up to 100 kilowatt hours per month, the user would pay an additional P39.75 or P594.00 per month. On the other hand, he stated that an average Meralco subscriber in Metro Manila consuming an average of 194 kwh would pay an additional P104.00 a month or roughly P1,430.30. He pointed out that the VAT collections on power would be done very efficiently as it would be collected from the first part of the chain.

Additionally, Senator Recto noted that keeping power VAT-exempt would be difficult for businesses since these establishments do not have an input VAT credit on power to begin with even though they are charging the consumer but not necessarily remitting the tax revenue to government. This, he said, is why there is a current 40% leakage in the collection of the VAT. He also pointed out that it would be hard for businesses and the BIR to collect VAT if power and petroleum are exempted. He pointed out that the House proposal of imposing an incremental VAT for the next four years and the proposed Senate amendment to exempt power and petroleum from VAT would result in a difficult computation of the VAT for all purchases not only for the VAT-registered person but also for the BIR. He said that the Senate proposal, wherein every purchase is imposed a 10% VAT, would be easier for the BIR to administer. Additionally, he believed it is unfair for a small business enterprise earning P550,000 a year to pay VAT while a big power firm grossing over P130 billion in sales is exempted from paying VAT. In closing, he did not accept the proposed amendment of Senator Defensor Santiago.

Senator Defensor Santiago asked for a division of the House.

At this juncture, the Chair pointed out that power generation, transmission and distribution

companies are currently zero-rated under the EPIRA. As such, it suggested that instead of deleting the provision, Senator Defensor Santiago might consider transferring the provision under Exempt Transactions on Section 109.

Senator Defensor Santiago said that she would propose the appropriate amendment when the Body discusses the committee amendments to lines 19 and 20 of page 11.

REMARKS OF SENATOR ARROYO

For his part, Senator Arroyo stressed that some members oppose the removal of the VAT-exemption of generating companies as proposed in Senate Bill No. 1950, while he and the others oppose the move to exempt generating companies for VAT.

In stating his case, Senator Arroyo pointed out that electricity is distributed by electric power companies and cooperatives to their consumers who buy the electric power they distribute from generating companies which are owned either by the Napocor or by the independent power producers (IPPs). Moreover, he noted that imposing VAT on the power sector actually means taxing the IPPs because the Napocor is a tax-free enterprise under its Charter.

He recalled that to address the expected power supply shortage, the Napocor entered into contracts with the IPPS which were put up by private investors; the contract stipulated a take-or-pay or shotgun provision wherein the Napocor would pay for any and all electricity produced by the IPPs regardless of whether this is used by the power firm. This, he said, is the reason why foreigners invested money in the generation industry.

Senator Arroyo said that foreign investors invested in the generation industry precisely because of the "pay or take" provision, a shotgun provision in the Napocor-IPP contracts that was compounded by another provision which forced Napocor to pay for the future taxes of the IPPs. With these guaranteed privileges, he said, the IPPs are the greatest moneymakers in the country.

Senator Arroyo lamented that the Electric Power Industry Reform Act of 2001 which was expected to reform the power industry did not correct the iniquitous and onerous provisions in the

IPP contracts. Instead, he said, two provisions were inserted in the law, namely: 1) zero-rating generation companies which effectively exempted IPPs from VAT; and 2) making government assume the losses of Napocor amounting to P200 billion which is now over P500 billion. He disclosed that Napocor incurred such huge losses substantially because of the one-sided Napocor-IPP contracts. He stressed that between the IPP contracts and the EPIRA, four crimes were foisted on the Filipino people.

Moreover, Senator Arroyo informed the Body that the committee hearings revealed that Napocor, being tax free, does not pay tax for the fuel it uses to run the gencos but the IPPs in effect do not also pay the corresponding tax on the fuel they use because they get it through Napocor. This terrible connivance between Napocor and the IPPs is crime no. 5, he underscored. He pointed out that EPIRA zero-rated the IPPs precisely to lower power cost but the opposite happened, so the exemption should be lifted.

Despite all these crimes against the public, Senator Arroyo contended that the IPPs are now threatening to impose higher electricity costs should their exemption from VAT be lifted. He called the Body's attention to the real issue at the moment which is to right an injustice. He submitted that the IPPs should be imposed a VAT because the threat of higher power cost should not make the Philippines helpless to guard against it. He stressed that more superior to the non-impairment contract clause in the Constitution is the police power of the State which enables it to impair contracts for the public good.

POINT OF ORDER OF SENATOR ENRILE

At this juncture, Senator Enrile raised a point of order and he asked whether the parliamentary status was the period of debate or the period of amendments.

Senator Arroyo stated that he gave way to the Senate leadership's request during the period of debate that administration senators express their points during the period of amendments which was why he never took the floor before then.

Senator Enrile insisted that the Body was in the period of amendments during which a debatable issue should not be raised. He asked for a division of the house.

SUSPENSION OF SESSION

Upon motion of Senator Pangilinan, the session was suspended.

It was 5:38 p.m.

RESUMPTION OF SESSION

At 5:45 p.m., the session was resumed.

Upon resumption, Senator Enrile withdrew his point of order but asked if he could interpellate Senator Arroyo.

The Chair ruled that Senator Arroyo was simply making a manifestation. It said that Senator Enrile could interpellate the proponent of the amendment should there be questions on it.

REMARKS OF SENATOR ARROYO

Senator Arroyo stated that the House of Representatives incorporated in its VAT bill a "no pass-on" provision in order to prevent the IPPs from passing the VAT to the consumers. He said that the "no pass-on" provision is constitutionally sanctioned under the police power of the State.

Moreover, Senator Arroyo informed the Body that the gross sales of the IPPs amounted to P230 billion, of which P130 billion belongs to the Mirant group of companies which would benefit from the exemption. He wondered whether the Body would perpetuate such an inequity. On the other hand, he proposed the incorporation of a provision which would protect the public should the IPPs be imposed a VAT.

REMARKS OF SENATOR OSMEÑA

At the outset, Senator Osmeña supported Senator Arroyo's right to interpellate during the period of amendments. He stated that he himself agreed to terminate his own interpellation on the understanding that he would be allowed to debate during the period of amendments, a practice which the Members have been doing.

Senator Osmeña also supported the stand of Senator Arroyo to impose VAT on the IPPs and all generating companies in order to have a level-playing field. He pointed out that Napocor is already

tax-exempt, the reason the EPIRA included the VAT zero-rating on NPC gencos.

At this juncture, Senator Enrile read to the Body the pertinent provision of EPIRA, to wit:

Pursuant to the objective of lower electricity rates to end-user sales of generated power by generation companies shall be value-added tax zero rated.

Senator Osmeña recalled that before the country had a power crisis in 1991 and 1992, Napocor was generating huge profits because it practically had monopoly of the generation of power; however, the chain of continuous supply of power was broken when the government decided to scrap the Bataan Nuclear Power Plant (BNPP) which was supposed to generate 600 megawatts of power and did not invest in new generating plants to take up the slack that was lost from the scrapping of the BNPP. Since then, he said, demand rose and the supply did not rise, and as a consequence, the country experienced a power crisis.

Senator Osmeña recalled that when Mr. Ramos was elected President in the 1992 elections, he asked Congress to pass the Emergency Power Crisis Act which was eventually approved. However, he noted that under the said law, Congress gave the Executive the blank check to negotiate with the private sector involved in power generation to fast-track the development of new generating companies in order to fill the gap between the supply and the demand at that time. Moreover, he noted that the problem was not only due to the fact that the government ordered too much power; it also bought overpriced power. For instance, he cited the Casecan deal which was found by the interagency committee tasked by the EPIRA Law to have the highest rate in the country at P9.00 per kilowatt-hour, even if it does not deliver power because sometimes there is no water in Casecan and in the rivers nearby.

Relative thereto, he cited the two kinds of IPPs: a Napocor IPP and a private IPP. He confirmed Senator Arroyo's statement that some 17 to 20 years ago, energy officials projected that the country's power supply would not be able to meet the future power needs, that was why in 1985, the Bataan Nuclear Power Plant was built to meet the shortage that was projected to happen in the ensuing

years. He said that the private sector was asked to raise the money because Napocor no longer had the money or the credit to put up the power plant.

He stated that following the passage of the Emergency Power Crisis Act in December 1994, the Ramos administration ordered so much power that the World Bank in its report projected that the government's order for too much power would result in a political backlash because consumers would be charged later on for that power that was purchased but which they would not actually use. He noted that World Bank was right because that was exactly what happened in 1999 and 2000. Moreover, he pointed out that the contracts that Napocor has been paying were a consequence of the "take or pay" provision. He explained that power sold by the Napocor is subject to the Return on Rate Base (RORB) formula, a regulated rate, hence, nobody would dare to invest a billion dollars in putting up a power plant unless assured of a return. He said that since the Napocor was not able to secure loans from international lender to put up a power plant, it negotiated with the IPPs and to entice them, the "take-or-pay provision" was included in their contract to guarantee a return on their investment.

