



**REPUBLIC OF THE PHILIPPINES**

**S e n a t e**

**Pasay City**

# **Journal**

**SESSION NO. 75**

Wednesday, April 13, 2005

**THIRTEENTH CONGRESS  
FIRST REGULAR SESSION**

**SESSION NO. 75**  
Wednesday, April 13, 2005

**CALL TO ORDER**

At 3:48 p.m., the Senate President, Hon. Franklin M. Drilon, called the session to order.

**PRAYER**

Senate President Franklin M. Drilon led the prayer, to wit:

For the blessings and the grace that You have constantly revealed to us, Your sons and daughters on earth, we humbly pray in thanksgiving to You. As we set forth with the task that this day has laid down for us, we pray that You grant us the courage and strength in carrying out our duties as we have been given this privilege of serving in this Chamber, of serving this country and above all of serving You, dear Lord. That You bestow unto us guidance and patience as we tackle the problems and the ills that have befallen this land. That You bequeath unto us Your most divine wisdom and knowledge as we search and look for the means and avenues to accomplish the task that our countrymen have delegated to us in accordance with Your most holy will.

And we pray above all, dear Lord, that You provide us the sincerity and earnestness to look beyond personal and partisan desires as we work together for the common good of the Filipino people.

Amen.

**ROLL CALL**

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

Angara, E. J.	Cayetano, C. P. S.
Arroyo, J. P.	Defensor Santiago, M.
Biazon, R. G.	Drilon, F. M.

Ejercito Estrada, J.	Magsaysay Jr., R. B.
Ejercito Estrada, L.L.P.	Osmeña III, S. R.
Enrile, J. P.	Pangilinan, F. N.
Flavier, J. M.	Pimentel Jr., A. Q.
Lim, A. S.	Roxas, M.

With 16 senators present, the Chair declared the presence of a quorum.

Senators Gordon, Lacson, Madrigal, Recto, Revilla and Villar arrived after the roll call.

Senator Lapid was on official mission abroad.

**DEFERMENT OF APPROVAL  
OF THE JOURNAL**

Upon the motion of Senator Pangilinan, their being no objection, the Body deferred the approval of the Journal to a later hour.

**REFERENCE OF BUSINESS**

The Secretary of the Senate read the following matters and the Chair made the corresponding referrals:

**BILL ON FIRST READING**

Senate Bill No. 1978, entitled

**AN ACT GRANTING FILIPINO  
CITIZENSHIP TO MR. CHARLES  
WILLIAM MOSSER, WITH ALL THE  
RIGHTS AND PRIVILEGES AND  
PREROGATIVES APPURTENANT  
THERE TO**

Introduced by Senators Flavier, Drilon, Pangilinan, Enrile, Angara, Jinggoy Ejercito Estrada, Magsaysay Jr. and Biazon

**To the Committee on Justice and Human  
Rights**

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**RESOLUTIONS**

Proposed Senate Resolution No. 228, entitled

RESOLUTION URGING THE SENATE COMMITTEE ON AGRICULTURE AND FOOD AND OTHER APPROPRIATE COMMITTEES TO CONDUCT AN INQUIRY, IN AID OF LEGISLATION, ANENT THE STATUS OF MANAGEMENT AND UTILIZATION OF COCONUT LEVY FUND IN THE LIGHT OF REPORTS THAT IT IS BEING APPROPRIATED FOR IMMENSELY HUGE PROJECTS TO THE DETRIMENT OF SMALL COCONUT FARMERS WITH THE END IN VIEW OF CHARTING POLICIES FOR THE COCONUT INDUSTRY AND FAMILIES DEPENDING ON THE SECTOR

Introduced by Senator Magsaysay Jr.

**To the Committee on Agriculture and Food**

Proposed Senate Resolution No. 229, entitled

RESOLUTION DIRECTING THE COMMITTEE ON CULTURAL COMMUNITIES TO CONDUCT AN INQUIRY, IN AID OF LEGISLATION, ON THE DENIAL OF THE RIGHT TO ANCESTRAL DOMAINS OF THE TUMANDOK INDIGENOUS PEOPLES IN PANAY

Introduced by Senator M. A. Madrigal

**To the Committee on Cultural Communities**

Proposed Senate Resolution No. 230, entitled

RESOLUTION DIRECTING THE COMMITTEE ON YOUTH, WOMEN AND FAMILY RELATIONS TO CONDUCT AN INQUIRY, IN AID OF LEGISLATION, ON THE NEED FOR A COMPREHENSIVE POLICY AND SYSTEM OF RESTORATIVE JUVENILE JUSTICE

Introduced by Senator M. A. Madrigal

**To the Committees on Justice and Human Rights; and Youth, Women and Family Relations**

Proposed Senate Resolution No. 231, entitled

RESOLUTION DIRECTING THE SENATE COMMITTEE ON LABOR AND EMPLOYMENT AND THE SENATE COMMITTEE ON ACCOUNTABILITY OF PUBLIC OFFICERS AND INVESTIGATIONS (SENATE BLUE RIBBON COMMITTEE) TO CONDUCT AN INQUIRY, IN AID OF LEGISLATION, INTO THE REPORTED IMPARTIALITY AND INVOLVEMENT IN CORRUPTION OF SOME COMMISSIONERS OF THE NATIONAL LABOR RELATIONS COMMISSION (NLRC) AND LABOR ARBITERS IN THEIR RESOLUTION OF CASES BEFORE THE NLRC

Introduced by Senator Pimentel Jr.

**To the Committees on Labor, Employment and Human Resources Development; and Accountability of Public Officers and Investigations**

Proposed Senate Resolution No. 232, entitled

RESOLUTION DIRECTING THE SENATE COMMITTEE ON AGRICULTURE AND FOOD TO CONDUCT AN INVESTIGATION, IN AID OF LEGISLATION, INTO THE ALLEGED CONTROVERSY INVOLVING THE P8.4 BILLION AGUSAN VALLEY COCONUT PROJECT IN CARAGA, FUNDED BY THE COCONUT LEVY ASSETS, AND TO INSTITUTE MEASURES TO PROTECT THE COCONUT INDUSTRY AND FARMERS-WORKERS SECTOR

Introduced by Senator Pimentel Jr.

**To the Committee on Agriculture and Food**

**COMMUNICATION**

Letter from Officer-in-Charge Alberto V. Reyes of the *Bangko Sentral ng Pilipinas* dated 30 March 2005, submitting to the Senate the 2004 Annual Report of the *Bangko Sentral ng*

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*Pilipinas*, pursuant to the provisions of Sections 39 and 40 of Republic Act No. 7653.

**To the Committee on Banks, Financial Institutions and Currencies**

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

*(Continuation)*

Upon motion of Senator Pangilinan, there being no objection, the Body considered, on Second Reading, 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.

**MANIFESTATION  
OF SENATOR PANGILINAN**

Senator Pangilinan informed the Body that for purposes of the procedure, the Body would resume consideration of the proposed amendments on pages 33 and 34 and, thereafter, consider the items that were deferred the other day. The Chair suggested that the Body use the amended version of the bill as of April 12, 2005 which contains the approved amendments, also indicating therein the provisions that were deferred for further discussion. He pointed out that page 32 of the April 1 draft is now on page 37 of the April 12 draft.

**INQUIRIES OF SENATOR ROXAS**

As regards Section 26, Senator Roxas asked on the impact of the provision repealing the sections on the franchise tax of airlines and subjecting them to VAT and other taxes. Senator Recto explained that the bill recommends imposing VAT on the airline and shipping industries in lieu of the franchise tax. Similarly, he said, power-generating, transmission and distribution utilities shall also be subject to VAT, thus, their franchise tax shall be removed.

To the observation that the ticket sales of airlines would be subject to VAT while their purchases would be credited as VAT inputs. Senator Recto agreed, explaining further that international operations of domestic airlines would be zero-rated. For instance, he said that if 80% of the gross sales of these airlines are zero-rated, the tax would be immediately refundable or, like other exporters, they could apply for a tax credit certificate in lieu of their other liabilities.

Adverting to page 6, lines 1-4 of the old copy of the bill, Senator Roxas asked whether this would apply to the international operations of domestic carriers. Senator Recto clarified that the provision only applies to foreign carriers. Moreover, he said that under Section 110 on pages 14 and 15 of the latest version, services to local airlines such as PAL or Cebu Pacific could be charged a 10% VAT that could be refunded immediately. The zero-rating of the international operations of domestic airlines, he pointed out, is provided for on lines 31 and 32, page 8.

On the suggestion to amend the provision to establish clearly that it has reference to the international operations of domestic carriers, Senator Recto did not object.

On whether jet fuel purchased by PAL could be credited against its output VAT for domestic operations while in other instances, being zero-rated, the VAT could be refunded to PAL, Senator Recto answered that under Section 1 of the Code, a VAT-registered person shall be allowed tax credits on total input tax which can be directly attributed to transactions subject to VAT and a ratable portion of any output tax which cannot be directly attributed to either activity. Assuming that PAL or Cebu Pacific generated gross sales of 70% from international flights and 30% from domestic flights, he explained that this means that tax on sales from international flights would be immediately refundable while tax on sales from domestic flights would be credited VAT-on-VAT.