On another matter, Senator Osmeña pointed out that the basis of the Electric Power Industry Reform Act (EPIRA) was a well-backed study. He recalled that Senator Magsaysay was, in fact, sent on several trips to Australia, New Zealand, Washington D.C., London, Argentina, as early as 1996, along with Senator Webb, who was then Chairman of the Energy Committee, to learn from them on how to reform the country's power industry, invite gencos that would be willing to put up the money and be able to raise the rates without fear of being regulated any longer. He stated that it took Congress six years to enact the bill—which went through three or four chairmen of the Committee on Energy ending with Sen. John Osmeña in 1999 to 2001—into law. He said that the law did not guarantee that the cost of power would be lower as it was left to the vagaries of the market and the law of supply and demand. He agreed with Senator Arroyo that the EPIRA did not correct the iniquitous and onerous provisions in the IPP contracts primarily because of the sanctity of contracts as guaranteed by the Constitution. Instead, he said, EPIRA changed the rules of the game so that gencos would no longer be regulated and that they would be put up no longer by

the government but by the private sector as what happened to Masinloc, the first big power plant of 600 megawatts owned by Napocor, which was sold to private investors. Should there be a power shortage in 2008 or 2009, he predicted that the investors would make a lot of money, but if there is a surplus in power, they are going to lose some money.

Senator Osmeña explained that under the EPIRA, the P200 billion obligation of Napocor was assumed by the government, otherwise, the obligation would have been passed on to the consumers through higher power rates. He disclosed that the present total asset of Napocor is \$4 billion but its liabilities amount to \$10 billion, excluding the IPPs. He said that should the Napocor sell all its assets, it would be stuck with \$6 billion liabilities that were guaranteed by the government. For instance, he noted that the government is paying P70 billion to P80 billion a year to subsidize Napocor. He stated that the government and the Napocor are in the same pocket until the next 25 years as the government would be paying off the \$6 billion liabilities of Napocor that would not be covered by the sale of its generating assets or its transmission company.

He agreed with Senator Arroyo that the fuel that the IPPs use are coursed through Napocor tax-free because all the contracts that involve coal and bunker fuel that were coursed through Napocor are known as Energy Conversion Agreements (ECAs) wherein Napocor gives the coal, for instance, to Mirant in Sual, and Mirant, in turn, pays Napocor in kilowatts. He said that through ECAs, the IPPs could get away from not paying the 2% to 3% excise taxes on fuel, which he believed is perfectly legal and one way to lower the power cost.

Senator Osmeña believed that all gencos were VAT zero-rated under EPIRA because the Napocor sold its generating plant to the private sector, it cannot go from VAT zero-rated to VAT because nobody would want to compete against Napocor that is VAT zero-rated.

Senator Recto clarified that the gencos of Napocor are exempt, not zero-rated, because Napocor is exempt, not zero-rate, under its charter.

To level the playing field, Senator Osmeña stated that the options were either to VAT or VAT, zero-rate everything.

From the presentations made by the DOE and the DoF during the caucuses, Senator Recto noted that gencos owned by Napocor are exempt and IPPs are zero-rated which, in effect, did not level the playing field but benefited nongovernment power generating companies. But Senator Osmeña noted that according to Senator Enrile, all generating companies should be VAT zero-rated to ensure a level playing field and to make it easier for Napocor to sell its gencos.

Senator Osmeña mentioned that for the IPPs to pay VAT does not imply that they cannot pass it on; they can do it as a cost of doing business. In fact, he said, they can rightfully apply to the ERC to include all their costs in their cost of doing business.

He agreed that 65% of the country's commercial power is already being imposed the VAT. He noted that the cost of power is already included in the 10% VAT imposed on everything that is being sold. He said he was surprised that based on the DoF data, if power would be imposed the VAT, its collection from the P308 billion power industry would decrease from P20 billion to P10 billion. The reason therefor, he surmised, could be the 60% collection efficiency, that the VAT is being paid but not necessarily being collected by the government even if the consumer already paid a VAT on the commercial use of power. While he acknowledged the neutrality and efficiency of VAT, he pointed out that it would affect the residential users.

Senator Osmeña agreed that on the average there would be an additional cost of P14 per household in the provinces and about P104 per household in the Meralco franchise area. However, he believed that the residential rate would be raised only by about 6% to 7%, not by 10%. Senator Recto said that such calculation would be correct after taking away the franchise tax.

Senator Osmeña argued that there is no one in the world who cannot lower his residential rate by 10%, because he, himself, lowered his residential rate by about 25% to 30% in the past two months by simply turning off the lights and airconditioning. In fact, he said, the demand for power in the U.S. was brought down just by teaching people how to utilize it in their homes, by car pooling and by giving credits to those who have been able to bring down their consumption by 10% or more. In the same manner, he believed that every Filipino could

save a lot of money especially if the government teaches him to cut power consumption by 10%; thus, despite a 7% increase in residential rate, if there is a cut in power consumption by 10%, the Filipinos would still be ahead. Further, he noted that a lot of the professions have no input VAT as he asserted that exporters, particularly of micro conductors, would suffer under a VAT-exempt regime where there is no input VAT to credit, and so their cost of power would go up. He said that when they are part of the VAT system, however, they could use the input VAT as a credit versus their output VAT, or, if they are VAT zero-rated, they could get a refund.

Senator Osmeña reiterated his argument that VAT exemptions would make things worse because people would be taxed twice as the Department on Finance itself admitted. To amplify his point, he stated that a dressmaker, who is VAT-exempt, makes a dress using materials on which VAT was paid, when the dress is sold, the dressmaker has no input VAT to pass on. On the other hand, a wholesaler can charge 10% on the dress so that, in effect, the government would be collecting VAT twice.

Senator Osmeña reiterated his support to impose VAT on power all the way through for fairness, neutrality, transparency and to ensure that the economy works the way it is supposed to work.

REQUEST OF SENATOR PIMENTEL

Senator Pimentel asked for time to allow the Minority to go into caucus.

Senator Recto expressed hope that the bill would see its completion after the caucus because, like the other members, he had agonized for the last two months over statements made relative to the measure.

SUSPENSION OF SESSION

Upon motion of Senator Pangilinan, the session was suspended.

It was 6:15 p.m.

RESUMPTION OF SESSION

At 7:19 p.m., the session was resumed.

INQUIRY OF SENATOR PIMENTEL

Asked by Senator Pimentel if her proposed amendment is in the nature of an exemption, Senator Defensor Santiago replied in the affirmative as she said that if the provisions are deleted, electricity would continue to be VAT-exempt.

INQUIRY OF SENATOR OSMEÑA

Senator Osmeña remarked that there are three VAT regimes recognized in law – VAT zero-rated, VAT-exempt and VAT all the way through. He inquired whether the exemption means that electricity is either VAT zero-rated or VAT-exempt. Senator Defensor Santiago stated that the status quo would continue, whatever it might be.

For its part, the Chair noted that the electricity is VAT zero-rated.

Senator Recto clarified that the status quo is such that IPPs are zero-rated while the gencos of Napocor, the Transco and the distribution utilities are exempt.

Senator Roxas stated that the net effect of the subsequent amendment of Senator Defensor Santiago on page 9 would convert the zero-rating of IPPs into an exemption.

At this juncture, Senator Defensor Santiago manifested that she would propose an amendment to insert a new section, between lines 19 and 20, page 11, to wit:

(M)SALES OF ELECTRICITY BY POWER GENERATION COMPANIES 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 6 OF R.A. NO. 9136, POWER GENERATION COMPANIES SHALL IN NO CASE BE VALUE-ADDED, TAX ZERO-RATED.

The Chair asked whether the intent of the proposed amendments is to delete the phrase on

page 7 starting with the word "SALES" on lines 5 up to the word "COMPANIES" on line 7 and the words "ELECTRIC UTILITIES" on lines 7 and 8, and, thereafter, to insert between lines 19 and 20, page 11, a new subsection (M) that would make power tax-exempt. It added that if the proposed amendments are carried, the mere deletion of lines 5 to 8, page 7, would put the provision back to where it is at present. Senator Recto agreed.

At this juncture, Senator Pimentel inquired what the required vote is to pass the proposed amendments.

SUSPENSION OF SESSION

With the permission of the Body, the Chair suspended the session.

It was 7:24 p.m.

RESUMPTION OF SESSION

At 7:25 p.m., the session was resumed.

Replying to the query, Senator Defensor Santiago read Article VI, Section 28, paragraph (4) of the Constitution which states, "No law granting any tax exemption shall be passed without the concurrence of a majority of all the Members of the Congress." She believed that the Body should reach the conclusion that the proposed Act is not granting an exemption but retaining an exemption provided for in law. She stated that the constitutional provision she just read does not apply in this instance, hence, all that is needed is a simple majority vote of the senators present.

REMARKS OF SENATOR ARROYO

Senator Arroyo stated that when the law states "a majority of all the Members of Congress," with respect to the Senate that consists of 23 members, a majority of 12 becomes necessary. He said that a majority of members present is sufficient to impose a tax; however, he reasoned that when the Body grants an exemption, a privilege that is given to a person or an entity and not to others, the Constitution requires not just a majority of the members present but a majority of all the members.

The Chair explained that the proposed amendment is to delete lines 5 to 7, page 7 which the Body

has not acted upon. It noted that there is no proposed amendment as yet to page 11 to grant an exemption. It suggested that the resolution of the issue be deferred to a later hour.

Senator Arroyo opined that if the proposed amendment is approved, its net effect would be to exempt the power sector.

At this point, Senator Enrile remarked that the source of the exemption is Section VI of the EPIRA. He said that Senator Recto is seeking to lift the exemption through the insertion of a provision; on the other hand, the proposed amendment of Senator Defensor Santiago is to delete said provision so as to maintain the exemption.

Senator Enrile posited that to establish the exemption from VAT presently enjoyed by the power industry, said provision would not be placed under the section of the Code that grants exemptions. He clarified that an exemption in the existing law is simply being reiterated.

Stating that industries that are presently exempted from VAT would be subject to VAT under the bill, Senator Arroyo maintained that if the proposed amendment of Senator Defensor Santiago is carried, it would put the gencos in a category different from the others. He argued that the Body cannot apply one rule for the generation companies and another rule for all the others.

Senator Enrile remarked that when the Senate exempts, it complies with the Constitution as he added that lifting the exemption simply needs a majority vote of a quorum.

RULING OF THE CHAIR

At this juncture, the Chair ruled that the Body would proceed with the vote on the proposed amendment of Senator Defensor Santiago and thereafter, determine the question of whether the majority vote needed is 13 or 12.

Senator Pimentel said that such was the reason he asked about the intent of the proposed amendment.

The Chair clarified that if the proposed amendment is carried, the provision on the exemption would be inserted on page 11. *AK*

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Senator Pimentel said that this would set the stage for other exemptions. He underscored that the Body cannot vote on the issue without anticipating that in the event the proposed amendment is carried, the gencos would be exempted.

Senator Pimentel said that he did not wish to delay the proceedings but he pointed out that Article VI, Section 12 of the Constitution requires all members to reveal their interests – financial or business – before they are supposed to assume their duties. He commented that not all members have complied with the requirement, as he advised that they are discussing a very important legislation that would affect the lives of the citizens, and that it is equally important to find out whether there are factors that might inhibit some of the members from participating in the voting. Invoking Article VI, Section 12 of the Constitution, he asked the members to disclose their financial interest to be free from any suspicion.

SUSPENSION OF SESSION

Upon motion of Senator Pangilinan, the session was suspended.

It was 7:36 p.m.

RESUMPTION OF SESSION

At 7:52 p.m., the session was resumed.

MANIFESTATION OF SENATOR PIMENTEL

Senator Pimentel said that he found it reasonable that it should be left to the conscience of the senators to explain their compliance with the requirement of Article VI, Section 12 of the Constitution during their term.

VOTING OF THE PROPOSED AMENDMENT OF SENATOR DEFENSOR SANTIAGO

Submitted to a vote and with 8 senators voting in favor and 11 against, the proposed amendment of Senator Defensor Santiago was not approved.

Senator Roxas requested a nominal voting.

Thereupon, the Secretary of the Senate called the roll for nominal voting.

RESULT OF THE VOTING

The result of the voting was as follows:

In favor

Biazon	Gordon
Defensor Santiago	Magsaysay
Ejercito Estrada (J)	Revilla
Ejercito Estrada (L)	Roxas
Enrile	

Against

Angara	Osmeña
Arroyo	Pangilinan
Cayetano	Pimentel
Flavier	Recto
Lim	Villar
Madrigal	

With 9 senators voting in favor and 11 against, the proposed amendment of Senator Defensor Santiago was not approved.

EXPLANATIONS OF VOTE

By Senator Pimentel

Senator Pimentel stated that in voting against the proposed amendment of Senator Defensor Santiago, it is not his intention to burden the poor with additional tax rates, as claimed in the propaganda materials. There would be subsequent proposals, he assured, that would mitigate the plight of the poor under a VAT regime.

By Senator Roxas

In explaining his affirmative vote, Senator Roxas stated that from an equity point of view, by the very nature of VAT, businesses that have input VAT would not bear the burden; it would be borne by the end-consumers. Also, he said that the burden to be imposed would not be commensurate to the revenue to be collected government.

He warned that by lifting the exemption in the power industry, every consumer's electric bill would increase by 10%.

Senator Roxas predicted that given the latest P308-billion sales estimate of the power sector, the collective power bills of consumers would go up by P30 billion. However, he said that like inflation,

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such increase would not mean any additional benefit to the government because with the input/output feature of VAT, the net collections would be a low of P3 billion to a high of P8 billion.

Finally, Senator Roxas explained that he voted in favor of the amendment based on the principle that even as the same amount of money may be collected from a tax measure, not all taxes course their way through the economy in the same manner. He believed that taxing the power sector would cause inflation and make the economy less competitive.

By Senator Osmeña

Explaining his negative vote, Senator Osmeña admitted that he was at a total loss as to how VAT on the power sector would mean an increase of P30 billion in revenue collections when the Committee itself had a projection of only P10 billion — P5 billion in actual new revenues and another P5 billion as a result of efficiencies.

Acknowledging that the power industry has a gross sales of roughly P308 billion including ancillary services for Transco, and that VAT would bring in additional revenues, he asserted that these would be nowhere near 10% of P30 billion since VAT is, in effect, already being collected in the commercial sector or on roughly 65% of total power sales. The revenue impact on the people, he said, would be less than P5 billion, as borne out by numbers from the DOE and DoF.

Admitting that VAT on the power sector would be more of a burden on the residential Consumers, Senator Osmeña said that the committee members felt that it would be easier for the BIR to collect the tax since there would be no exemptions that would break the VAT chain; and rather than collecting VAT from people without their knowledge, it would be better for the people to see how VAT is being collected. VAT, he explained, is being collected on all purchases of all consumers across the country.

Relative to the “no pass-through” provision, Senator Osmeña pointed out that the Napocor would be left holding the bag with P15 billion in VAT so that in effect, what is being collected with the left hand would be thrown away by the right hand.

He pointed out that the P4-billion assets of gencos and Transco would now command a lower

price in the market because they are stuck with VAT. He stated that the government stands to lose US\$400 million to US\$500 million that would be used to pay off Napocor loans. He reiterated that the purpose of the measure is to have an efficient VAT collection at every step of the VAT chain.

ENRILE AMENDMENT

On page 7, line 13, after the word “faculties,” Senator Enrile proposed the insertion of a semi-colon and the proviso: *PROVIDED, THAT THE VAT ON SALES OF ELECTRICITY BY GENERATION COMPANIES, TRANSMISSION COMPANIES AND DISTRIBUTION COMPANIES AS WELL AS SERVICES OF FRANCHISE GRANTEEES OF ELECTRIC UTILITIES SHALL NOT APPLY TO HOUSEHOLD CONSUMERS.*

Senator Recto asked if the intention of the proposed amendment is that VAT on power companies cannot be passed on to residential users. Senator Enrile replied in the affirmative as he stressed that it is unfair to impose VAT on electricity that is actually sold by zero-rated generation companies to households.

Asked by Senator Recto whether the proviso would mean that commercial and industrial companies would bear the VAT burden if they are unable to pass it on to residential consumers, Senator Enrile clarified that VAT would apply only to the extent of the sales by generation companies of electricity passing through the wires of Transco and distribution companies to households.

Senator Osmeña asked whether the commercial users would now subsidize the residential users because the trigger point of the VAT is the bill that the consumer receives, thus, under the proposed Act, he should not pay more than 10%. He said that what would happen is that the national government would not be able to collect VAT on residential consumers.