Upon further queries, Senator Recto explained that under the law, a VAT-registered person has to make monthly payments to the BIR and has to keep a subsidiary journal of daily purchases and sales which are factors that determine which input VAT is creditable against output VAT and which is refundable. Additionally, he noted that since there

are only two domestic airlines that have international routes, it would be easy for the BIR to monitor them.

Senator Roxas said that Congress could ask the BIR to state the factor—either revenue number or miles flown or number of operating hours—that would determine the apportionment of capital goods. Senator Recto replied that since VAT is based on sales, the determining factor is the volume of sales.

That being the case, Senator Roxas believed that the cumulative ticket sales of international flights versus domestic flights would be the determining factor as to how much of the jet fuel, for instance, would be apportioned between domestic and foreign operations. He posited that subjecting capital expenditure to VAT without the immediate crediting of the corresponding input VAT would stunt the re-fleeting of domestic carriers because all their planes would be 10% more expensive.

Senator Recto clarified that VAT inputs on capital goods with respect to the zero-rated portion are immediately creditable. With regard to the zero-rated portion, he said that just like any other export, the 60-month or five year cap on the crediting of capital goods does not apply. He noted that the House version exempts the importation of planes. He said that he would leave the matter of imposing VAT on the importation of planes to the Body. But Senator Roxas pointed out that airplanes are not the same as export goods, or even vessels because ports handle certain classes of vessels while airplanes can fly both domestic and international routes. He stressed the need to determine what portion of the capital expenditure would be subject to zero-rate and what portion is exempt due to its usage in international operations.

Senator Recto replied that if 80% of gross sales are zero-rated, then 80% of the input including the VAT paid on the importation of the plane is immediately refundable or creditable; the balance of 20% which was used for domestic operations is creditable VAT-on-VAT such that the difference — VAT on passengers minus VAT input — should be paid to government. As practiced in many countries, he said that by and large, zero-rating is for exports or for products consumed externally. He reiterated that a single VAT rate and threshold for exemptions should be applied to hard-to-tax sectors.

At this juncture, the Chair reminded the Body that the parliamentary status was the period of amendments. Noting that premises had already been laid, it appealed to the Members to propose their amendments to the last few pages to finish the first-pass.

### SUSPENSION OF SESSION

Upon motion of Senator Roxas, the session was suspended.

*It was 4:18 p.m.*

### RESUMPTION OF SESSION

At 4:42 p.m., the session was resumed.

### PROPOSED AMENDMENT OF SENATOR ROXAS

Senator Roxas proposed that the importation of commercial aircrafts and shipping vessels be exempted. Senator Recto did not accept the proposed amendment.

### INQUIRIES OF SENATOR ENRILE

Initially, Senator Enrile inquired how VAT on imported equipment for both domestic and international airlines and vessels would be formulated. He supposed that the more equitable way of allocating the input VAT is to use the number of hours utilized in domestic and international operations.

Senator Recto stated that a VAT-registered entity has a journal of purchases and sales that it reports to the BIR, and that it makes monthly payments. He anticipated that there would be no problem in determining which of the VAT inputs should be utilized for VAT outputs.

Senator Enrile observed that the books would reflect the nominal values of the tickets issued for both domestic and international flights; however, he pointed out that the lifespan of the plane is determined by the number of hours of its utilization. In response, Senator Recto stated that such would be a secondary way of doing it. He reiterated that VAT is based on one's sales and purchases, hence, VAT inputs on purchases minus VAT output, equals net VAT. He stated that the used hours of the equipment also have value that can be computed for income tax purpose with depreciation factored in.

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The Chair assumed that the BIR would always resolve a very complicated system in favor of greater collection. Senator Enrile agreed to delegate the matter to the BIR.

Senator Roxas opined that it would be unwise to simply leave the matter to the BIR because calculating the input and output VATs on the basis of revenue would have a different financial impact than calculating these on the basis of hours utilized; for instance, if Philippine Airlines decides to open a new route, it would necessarily lose money and its planes would be spending hours plying the route even when they are empty. Expressing the belief that the double whammy would be a disincentive to the Filipino in opening new routes, he stressed the need to study and interpret the material and financial impacts of the issue. Senator Recto said that the solution to this would be to exempt the importation of airplanes from VAT.

Senator Enrile reiterated his proposal to delegate the matter to the Bureau of Internal Revenue that must establish a formula to serve the interest of the government. Senator Recto clarified that the useful life of a plane could be computed on value as well. He cautioned that companies would lose money if they do not realize this relationship. In view of the arguments for and against imposing VAT on the importation of capital goods, he reiterated that the bill suggests that in a purest VAT system, international gross sales should be zero-rated and only the domestic sales should be subject to VAT.

To compute VAT, Senator Recto said that the following formula would be used: Assuming an 80% gross international sales, VAT outputs would be the total amount of purchases divided by eleven; 80% could be refunded or credited to other internal revenue tax or refunded immediately. To illustrate, he gave the following example:

Gross Sales	: P100
Domestic Sales	: P 20 (20%)
International Sales	: P 80 (80%)
Total Purchases	: P 55/11 = P5 (Input VAT)
Refund	: P 5 x 80%

He said that the VAT input could thereafter be deducted from the P20 on domestic sales.

Replying to further queries, Senator Recto explained that capital equipment input would be part

of the total purchases (in this case, P55) which also include office supplies and VAT inputs. He affirmed that only 20% of the input VAT would be applied against domestic service if 80% went to international sales and 20% to domestic sales. Conversely, he said, if gross international sales is only 20%, then the reckoning of input VAT could only be at 20%.

Asked by Senator Roxas on the reckoning period, Senator Recto replied that it would be the sales of the current year, or in the year in which the event happened. If the tax refund could not be recovered for that year, he said that the exporter could have a tax credit certificate, but this would only be limited to zero-rated enterprises.

#### REMARKS OF SENATOR GORDON

Senator Gordon believed that the matter of safety in terms of capital expenditures for replacing engines and other parts of an aircraft could be compromised if airlines are taxed too much, aside from the fact that additional taxes would make it difficult for the airlines to re-fleet, thereby affecting the country's industries, particularly the tourism industry.

Stating that the issues had already been debated for the last six weeks, the Chair appealed to the Body to move on and decide other issues. Senator Gordon said he just wanted to point out certain technical matters that were discovered along the way so that a good law could be crafted.

#### REMARKS OF SENATOR OSMEÑA

Senator Osmeña added that the issue about pro-rating VAT on capital equipment for airlines is moot because the formula is: gross receipts minus input VAT=VAT. He pointed out that if a \$15 million VAT is paid on a \$150-million airplane, it would take several years before the airline has to pay net VAT because of the heavy load of writing off the input VAT; thus, there is a need to take into consideration the fact that airplanes, aircraft, and ships are exportable. And while automobiles, trucks and other equipment are kept in the country when they are resold, he said that aircrafts are usually resold abroad; hence, it would be difficult to refund the VAT paid on these aircrafts.

Senator Recto said that technically, the seller could get a refund if there is a cessation of business.

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Senator Osmeña reiterated that it would be difficult to get a refund of the VAT if the equipment is sold abroad. He said that, in fact, this was the reason why the House had exempted importations by airlines and shipping from VAT.

#### REMARKS OF SENATOR ROXAS

Senator Roxas pointed out that the only difference between aviation gas and kerosene are the additives that prevent the freezing of the kerosene. Relative thereto, he noted that the Body approved the imposition of 10% VAT on kerosene and then removed the excise tax; likewise, aviation gas was imposed a 10% VAT but the P3.50 per liter excise tax was maintained. Stating that technical smuggling could happen because aviation gas could be imported as kerosene then mixed with the additives in the depot to make it aviation gas, he then proposed to treat aviation gas in the same manner as kerosene. Senator Recto estimated a P4 billion loss in revenues if the excise tax on aviation turbo jet gas would be reduced to zero. He explained that the Committee recommended the reduction of excise taxes on kerosene, diesel fuel because these are socially sensitive products.

To the observation that the retention of the excise tax on aviation turbo jet fuel would encourage the importation of kerosene as it is much cheaper, Senator Recto admitted that there is already smuggling of kerosene whose excise tax at P0.50 is minimal compared to aviation gas. He believed, however, that there would be less smuggling if VAT is put in place, and smuggling would be easier to track because of the input/output system.

Senator Roxas countered that there is smuggling in the sense that kerosene comes in through customs at a very low excise tax, mixed with additives at the depot and sold as aviation gas; on the other hand, there is no smuggling if kerosene is sold as *gaas*.

At this juncture, Senator Pangilinan stated that there are no proposed amendments to pages 38 and 39 and, therefore, the deferred items would be considered next.

#### REMARKS OF SENATOR LIM

Senator Lim brought to attention of Senator Recto the column of former Secretary Solita Collas-Monsod in the March 11, 2005 issue of

*The Philippine Daily Inquirer*. He clarified that he brought the matter up because the DoF figures could be erroneous.

In reaction, Senator Recto pointed out that all the numbers in the committee report came from the DoF and were tested.

The Chair appealed to the Body to complete the first pass on the bill after which, Senator Lim could make his manifestation.

#### SUSPENSION OF SESSION

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

*It was 5:21 p.m.*

#### RESUMPTION OF SESSION

At 5:24 p.m., the session was resumed.