Asked by Senator Recto if it is possible that power generating companies and distribution utilities, realizing that they would incur a loss, could pass on the additional cost to industrial and commercial users, Senator Osmena admitted that VAT would be passed on not as VAT but as cost to the consumers. Precisely, he said that he has always been in favor of subjecting everybody to VAT.

4

18

Senator Recto accepted the amendment and submitted to a vote, there being no objection, the same was approved by the Body.

PROPOSED AMENDMENT OF SENATOR PIMENTEL

On page 7, line 7, Senator Pimentel proposed the insertion of the following clause: SALES OF ELECTRICITY BY GENERATION COMPANIES, TRANSMISSION AND DISTRIBUTION COMPANIES: *PROVIDED*, THAT THE TAX HEREIN LEVIED SHALL BE ABSORBED AND PAID BY THOSE GENERATION COMPANIES, TRANSMISSION AND DISTRIBUTION COMPANIES AND THE SELLER SHALL NOT PASS ON THE COST OF SUCH TAX PAYMENTS EITHER DIRECTLY OR INDIRECTLY TO THE CONSUMER IT BEING THE EXPRESS INTENT OF THIS ACT THAT THE TAX HEREIN LEVIED SHALL BE BORNE EXCLUSIVELY BY THE COMPANIES ABOVEMENTIONED: *PROVIDED*, THAT ANY VIOLATION OF THIS CLAUSE SHALL BE PUNISHED WITH IMPRISONMENT NOT EXCEEDING ONE (1) YEAR OR A FINE NOT LESS THAN ONE THOUSAND (P1,000.00) PESOS BUT NOT EXCEEDING ONE MILLION (P1,000,000.00) OR BOTH.

SUSPENSION OF SESSION

Upon motion of Senator Recto, the session was suspended.

It was 8:12 p.m.

RESUMPTION OF SESSION

AT 8:13 p.m., the session was resumed.

Senator Recto thought that the Enrile amendment already covered the issue of "no pass-through" provision with respect to residential users. Subject to style, he suggested that the proposed amendment of Senator Pimentel be merged with the Enrile amendment.

Asked by the Chair whether the "no pass-through" clause would apply only to residential users, Senator Pimentel replied that his proposed amendment and the Enrile amendment should be consolidated to emphasize the intent that the small man would not be burdened.

SUSPENSION OF SESSION

Upon motion of Senator Recto, the session was suspended.

It was 8:14 p.m.

RESUMPTION OF SESSION

At 8:17 p.m., the session was resumed.

Upon resumption, Senator Recto accepted the proposed amendment of Senator Pimentel, subject to style.

INQUIRIES OF SENATOR ROXAS

Asked by Senator Roxas if he agreed to the proposed amendment of Senator Pimentel, subject to style, Senator Recto said that his understanding is that the proposed amendment of Senator Pimentel would be merged with the Enrile amendment as both deal with regulatory issues. He added that it is a matter of using the correct language and limiting the proviso to residential users.

Senator Roxas queried at what particular point the "no pass-through" is implemented. Senator Recto replied that when he asked Senator Osmeña the same question, he gathered that the IPP would probably consider VAT as a cost and pass it on to commercial and industrial users.

Senator Roxas pointed out that this would be "passing through" VAT and would violate the intent of the proposed Act. Senator Recto stated that as he understood it, the Pimentel amendment used a different phraseology to correct the earlier amendment.

The Chair asked that the matter be clarified for purposes of the record.

REMARKS OF SENATOR ANGARA

Senator Angara informed the Body that a compromise language had been agreed upon to accommodate both amendments. He clarified that the Pimentel amendment is intended to limit the "no pass-through" proviso only to household consumers because industrial and commercial users would always find ways to pass on the VAT as a cost and this makes the consumer the ultimate bearer of the

VAT. He stated that under the compromise language, household consumers are exempt from VAT and VAT cannot be passed on to them in whatever shape or form under penalty of law. This would make it very clear that the "no pass-through" proviso is applicable only to household consumers.

Senator Recto remarked that it is difficult to understand how the proviso would operate as it may have the effect of subsidizing residential users, although the cost is charged to industrial and commercial users. It would be difficult for gencos to determine who they are selling it to, whether residential users, commercial users or industrial users, he said. He disclosed that some Members had requested for the meantime that the Body accept the Pimentel amendment, subject to style, and take it up later on so as not to delay the discussion on other provisions.

Asked by Senator Roxas on the parliamentary status of the Pimentel amendment, the Chair replied that the action on the Pimentel amendment had been deferred.

PROPOSED AMENDMENT OF SENATOR ENRILE

On line 13, page 7, after the word FACULTIES, Senator Enrile proposed the insertion of a semicolon (;) and the phrase AND THE SALE OF LUBRICATING OIL, PROCESSED GAS, GREASE, WAX AND PETROLATUM.

Senator Recto informed the Body that everything on page 7 refers to Section 108 on the sale of service, while Senator Enrile was talking about the sale of goods. He pointed out that petroleum products named in the proposed amendment of Senator Enrile are considered goods under Section 106.

Senator Enrile asked if the bracketing of lines 16 to 22, page 9, does not mean an exclusion of said products from VAT. He stated that if the products are spread into the record, he would not pursue his proposed amendment. Senator Recto assured the Body that the products are spread into the record.

Senator Enrile then withdrew his proposed amendment.

PANGILINAN AMENDMENT

As proposed by Senator Pangilinan and accepted by the Sponsor, there being no objection, the Body approved the following amendments, one after the other:

1. On page 8, line 6, after the word "FOR," delete the word "NONRESIDENT"; and after the word "PERSONS," delete the word "NOT"
2. On the same page, line 7, restore the word "OUTSIDE" and delete the word "IN."

He stated that lines 6 and 7 would now read as follows: "(2) SERVICES OTHER THAN THOSE MENTIONED IN THE PRECEDING PARAGRAPH PERFORMED FOR PERSONS DOING BUSINESS OUTSIDE THE PHILIPPINES.

ENRILE AMENDMENT

On page 8, line 12, after the word "VESSELS," as proposed by Senator Enrile and accepted by the Sponsor, there being no objection, the Body approved the insertion of the words OR AIRCRAFTS.

INQUIRIES OF SENATOR OSMEÑA

Adverting to the Pangilinan amendments, Senator Osmeña queried if a corporation doing business inside and outside the Philippines would be subject to VAT. Senator Recto replied that the provision states two conditions: services should be paid in foreign currency, and shall be accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas*. He cited a call center as an example of a corporation performing services for a person not doing business in the Philippines. He stated that business consumed externally and paid for in foreign currency is like an export, in which case, it should be zero-rated.

To the concern that a business that has a branch in Hong Kong could claim an exemption, Senator Recto proposed that the phrase WHEN THE SERVICES ARE PERFORMED be inserted after the word "PHILIPPINES."

Upon further query, Senator Recto explained that the provision is trying to capture businesses outside the Philippines, like call centers, or services that are consumed externally and paid for in foreign currency.

Asked if technical work like research that a lawyer conducted in the Philippines and sent to a client in Hong Kong would be an exported service, Senator Recto replied in the affirmative, adding that it would be covered by the provision.

On whether a medical prescription that was transcribed in the Philippines for a client abroad is a service performed in the Philippines or abroad, Senator Recto replied that if the work was done in the Philippines but the result was sent abroad, technically, it is an exported service. He confirmed that the operative term is "consumed externally."

Senator Osmeña suggested the addition of one or two sentences to clarify the intent of the provision. For his part, Senator Recto reiterated that the intent is to cover services that are consumed outside the country.

RECTO AMENDMENT

On page 8, line 7, after the word "PHILIPPINES," as proposed by Senator Recto, there being no objection, the insertion of the phrase WHEN THE SERVICES ARE PERFORMED was approved by the Body.

REMARKS OF SENATOR PANGILINAN

Thereafter, Senator Pangilinan informed the Body that Senator Madrigal would propose amendments to page 8 in the next day's session as she needed time to prepare. He disclosed that the amendments are on the transport of passengers.

PROPOSED AMENDMENT OF SENATOR OSMEÑA

On page 9, line 10, Senator Osmeña proposed the deletion of the words AND COPRA.

Senator Angara observed that the price of copra has been volatile throughout the years, thus, if it is subjected to VAT, copra farmers would likely to get less and less from this commodity. He reported that almost 20 million people are dependent on copra. He asked Senator Osmeña to withdraw his proposal to include copra in the VAT system.

Senator Osmeña said that having been a copra producer himself, he is aware of the volatility of the price of copra. He noted that Senator Angara wanted to exempt coconut farmers from VAT

but he pointed out that copra would eventually be part of the VAT chain as it moves down the line. Asked at what point copra would join the VAT chain, Senator Angara believed that the sale of copra by a dealer to a miller should be subject to VAT because that would be a second level transaction. He affirmed that the farmer selling the copra to a dealer or trader is exempt from VAT but the dealer selling to a miller is already subject to VAT as well as the oil miller.