Senator Pangilinan stated that Senator Lim had agreed to consider as having been read into the Record the column of Mrs. Monsod. He said that Senator Lim would propose an amendment.

Following is the full text of the column of Mrs. Monsod:

#### NOT QUITE FILL THE BILL

The scuttlebutt is that the Senate will pass its version of the VAT bill before the congressional Easter break. Already, it is being touted by its principal author, Sen. Ralph Recto, as superior to its House counterpart on the grounds that (1) its estimated revenue impact will be larger, even though it keeps the VAT-rate at its original level of 10% while the House version has it at 12%; (2) it will avoid the administrative nightmares and tax leakages that are likely to occur with the multiple rates featured in the House version; and, (3) it also has safety nets for the poor, because it removes the excise tax on "socially sensitive" products.

How does it accomplish this miracle? Apparently by a combination of temporarily increasing the corporate tax to 35% until the end of 2008, lifting more exemptions, and keeping the rates at 10% when the House plays around with a combination of 4%, 6%, 8% as well as 12% VAT rates.

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Whoa, there. While the Recto version looks and sounds goods, it doesn't quite fill the bill — no pun intended.

First, there is the matter of its revenue impact. It has been observed time and time again that there is always a large gap between the expected or estimated impact of revenue proposals and their actual impact (in terms of increased revenue collections) — and Recto's estimates of what his proposal will bring in are not going to be an exception. So I'm not worrisome, though, is that the Public Finance Institute of the Philippines (PFIP), an independent entity headed by Dr. Angel Yoingco, has also come out with preliminary estimates of the impact of the Recto bill. And the two sets of estimates are like chalk and cheese. Recto claims that at 100% efficiency, the net revenue impact of his bill is P64.3 billion. The PFIP puts it at P11.5 billion at the same level of efficiency.

That gap of more than P52 billion is much too large to ignore, and serious attempts must be made to try to reconcile the differences. The PFIP is very transparent about the methodology it used to construct the estimates (Its files are open for review). It used the 1994 Philippine Input-Output Table, with the figures adjusted using the gross value added for 2004.

As it explains, "The incremental revenue from lifting the VAT exemption of a sector (e.g. power) is not a straightforward multiplication of its output by a 10% VAT rate. The input taxes that were paid by the sector on its raw materials have to be netted out (The input-output table shows the value of the raw materials and supplies that Sector A sources/buys from other sectors). In addition, since the formerly exempt sector will now be subject to VAT, the sectors that buy/procure its goods or services can now claim an input VAT. This also has to be netted out from the expected revenue."

Thus, the PFIP first takes into account the intake from the lifting of VAT exemptions of certain goods and services (coal, petroleum products, water and air transport of passengers, land transport of passengers, cooperatives, medical services, legal services, electricity, non-food agricultural and forest products, banking), all of which amount to P63.7 billion. It adds the intake from the increase in the corporate income tax (P7.25 billion).

Then, it subtracts the reduction in the VAT collection from the sectors presently subject to VAT because of the increase in their input

tax — amounts ranging from P18.9 billion for the wholesale and retail industry, to P3 million for leather and leather products — all totaling P44 billion. It also subtracts the revenue forgone from the reduction in the excise tax on socially sensitive products — P10 billion.

At this point, one does not know what methodology Recto used to get his estimates. Those computations should be as transparent as the PFIP estimates, and his files, or those of the people who provided him with the data, should be open to scrutiny. But even at this point, one can already surmise that one of the reasons for the large gap between the two estimates must have been the failure to subtract the P44 billion representing credits for input VAT in the inter-industry flows. That's a pretty large oversight.

And that is not all. The PFIP preliminary estimates may be overstated because these do not as yet include the reduction in revenue from the repeal of the franchise tax on electricity, which is estimated at P1.4 billion. Neither does the PFIP include another large possible reduction in revenue flows resulting from the possible repeal of the gross receipts tax (GRT) on banks, which as yet is not included in the Recto bill. This could be another oversight, because in all the other sectors which came under his VAT, their current transactions tax burdens, e.g., their percentage, or franchise taxes, were repealed. Following this logic, the VAT imposed on banks will presumably replace the GRT (unless Recto wants to tax the banks at a rate of 13%). If the GRT is repealed, that means another P10.3 billion must be subtracted from the PFIP estimates — which means that, after all that huffing and puffing, the net revenue impact of the Recto bill may actually be negative — instead of the expected increase in revenue of P64 billion, the government gets little or nothing additional at best, and may experience a decrease in revenues at worst!

Which brings us to another very important point: It would seem that nowhere near enough homework has been done by the legislature regarding these tax matters — the so-called complete staff work is absent. Which is why they come up with bloated estimates that have no bearing on reality (as in the case of the latest sin taxes or the lateral attrition bill).

There are other examples: In one instance, the result is a perverse incentive — the Recto bill expands VAT coverage to cabarets and night and day clubs, which will effectively reduce the

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tax they pay by more than half, encouraging their proliferation, because the VAT will replace the 18% amusement tax they are currently paying (I obviously assume, maybe wrongly, that Recto's conferring benefits on cabarets and night clubs was not with malice aforethought, as was done with their air transport industry).

In another stance, there are serious long-run ramifications for the investment climate in the country. The bill provides that input taxes on capital goods (i.e., for which depreciation and amortization deductions are allowed), which previously could be deducted immediately, must now be deducted over a period of 60 months. As a colleague put it, the productive (as distinct from hot money) investor is effectively required to make a five-year interest free loan to the government, where before it was for, at most, one year. One speculates this provision was inserted in there as a way of skinning the telecommunications cat (the capital investments in telecoms are enormous, and some legislators seem to think that they should be fair game) -- but it nevertheless gives a very negative signal to potential foreign and local direct investors.

Thus, while the use of a single rate minimizes avoidance and administrative nightmares, the revenue benefits from the "superior" Recto bill seem to be vastly exaggerated. Moreover, it has wittingly (e.g., in the case of Lucio Tan and other powerful families like the Aboitizes) or unwittingly (e.g. cabarets, day and night clubs) conferred benefits in an arbitrary manner. And it will discourage investment, particularly in capital intensive industries. *Caveat emptor.*

#### PROPOSED AMENDMENT OF SENATOR LIM

Senator Lim stated that instead of imposing additional taxes or expanding the coverage of tax laws, government can collect an additional P22 billion annually by simply repealing or amending the seventh paragraph of Section 4(C) of R.A. No. 8424, the Tax Reform Act of 1997. He proposed to amend said paragraph as follows:

"The classification of each brand of cigarettes based on its CURRENT average net price as set forth in Annex "D", including the classification of brands for the same products which, although not set forth in the said Annex "D", were registered and were being commercially produced and marketed after the effectivity of this Act, shall NOW BE in force, until revised by Congress."

He pointed out that according to Mrs. Monsod, the government could collect P22 billion to P38 billion by simply amending or repealing that "poison pill" provision. He stated that former Finance Secretary Camacho likewise posited that government lost P28 billion in potential tax take from Fortune, P1.8 billion from La Suerte and P2.52 billion from Sterling.

Senator Lim stated that Secretary Monsod's position that government could generate additional revenues from the repeal or amendment of the so-called poison bill provision is shared by financial experts like Vicente Jaime, Jesus Estanislao, Roberto Ocampo, and Ernest Leung, all former secretary of Finance. He believed that the amendment or repeal of the seventh paragraph complemented by effective tax collection efforts could easily generate more than the amount expected from the proposed VAT increase.

Senator Recto did not accept the proposed amendment, stating that it is not appropriate to repeat the debates on the sin tax measure this time and he did not believe that the proposal could generate additional revenues.

The Chair suggested that the Committee on Ways and Means review Senator Lim's proposal at the appropriate time. Senator Recto said that it is possible.

Senator Lim called for a division of the House on his proposed amendment. He said that since the very essence of the discussion is how to generate revenues to address the financial crisis, any reasonable man would consider an additional P38 billion in revenues as against Senator Recto's proposal that would generate only P11 billion, as Mrs. Monsod claimed in her column.

The Chair stated that Senator Lim's proposed amendment requires the Body to go back to the sin tax measure and vote on it again.

Submitted to vote and with seven senators voting in favor and nine against, the proposed amendment of Senator Lim was not approved.

#### MANIFESTATION OF THE CHAIR

The Chair stated that the Body would take a second pass on the measure.

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Senator Pangilinan announced that the Body would take up the deferred items.

### **RECTO AMENDMENT**

On page 5, line 2, as proposed by Senator Recto, there being no objection, the Body approved the substitution of the words and figures "THIRTY-THREE PERCENT (33%) with THIRTY-EIGHT PERCENT (38%)."

### **ENRILE AMENDMENT, AS AMENDED**

On page 7, lines 13 to 18, Senator Enrile proposed the recasting of the proviso to read as "*PROVIDED, THAT THE VAT ON THE SALES AND SERVICES OF ELECTRICITY BY GENERATION COMPANIES, TRANSMISSION COMPANIES, AND DISTRIBUTION COMPANIES, AS WELL AS THOSE OF FRANCHISE GRANTEEES OF ELECTRIC UTILITIES SHALL NOT APPLY TO HOUSEHOLD END-USERS.*"

Senator Recto proposed the modification of line 14 to read as "ON THE SALES OF ELECTRICITY AND SERVICES BY GENERATION COMPANIES."