At this juncture, Senator Recto reminded the Body that the bill exempts gross sales of P750,000 and below so that a farmer grossing more than the threshold amount could afford to pay VAT.

SUSPENSION OF SESSION

Upon motion of Senator Angara, the session was suspended.

It was 8:43 p.m.

RESUMPTION OF SESSION

At 8:44 p.m., the session was resumed.

Upon resumption, Senator Osmeña withdrew his proposed amendment with the understanding that similar to rice, copra is processed coconut meat but when it enters the milling state, it would be subject to VAT like raw sugar.

ANGARA AMENDMENT

On page 9, in lieu of the deleted phrase on lines 16 to 19, Senator Angara proposed the insertion of the phrase SALE OR IMPORTATION OF ALTERNATIVE OR RENEWABLE SOURCES OF ENERGY.

He explained that the intent is to encourage the development of alternative renewable sources of energy such as solar, wind or wave, as well as the development of ethanol from sugar and bio-diesel from coconut oil, both of which the Philippines has plenty, in light of projections that fossil oil will cost \$100 per barrel in five years.

Senator Osmeña suggested that the proposed amendment be included among the VAT zero-rated items so that the seller gets a refund on his inputs instead of putting this under the VAT exempt category which does not allow the seller to pass on

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16

his input cost and the buyer from enjoying any input for his purchase.

Senator Angara accepted Senator Osmeña's suggestion. The Chair stated that Senator Angara's amendment would be inserted on page 8 under "Transactions Subject to Zero Percent Rate."

Asked by Senator Arroyo on the cost implications of the amendment, the Chair stated that the cost was hard to determine at that point.

Senator Recto believed that the issue should have been included in the Fiscal Incentives bill. But he accepted the amendment which should be inserted on page 8, between lines 16 and 17 as a new paragraph (7) to read as SALE OR IMPORTATION OF ALTERNATIVE OR RENEWABLE SOURCES OF ENERGY.

Senator Osmeña asked how renewable or alternative sources of energy could be imported. On his suggestion that the wording be limited only to sale, Senator Angara conceded that "sale" would include importation but it would be better to spell it out. He added that "production" does not trigger VAT as long as there is no "sale." He said that windmill could be imported for wind power, or solar equipment to generate solar power, in effect, capital importation, for which inputs would be refunded.

There being no objection, the Angara amendment was approved by the Body.

INQUIRY OF SENATOR OSMEÑA

On page 11, asked by Senator Osmeña whether lines 20 to 24 are bracketed, Senator Recto affirmed, saying that it would indicate that sales by electric cooperatives relative to generation and distribution of electricity are subject to VAT.

PROPOSED AMENDMENT OF SENATOR OSMEÑA

On page 12, line 4, between the words "sales" and "by," Senator Osmeña proposed the insertion of the phrase BELOW P5 MILLION.

At this juncture, Senator Pimentel requested that the issue of cooperatives be taken up the next day.

Senator Osmeña withdrew his proposed amendment in the meantime. However, he expressed

concern that several large cooperatives have used the cooperative law to be exempted from paying income tax, duties and the VAT. He called the Body's attention to the distortion that is created between a cooperative producing the same good and one who is not a member of cooperative, pointing out that the cooperative, even though it is owned by very big people, enjoys a tax advantage which it could use to lower the price of its products. He wondered whether the exemption could be limited to small producers only.

The Chair stated that the application on cooperatives would be taken up the following day.

ENRILE AMENDMENT

Thereupon, on the same page, line 14, as proposed by Senator Enrile and accepted by the Sponsor, there being no objection, the Body approved the insertion of a comma (,) between the words "lot" and "and."

OSMEÑA AMENDMENT

On the same page, lines 15 and 16, as proposed by Senator Osmeña, and accepted by the Sponsor, there being no objection, the Body approved the change of the phrase and figure "ONE MILLION FIVE HUNDRED THOUSAND PESOS (P1,500,000)" to TWO MILLION FIVE HUNDRED THOUSAND PESOS (P2,500,000).

PIMENTEL AMENDMENT

On page 13, lines 9 and 10, Senator Pimentel proposed the replacement of the words and figure "SEVEN HUNDRED FIFTY THOUSAND PESOS (P750,000)" with TWO MILLION PESOS (P2,000,000).

SUSPENSION OF SESSION

Upon motion of Senator Recto, the session was suspended.

It was 8:58 p.m.

RESUMPTION OF SESSION

At 9:05 p.m., the session was resumed.

Upon resumption, the Chair stated that Senator Pimentel's amendment on lines 9 and 10 of

page 13 seeks to replace the amount and figure of "SEVEN HUNDRED FIFTY THOUSAND PESOS (P750,000)" with TWO MILLION PESOS.

Replying to Senator Recto's query, Senator Pimentel accepted the amount of ONE MILLION FIVE HUNDRED THOUSAND PESOS. There being no objection, the Pimentel amendment, as amended by Senator Recto, was approved by the Body.

PROPOSED AMENDMENT OF SENATOR ENRILE

On page 14, Senator Enrile proposed the deletion of the capitalized words starting on line 20 up to line 5 of page 15.

Senator Recto explained that the deletion would mean a minimum loss of P23 billion as projected by the DOF. He declined the proposed amendment.

Replying to Senator Angara's query, Senator Recto clarified that the proviso would limit the ability of a VAT-registered person for an immediate refund of his VAT inputs by spreading the period of recovery to five years. He disclosed that the practice is done in many countries with the extreme case in China where VAT inputs are not allowed to be credited. The present practice in the Philippines is an immediate refund credited to any other internal revenue tax, he said.

Senator Enrile pointed out that China is a market which does not need any foreign investments as much as the Philippine market does. He stressed that the proviso would discourage foreign investors to come to the Philippines.

Senator Recto disagreed, clarifying that foreign investments on export-oriented enterprises are not affected by the proviso.

Senator Enrile asked for a division of the House.

Senator Arroyo pointed out that no Member wants to increase the VAT rate from 10% to 12%, in which case the Body has to find a way to recover the projected loss as a result thereof. Considering the amount involved, he suggested that all Members be present to participate in a P23 billion decision.

Senator Roxas disputed the figure of P23 billion. He contended that the projected loss is spurious as

the revenue gain is not real because in effect the amount is an interest-free loan from the investor to the government; the loan eventually would be paid. He stressed that what the government stands to earn in reality is the discounted earnings from the VAT inputs.

Senator Recto maintained that the P23 billion is the minimum computation of the DOF on importation alone since the capital equipment which entered the country in 2003 amounted to P912 billion or in effect a VAT collection of about P91 billion.

DIVISION OF THE HOUSE

The Chair called for a division of the House on the proposed amendment of Senator Enrile.

Submitted to a vote and with two senators voting in favor and eight against, the proposed Enrile amendment was lost.

NOMINAL VOTING ON THE PROPOSED AMENDMENT OF SENATOR ENRILE

Senator Enrile requested a nominal voting.

Thereupon, Secretary Yabes called the role for nominal voting.

RESULT OF THE VOTING

The result of the voting was as follows:

In favor

Angara
Enrile
Roxas

Against

Arroyo	Osmeña
Biazon	Pangilinan
Flavier	Pimentel
Magsaysay	Recto

With three senators in favor and eight against, the proposed Enrile amendment was lost.

ENRILE AMENDMENT

Still on page 14, line 22, after the word "DEPRECIATION," as proposed by Senator Enrile,

and accepted by the Sponsor, there being no objection, the Body approved the deletion of the word "OR."

DEFERMENT OF AMENDMENTS

Upon request of Senator Osmeña, the Body deferred consideration of amendments to page 15 particularly lines 10 to 16 on presumptive input tax.

Also, the Body deferred amendments to page 16 in view of the manifestation of Senator Lacson during the caucus that he would propose the restoration of the provision on lines 19 to 24.

RECTO AMENDMENTS

As proposed by Senator Recto, there being no objection, the Body approved the following amendments:

1. On page 21, lines 24 to 26, up to lines 1 and 2 of page 22, restore the text of Section 116 of the original law; but change the figure "109(z)" to 109(S) on line 1, page 22; and
2. On page 22, lines 16 to 22, restore Section 14.

Asked by Senator Osmeña why Section 14 was deleted, Senator Recto replied that at first, the Committee members thought these were the taxes but realized later on that these were franchise taxes. He clarified that Section 118 does not refer to domestic airlines but to international airlines like Lufthansa, Cathay Pacific, among others, which are not subject to VAT nor VAT zero-rated but pay percentage tax.