Thereafter, as modified by the Chair and accepted by Senator Enrile, the Body approved the amendment to lines 13 to 18 to read as "*PROVIDED, THAT ON THE SALES OF ELECTRICITY BY GENERATION COMPANIES, AND SERVICES OF TRANSMISSION COMPANIES, AND DISTRIBUTION COMPANIES AS WELL AS THOSE OF FRANCHISE GRANTEEES OF ELECTRICAL UTILITIES SHALL NOT APPLY TO HOUSEHOLD END-USERS.*"

### **SUSPENSION OF SESSION**

Upon motion of Senator Pangilinan, the session was suspended.

*It was 5:42 p.m.*

### **RESUMPTION OF SESSION**

At 5:43 p.m., the session was resumed.

### **MOTION OF SENATOR GORDON**

Senator Gordon stated that for the last three years, he has been trying to beef up tourism

because it is a grandfather industry that can create business and jobs even for people who did not go to college.

On page 7, lines 2 to 5, Senator Gordon asked for the reconsideration of the approval of the clause "COMMON CARRIERS BY AIR OR SEA RELATIVE TO THEIR TRANSPORT OF PASSENGERS, GOODS OR CARGOES FROM ONE AIRPORT OR PLACE IN THE PHILIPPINES TO ANOTHER AIRPORT OR PLACE IN THE PHILIPPINES," pointing out that it interdicts domestic tourism which is still in the fledgling stage, and adds to the burden of oil price increase and the impending imposition of tax on tickets and capital expenditures on domestic aircraft.

### **SUSPENSION OF SESSION**

Upon motion of Senator Pangilinan, the session was suspended.

*It was 5:47 p.m.*

### **RESUMPTION OF SESSION**

At 5:59 p.m., the session was resumed.

Thereafter, Senator Gordon withdrew the motion, stating that he would fight for the amendment in the bicameral conference.

### **PROPOSED AMENDMENT OF SENATOR OSMEÑA**

On page 7, line 23, Senator Osmeña proposed the substitution of the word "consumer" with the words HOUSEHOLD END-USERS.

Senator Angara said that the word "consumer" is appropriate in this instance because the provision does not only refer to household consumers but also to industrial and commercial consumers.

Senator Osmeña reasoned that the use of the word "consumer" would contradict the earlier proposal because at present, VAT is collected on 65% of the power utilized by the commercial sector.

The Chair agreed as it noted that the section simply refers to a prohibition to pass on the VAT to household end-users.

## PROPOSED AMENDMENT OF SENATOR RECTO

Senator Recto proposed to recast the proviso on lines 13 to 28, page 7, and lines 1 to 3, page 8, as follows: *PROVIDED*, THAT THE VAT ON THE SALES OF ELECTRICITY BY GENERATION COMPANIES AND SERVICES OF TRANSMISSION AND DISTRIBUTION COMPANIES AS WELL AS THOSE OF FRANCHISE GRANTEEES OF ELECTRIC UTILITIES LEVIED ON HOUSEHOLD END-USERS SHALL BE ABSORBED AND PAID BY THOSE GENERATION COMPANIES, TRANSMISSION AND DISTRIBUTION COMPANIES. IT BEING THE EXPRESS INTENT OF THIS ACT THAT THE TAX HEREIN LEVIED SHALL BE BORNE EXCLUSIVELY BY THE COMPANIES ABOVE-MENTIONED; *PROVIDED*, THAT ANY VIOLATION OF THIS CLAUSE SHALL BE PUNISHABLE WITH IMPRISONMENT NOT EXCEEDING ONE YEAR OR A FINE NOT LESS THAN ONE THOUSAND (Php 1,000.00) BUT NOT EXCEEDING ONE MILLION (Php 1,000,000.00) OR BOTH.

Senator Recto reasoned that if one were to read the provision as presently worded, the household end-users are subject to VAT.

But Senator Enrile argued that the Recto amendment would change the nature of his amendment which is precisely to prevent the charging of VAT to household consumers.

The Chair said that if the intent is simply to refine the provision, it could be taken up in the bicameral conference.

Senator Recto stated that the problem is that the tax levied on household end-users shall be absorbed and paid by the generation, transmission and distribution companies which is contrary to the "no pass-through" principle.

Senator Osmeña believed that the intent of the Enrile amendment is precisely not to pass on the VAT to the residential consumers. Senator Recto pointed out, however, that the provision on lines 18 to 21 states that the tax to be levied shall be absorbed and paid by the power companies.