Upon further queries, Senator Recto affirmed that domestic airlines that have foreign routes are VAT zero-rated, they do not pay percentage tax but they pay corporate income tax.

ENRILE AMENDMENT

On page 22, as proposed by Senator Enrile and accepted by the Sponsor, there being no objection, the Body approved the deletion of the brackets on lines 16 and 22, and the changing of the words and figures "three percent (3%) to FIVE PERCENT (5%) on lines 20 and 22.

PROPOSED AMENDMENTS OF SENATOR ENRILE

On page 23, line 6, Senator Enrile proposed the deletion of the brackets in the word "electric." Senator Recto explained that electric would be removed from the coverage of franchise tax since the Body has voted to impose VAT on it.

On the same page, between lines 13 and 14, Senator Enrile proposed the insertion of a new Section 15 to read as follows:

SEC. 15. SECTION 121 OF THE SAME CODE, AS AMENDED, IS HEREBY FURTHER AMENDED TO READ AS FOLLOWS:

SEC. 21. *TAX ON BANKS AND NON-BANK FINANCIAL INTERMEDIARIES.* THERE SHALL BE COLLECTED A TAX OF SEVEN PERCENT (7%) OF THE GROSS RECEIPTS DERIVED FROM SOURCES WITHIN THE PHILIPPINES BY ALL BANKS AND NONBANK INTERMEDIARIES CONSISTING OF INTEREST, COMMISSIONS, DISCOUNTS FROM LENDING ACTIVITIES, AS WELL AS INCOME FROM FINANCIAL LEASING, ROYALTIES, RENTALS OF PROPERTY, REAL OR PERSONAL, PROFITS FROM EXCHANGE, AND ALL OTHER ITEMS TREATED AS GROSS INCOME UNDER SECTION 32 OF THIS CODE.

Thereafter, he proposed the deletion of the rest of the provision of Section 121 of the Code except the last paragraph which reads: "Nothing in this Code shall preclude the Commissioner from imposing the same tax herein provided on persons performing similar banking activities."

Senator Recto recalled that under Republic Act No. 3298, banks were removed from the VAT regime and transferred to a gross receipts tax regime; and under the old Code, the rates of 5%, 3% and 1% were imposed but under the new law, only two rates were imposed: 5% for the first five years and 1% for more than 5 years maturity. He then proposed that the seven percent (7%) be changed to FIVE PERCENT (5%) regardless of the

maturity period. Senator Enrile accepted the amendment to his amendment.

At this point, asked by Senator Pimentel to explain the proposed amendment, Senator Enrile stated that originally, the banks were supposed to be placed under the VAT system but Congress decided to place them instead under the GRT regime which was never changed; the tax remained at 5% and scaled down according to maturities of instruments. To be fair, he said, he proposed an amendment, which was amended by Senator Recto, that the banks be kept under the GRT regime but with a flat rate of 5%.

Senator Recto clarified that Congress did change the GRT on banks which used to be 5% for the first two years but not exceeding four years; 3% over two years but not exceeding four years; 1% over four years but not exceeding 7 years; and zero after seven years. He recalled that the last Congress passed said law that simplified the rates: less than five years, 5%, and more than five years, 1%. The government, he said, wanted to have a two rates instead of four to encourage longer term loans.

At this juncture, Senator Villar noted that one of the problems in the Philippines is that most bank loans are short-term, hence, the government is encouraging the banks to extend long-term loans; however, no incentive was given except the difference between the 5% and 1% rates, and capital markets were not even developed.

Expressing no objection to increasing the rates, Senator Villar proposed that the Committee maintain a certain difference between the long-term and the short-term rates that could be raised to 7% and 3% to encourage banks to give long-term loans. Since more short-term loans are granted, he surmised that collection would be much improved.

Senator Arroyo pointed out that the law was just passed last year and has not been given a chance to work. He asked the Body not to tinker with it.

Senator Recto explained that the DoF that helped draft R. A. No. 9238 simplified the rates in the measure to generate an additional P4 billion in revenues.

Senator Enrile said that his amendment seeks to equalize the policy of Congress which is imposing

VAT on poor people, on one hand, but is reluctant to impose VAT on banks on the other. Senator Recto explained that a GRT and not VAT is imposed on banks because, in general, financial transactions are hard to VAT. Senator Enrile said he had heard the same argument in 1995, 1998 and 2000.

Upon query of the Chair, Senator Recto noted that the proposed amendment of Senator Villar is to increase the GRT to 7% if the maturity period is five years or less, and 3% if the maturity period is more than five years.

Senator Enrile accepted the Villar amendment to his amendment.

Senator Enrile restated his proposed amendment to Section 121 of the NIRC by taxing interests, commissions and discounts from lending activities, as well as income from financial leasing on the basis of remaining maturities of the instruments from which such receipts are derived, i. e., 7% when maturity period is five (5) years or less, instead of 5%, and 3% if maturity period is more than five years, instead of 1%.

He likewise proposed the deletion of the first proviso thereafter and the retention of the last paragraph of Section 4 of R.A. No. 9238. Upon query of Senator Recto, and after pointing out that Section 4 contained two provisos, Senator Enrile withdrew his amendment.

SUSPENSION OF SESSION

Upon motion of Senator Recto, the session was suspended.

It was 9:48 p.m.

RESUMPTION OF SESSION

At 9:49 p.m., the session was resumed.

ENRILE AMENDMENTS

As proposed of Senator Enrile and accepted by the Sponsor, there being no objection, the Body approved the following amendments:

1. On page 23, between lines 13 and 14, as amended by Senator Villar, insert a new Section 15 to read as follows:

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SEC. 15. SECTION 121 OF THE SAME CODE, AS AMENDED, IS HEREBY FURTHER AMENDED TO READ AS FOLLOWS:

"SEC. 121. *Tax on Banks and Non-Bank Financial Intermediaries Performing Quasi-Banking Functions.* – There shall be collected a tax on gross receipts derived from sources within the Philippines by all banks and non-bank financial intermediaries in accordance with the following schedule:

- (a) On interest, commissions and discounts from lending activities as well as income from financial leasing, on the basis of remaining maturities of instruments from which such receipts are derived:

Maturity period is five (5) years or less [5%] 7%

Maturity period is more than five years [1%] 3%

- (b) On dividends and equity shares in net income of Subsidiaries 0%
- (c) On royalties, rentals of property, real or personal, profits from exchange and all other items treated as gross income under Section 32 of this Code [5%] 7%
- (d) On net rating gains within the taxable year on foreign currency debts, securities, derivatives, and other similar financial instruments [5%] 7%

2. Thereafter, insert a new Section 16 to read as follows:

SEC. 16. SECTION 122 OF THE SAME CODE, AS AMENDED, IS HEREBY FURTHER AMENDED TO READ AS FOLLOWS:

"SEC. 122. *Tax on Other Non-Bank Financial Intermediaries.* – There shall be collected a tax of five percent (5%) on the gross receipts derived by other non-bank financial intermediaries doing business in the Philippines, from

interest, commissions, discounts and all other items treated as gross income under this Code: *Provided*, That interests, commissions and discounts from lending activities, as well as income from financial leasing, shall be taxed on the basis of remaining maturities of the instruments from which such receipts are derived, in accordance with the following schedule:

Maturity period is five (5) years or less [5%] 7%

Maturity period is more than five years [1%] 3%

INQUIRIES OF SENATOR OSMEÑA

Noting that the new rates were never considered either in the hearings or in the debates on the floor, Senator Osmeña asked how much revenues are expected from the collection of the GRT on banks and finance companies. Senator Enrile said that according to the Department of Finance, revenues could reach P21 billion.

Expressing doubt that all the banks would pay that much in income taxes, Senator Osmeña requested a breakdown of expected revenues. Senator Recto said that for the two sections, total revenues at 7% interest alone would reach P6.7 billion; after five years, at 3%, revenues would be more than P2 billion to P3 billion over present collection. Senator Osmeña reiterated his request for data from the Bankers Association of the Philippines and the BSP.

Relative thereto, Senator Recto stated that in his consultation, the Secretary of Finance and the Central Bank Governor were not objecting to the Enrile amendments.

PROPOSED AMENDMENT OF SENATOR ENRILE

On page 23, Senator Enrile proposed the insertion of a new Section 17 to read as follows:

SEC. 17. SECTION 123 OF THE SAME CODE IS HEREBY AMENDED TO READ AS FOLLOWS:

"SEC. 123. *Tax on Life Insurance Premiums.* – There shall be collected from

every person, company or corporation (except purely cooperative companies or associations) doing life insurance business of any sort in the Philippines a tax of [five percent (5%)] SEVEN PERCENT (7%) of the premium collected, whether such premiums are paid in money, notes, credits or any substitute for money..."

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In reply, Senator Recto disclosed that the DoF had requested that Section 122 of the Code should remain as is.

Senator Angara feared that increasing business taxes almost across-the-board might give the impression that the country is business unfriendly. Given the fact that the country's life insurance industry is one of the most heavily taxed in the region, he cautioned that the growth of what could be the best mobilizer of savings in the country is being hampered. He stated that while he would want government to earn more revenues for social services, the revenues from the increase of GRT from 5% to 7% would definitely go to interest payments especially with the trend of rising interest rates and inflation. He asked that the proposed amendment be deferred until the next day after the Members shall have heard the facts from the DoF, the BSP and the insurance industry representative.

In reply, Senator Enrile believed that unlike the amendment to the corporate tax that was accepted by the Body, the proposals he presented during the hearings and caucuses are germane to the bill as these are covered under paragraph (j), Section 109 of the Code. Senator Angara said that he had also voted against the increase in corporate tax for the same reason that ultimately, it would constrict, rather than widen, the tax base because there would be less business and people would have less money.

For his part, Senator Recto assured Senator Angara that the DoF and BSP had already been consulted during the break.

Senator Recto disclosed that as far as the GRT is concerned, the position of the Executive branch is to impose a single 5% rate and remove the tiers regardless of maturity. He stated that there is an amendment to the amendment, to apply the same 7%-3% rule on non-financial intermediaries.

As regards the latest amendment, he conveyed the request of the DoF to maintain the status quo because life insurance companies are heavily taxed.

As regards the GRT on banks, Senator Roxas noted that the 7-3 proposal would only be applicable to lending by banks. Stating that a substantial amount of lending also happens through trust accounts, he queried whether the VAT regime would be applicable through lending arising out of the trust departments of financial institutions. Senator Recto explained that 5% GRT on interest is earned from lending, adding that banks do not earn interest income but a 5% fee.

Senator Roxas opined that the transaction fee or commission would be substantially less than interest on lending. He asked if the trustor or funder of the trust does not incur a GRT on whatever interest income he may have from the deployment of the funds in trust. In response, Senator Enrile stated that interest income is subject to a final withholding tax of 20%, adding that the bank, as a trustee, gets a fee of either 1% or .5% which is subject to GRT. He clarified that if the money in the trust account is in the form of all investment management agreement, the bank gets a commission or a management fee through its trust department.

Senator Roxas asked whether Senator Recto would entertain a proposal equalize the treatment of the flows of funds either from the credit department of trust department by applying the 20% withholding tax or the GRT.

Senator Recto explained that the situation today on the part of the depositor, is that there is a final withholding tax of 20% on interest income on the deposit; however, if the bank lends the money, it is subject to a 5% gross receipt tax.

Senator Enrile revealed that some of the banks become agents of foreign fund houses and when they sell securities inter-branch, they get a commission from the trust account. The commissions ought to be part of the gross receipt, he said. The problem, he stated, is that sometimes, the international banks book their commissions or income in their branches abroad and the branches abroad will book it as an income in Manila, so there is no tax both ways.

Senator Recto pointed out that the law states that gross receipts derived from interests, commissions,

116

discounts and all other items are considered gross income and under the Code, subject to 5% GRT as far as the banks are concerned. Senator Roxas made reservation to introduce amendments to equalize the treatment of the fund flows.

On the proposed amendment to Section 123 of the National Internal Revenue Code regarding taxes on life insurance premiums, Senator Enrile asked about the taxes on life insurance companies

Senator Recto said that the Committee did not take this section into consideration. Senator Enrile insisted that his proposals are germane to the bill because they are taxes covered by the VAT law under Section 5. Replying to the query, Senator Recto said that insurance companies have a premium tax of 5%, a documentary stamp tax and corporate income tax.

As regards the film industry, Senator Enrile noted that aside from paying corporate income tax, it also pays a 32% business tax. Senator Recto said that everyone has the same business corporate tax, adding that the biggest problem of the film industry is the 30% amusement tax imposed by the local government.

As regards the 7% rate proposed by Senator Enrile, Senator Recto suggested the retention of the 5% rate and to widen the tax base to include incomes from all investments thus equalizing the taxation of both the banks and the insurance companies.

Subsequently, Senator Enrile withdrew his proposed amendment to Section 123 of the NCR.

ENRILE AMENDMENT

On Section 124 (Tax on Agents of Foreign Insurance Companies) of the NIRC, as proposed by Senator Enrile and accepted by the Sponsor, there being no objection, the Body approved the increase in the tax on commission of foreign agents of foreign insurance companies from 5% to 10%.

On page 25, the Chair reminded the Body that the agreement in the caucus was to delete the words and figure FOUR PESOS AND EIGHTY CENTAVOS (P4.80) on line 3 and remove the brackets or the words and figure "FOUR PESOS AND THIRTY-FIVE CENTAVOS (P4.35).

Señator Recto replied that the same excise tax, P4.35 would be imposed on regular gasoline and unleaded/premium gasoline. Senator Pangilinan remarked that it was the same amendment as that of Senator Osmeña.

OSMEÑA AMENDMENT

At the instance of Senator Osmeña and proposed by Senator Recto, there being no objection, the Body approved the following amendments, one after the other:

1. On page 25, line 3, after the word CAPACITY, delete the words and figure FOUR PESOS AND EIGHTY CENTAVOS (P4.80);
2. On the same page, lines 3 and 4, remove the brackets on words and figure "FOUR PESOS AND THIRTY-FIVE CENTAVOS (P4.35)".

PROPOSED AMENDMENT OF SENATOR OSMEÑA

Relative to lines 6 to 9, page 25, Senator Osmeña stated that there has been a lot of misdeclaration and technical smuggling of aviation turbo jet fuel, as he disclosed that when kerosene leaves Subic, it is listed as kerosene used for households, yet somehow it finds its way into the aviation department where it is sold as aviation fuel which is why aviation fuel has not increased in the past three years. Adverting to the concern raised by Senator Gordon that a VAT on airlines passengers would have an impact on the tourism industry, he proposed to tax kerosene the same as the aviation fuel, and consider it as a tax break for the tourism industry. He noted that while imposing VAT on domestic passengers, the excise taxes on kerosene could be reduced to zero. In reply, Senator Recto pointed out, however, that aviation turbo jet fuel is not a socially sensitive product like diesel, bunker fuel and LPG that are consumed by the poor. He cautioned that putting aviation turbo jet fuel at zero rate would translate to a P4.3 billion in revenue losts.

Senator Osmeña stated that in 1998, 851 million liters of Jet A-1 fuel was sold; 933 million liters in 1999; 1,063,000,000 in 2000; and 1,060,000,000 liters in 2003. He then withdrew his proposed amendment.

The Chair called the attention of the Body to the reservation of some senators expressed during the caucus as regards the reduction of excise tax on kerosene, diesel, and bunker fuel to P0.00. It said that the Body is supposed to vote on the matter.

RECTO AMENDMENTS

On page 25, as proposed by Senator Recto, there being no objection, the Body approved the reduction of excise tax rates from P.60 to P0.00 for kerosene, P1.63 to P0.00 for diesel fuel, and P0.30 to P0.00 for bunker fuel oil, and on page 26, lines 1 to 4, the reduction of the excise tax rate on natural gas from 2% to 0.

INQUIRY OF SENATOR PIMENTEL

In reply to Senator Pimentel's query, Senator Recto stated that the phrase "except when such by-products are transferred to any of the local oil refineries through sale, barter or exchange, for the purpose of further processing or blending into finished products which are subject to excise tax under this Section" on line 24 to 27, page 24, is not being amended.

MANIFESTATION OF THE CHAIR

On page 27, the Chair stated that the words and figure "SEVEN HUNDRED FIFTY THOUSAND PESOS (P750,000) on lines 1, and 2, 16, and 17, 21 and 22 should be replaced by ONE MILLION FIVE HUNDRED THOUSAND PESOS (P1,500,000).

Senator Recto said that it is an omnibus amendment that would increase the threshold.

OSMEÑA AMENDMENT

On page 26, line 4, before the word "TAX," as proposed by Senator Osmeña and accepted by the Sponsor, there being no objection, the Body approved the insertion of the word EXCISE.

Senator Osmeña said that the amendment was proposed by Senator Enrile during the caucus.

PROPOSED AMENDMENT OF SENATOR CAYETANO

On page 31, after line 22, Senator Cayetano proposed the insertion of a new provision to read as follows:

(3) FIVE PERCENT (5%) FOR ENVIRONMENT CONSERVATION IN ORDER TO FULLY IMPLEMENT AND SUSTAIN A COMPREHENSIVE NATIONAL REFORESTATION PROGRAM WHICH SHALL BE CREDITED TO THE ACCOUNT OF THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES: *PROVIDED*, THAT THE SHARE HEREIN ALLOCATED FOR ENVIRONMENT CONSERVATION SHALL BE IN ADDITION TO ANY APPROPRIATION AUTHORIZED AND GRANTED YEARLY TO THE DENR TO BE SEGREGATED AS A TRUST FUND BY THE NATIONAL TREASURY.

CONGRESS SHALL CONTINUE TO APPROPRIATE AN AMOUNT IN THE GENERAL APPROPRIATIONS ACT FOR DENR'S REFORESTATION PROGRAM.

INQUIRY OF SENATOR ROXAS

In reply to Senator Roxas's query on Section 288(D), Senator Recto stated that with Senator Cayetano's proposed amendment, 25% of the incremental revenue would be used for the items under this particular provision while 75% would be used to reduce the budget deficit.

Senator Roxas wondered why these projects should not be included in the national government budget. He said that since money would be raised to fund these projects, he would propose an amendment to include the *palengke* which is the centerpiece of all commerce and trade in the country particularly for micro-small and medium enterprises.

Senator Osmeña stated that he did not object to the provision on the understanding that the money to be used for the projects is an existing appropriation. He said that if these projects would entail additional expenditures, the provision would be inconsistent with the purpose of the VAT measure which is to lower the budget deficit. While 40% of the VAT collection would go to IRA and 25% would be used to fund these projects, he pointed out that only 35% would be left to address the budget deficit.

48

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Senator Recto said that it is up to the Body to earmark any amount of incremental revenue from VAT but he advised the senators to be mindful of the measure's target which is to reduce the budget deficit.

Senator Roxas stated that while each senator has a particular advocacy, he would propose such an amendment in pursuit of the advocacy that brought him to the Senate.

REMARKS OF SENATOR ANGARA

Senator Angara wondered why school building construction and school furniture are among the projects singled out under Section 288(D). School building construction, he pointed out, could be funded by other sources like Pagcor, sweepstakes, or lottery winnings. He suggested that the provision might as well fund the school-feeding program that is very critical since six out of ten school age kids up to the age of ten are malnourished.

Further, Senator Angara stated that while the DepEd always has a budget for in-service teacher training, the funding for this purpose under the provision should be set aside for the development of critical skills in mathematics, science, and communication.

Senator Recto said that he has recommended that only 20% of the incremental revenue be spent for projects, but it is the Body that should decide how much of the incremental revenue should be used and how it should be allocated.

SUSPENSION OF SESSION

With the permission of the Body, the Chair suspended the session.

It was 10:36 p.m.

RESUMPTION OF SESSION

At 10:48 p.m., the session was resumed.

DEFERMENT OF AMENDMENTS

Upon motion of Senator Pangilinan, there being no objection, the Body deferred the consideration of amendments to pages 30 and 31 until the next day's session.

SUSPENSION OF CONSIDERATION OF SENATE BILL NO. 1950

Upon motion of Senator Pangilinan, there being no objection, the Body suspended consideration of the bill.

AMENDED COPY

At this juncture, the Chair directed the Secretariat to prepare a new version of the measure containing the approved amendments as well as the proposed amendments that would be considered in the next day's session.

REFERENCE OF BUSINESS

At the instance of the Chair, there being no objection, the Body considered the Reference of Business read and the matters therein referred accordingly.

MESSAGES FROM THE HOUSE OF REPRESENTATIVES

Letters from the Secretary General of the House of Representatives dated 11 April 2005, informing the Senate that on even date, the House of Representatives adopted House Concurrent Resolution No. 16, entitled

CONCURRENT RESOLUTION PROVIDING THAT THE SENATE AND THE HOUSE OF REPRESENTATIVES HOLD A JOINT SESSION TO RECEIVE AND HEAR THE ADDRESS OF HIS EXCELLENCY PERVEZ MUSHARRAF, PRESIDENT OF THE ISLAMIC REPUBLIC OF PAKISTAN,

and House Concurrent Resolution No. 7, entitled

CONCURRENT RESOLUTION PROVIDING THAT THE SENATE AND THE HOUSE OF REPRESENTATIVES HOLD A JOINT SESSION TO RECEIVE AND HEAR THE ADDRESS OF HIS EXCELLENCY HU JINTAO, PRESIDENT OF THE PEOPLE'S REPUBLIC OF CHINA,

44

16

in which it requested the concurrence of the Senate.

To the Committee on Rules

BILLS ON FIRST READING

Senate Bill No. 1975, entitled

AN ACT PROVIDING FOR A MAGNA CARTA FOR STUDENTS

Introduced by Senator Pangilinan

To the Committee on Education, Arts and Culture

Senate Bill No. 1976, entitled

AN ACT AMENDING CERTAIN PROVISIONS OF PRESIDENTIAL DECREE NO. 1464, OTHERWISE KNOWN AS THE TARIFF AND CUSTOMS CODE OF THE PHILIPPINES, AS AMENDED, AND FOR OTHER PURPOSES

Introduced by Senator Serge Osmeña

To the Committee on Ways and Means

Senate Bill No. 1977, entitled

AN ACT FURTHER AMENDING COMMONWEALTH ACT NO. 542, AS AMENDED, OTHERWISE KNOWN AS AN ACT TO CREATE A CORPORATION TO BE KNOWN AS THE GIRL SCOUTS OF THE PHILIPPINES, AND TO DEFINE ITS POWERS AND PURPOSES

Introduced by Senator Biazon

To the Committees on Government Corporations and Public Enterprises; Constitutional Amendments, Revision of Codes and Laws; and Ways and Means

RESOLUTIONS

Proposed Senate Resolution No. 224, entitled

RESOLUTION CALLING ON THE COMMITTEE ON JUSTICE AND

HUMAN RIGHTS TO INVESTIGATE THE ALLEGED ESCALATION OF EXTRA JUDICIAL KILLINGS, FORCED DISAPPEARANCES, ILLEGAL ARRESTS AND HARASSMENT COMMITTED AGAINST LEADERS AND MEMBERS OF PROGRESSIVE PARTY-LISTS LIKE BAYAN MUNA, ANAK PAWIS, GABRIELA AND THEIR ALLIED ORGANIZATIONS ALLEGEDLY BY MILITARY GROUPS

Introduced by Senator Pangilinan

To the Committee on Justice and Human Rights

Proposed Senate Resolution No. 225, entitled

RESOLUTION DIRECTING THE APPROPRIATE SENATE COMMITTEES TO CONDUCT AN INQUIRY, IN AID OF LEGISLATION, ON THE NON/DELAYED REMITTANCES OF EMPLOYERS AND EMPLOYEES PREMIUM CONTRIBUTIONS AND LOAN REPAYMENTS OF EMPLOYEES IN THE DEPARTMENT OF EDUCATION - AUTONOMOUS REGION IN MUSLIM MINDANAO

Introduced by Senator Biazon

To the Committee on Government Corporations and Public Enterprises

Proposed Senate Resolution No. 226, entitled

RESOLUTION URGING THE SENATE COMMITTEE ON EDUCATION, ARTS AND CULTURE TO CONDUCT AN INQUIRY, IN AID OF LEGISLATION, INTO THE PROPOSAL OF REQUIRING ALL HIGHER LEARNING INSTITUTIONS TO FULLY DISCLOSE THE PERFORMANCE OF THEIR GRADUATES IN LICENSURE AND ELIGIBILITY EXAMINATIONS

Introduced by Senator Marc Roxas

To the Committee on Education, Arts and Culture

Proposed Senate Resolution No. 227, entitled

RESOLUTION DIRECTING THE
COMMITTEE ON NATIONAL
DEFENSE AND SECURITY TO
CONDUCT AN INQUIRY, IN AID
OF LEGISLATION, ON THE
CONFLICTING STATEMENTS OF
THE TWO MAJOR SECURITY
INSTITUTIONS ON THE NATIONAL
SECURITY SITUATION

Introduced by Senator Biazon


To the Committee on National Defense and
Security

ADJOURNMENT OF SESSION *

Upon motion of Senator Pangilinan, there being no objection, the Chair declared the session adjourned until three o'clock in the afternoon of the following day.

It was 10:51 p.m.

I hereby certify to the correctness of the foregoing.


OSCAR G. YABES
Secretary of the Senate
KS M *ulu* *X*

Approved on April 18, 2005