Senator Enrile disagreed with the Pimentel amendment because if the Supreme Court declares

the provision invalid, residential end-users shall be subject to VAT, given the fact that the present wording assumes that they are subject to VAT except that others will pay for it.

Asked by Senator Recto if he was suggesting the deletion of the proviso on lines 18 to 26, Senator Enrile replied that he stands by his own amendment and he never agreed to anything.

Senator Recto stated that he accepted the Pimentel amendment with the understanding that such is its intent.

Senator Pangilinan recalled that Senator Enrile proposed an amendment which was subsequently followed by the Pimentel amendment, both of which were accepted by Senator Recto but somehow, the amendments got entangled.

In reaction, Senator Recto noted that in the previous day's session, he and Senator Osmeña clarified these issues during the discussion of the implications of the amendments. He recounted that, in fact, his reply to a query of Senator Osmeña was that with the Pimentel amendment, it would be possible that the commercial and industrial sectors would subsidize the household end-users if the generation, transmission and distribution companies would charge VAT.

Senator Osmeña clarified that in an open access regime, the generation companies can charge any rate that the market can bear with or without VAT; hence, it would be impossible to police them. He pointed out that at this time, it is possible to do that since the power rates of Napocor and other power companies are being approved by the Energy Regulatory Commission. He stated that it is not right to say that one will subsidize the other because the power companies will charge as much as they can.

Senator Osmeña stated that he has no objection to the way the Enrile amendment is worded but requested that it reflect that the word "consumer" on line 23 refers to "residential end-users" which is how the electric power industry categorizes that particular sector.

Senator Enrile agreed to the amendment, as long as it is understood that the term includes condominium units, single-detached houses and apartments. Senator Osmeña added that the term is understood as also including *barong-barong*.

Relative thereto, Senator Pimentel informed the Body that he had a written proposal that hopefully captured the essence of the Enrile amendment. He said that a mimeographed copy of his proposed amendment was distributed to the Members for easy reference.

### **PROPOSED AMENDMENT OF SENATOR PIMENTEL**

On page 7, line 13, after the semicolon (;), Senator Pimentel proposed the deletion of the clause starting with the word "PROVIDED" up to the word "BOTH" on line 3 of page 8 and in lieu thereof, the insertion of the following paragraphs, to wit:

SALES OF ELECTRICITY BY GENERATION, TRANSMISSION AND DISTRIBUTION COMPANIES; *PROVIDED* THAT THE VALUE ADDED TAX HEREIN LEVIED SHALL BE ABSORBED AND PAID BY THE GENERATION, TRANSMISSION AND DISTRIBUTION COMPANIES CONCERNED. THE SAID COMPANIES SHALL NOT PASS ON SUCH TAX PAYMENTS TO CONSUMERS, INCLUDING BUT NOT LIMITED TO HOUSEHOLDS, EITHER AS COSTS OR IN ANY OTHER FORM WHATSOEVER, DIRECTLY OR INDIRECTLY. ANY VIOLATION THEREOF SHALL SUBJECT THE PRESIDENT, OR THE CHIEF EXECUTIVE OFFICER OR THE RESPONSIBLE OFFICER AND THE BOARD OF DIRECTORS OF THE COMPANIES CONCERNED, INDIVIDUALLY TO A FINE NOT LESS THAN P1 MILLION.

FOR THE SECOND OFFENSE, THE ABOVE-MENTIONED PARTIES SHALL BE FINED NOT LESS THAN P2 MILLION OR IMPRISONED FOR NOT MORE THAN SIX MONTHS AT THE DISCRETION OF THE COURT.

FOR THE THIRD AND SUCCEEDING OFFENSES, THE ABOVE-MENTIONED PARTIES INDIVIDUALLY SHALL BE FINED NOT LESS THAN P3 MILLION AND IMPRISONED FOR NOT MORE THAN ONE YEAR. IN ADDITION, THE

LICENSE TO DO BUSINESS OF THE COMPANIES CONCERNED SHALL BE REVOKED AND THE PRESIDENT OR THE CHIEF EXECUTIVE OR THE OFFICER AND THE MEMBERS OF THE BOARD RESPONSIBLE THEREFORE, IR FOREIGNERS, BE DEPORTED.

Senator Recto noted that the proposed amendment seeks to lift the VAT burden on the consumers, whether industrial, residential or commercial. He stated that if the point is to make the companies pay additional taxes, then a different tax should be imposed and not VAT. He did not accept the proposed amendment.

### **SUSPENSION OF SESSION**

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

*It was 6:18 p.m.*

### **RESUMPTION OF SESSION**

At 6:19 p.m., the session was resumed.

### **PROPOSED AMENDMENTS TO THE AMENDMENT**

Senator Angara proposed to reword the second paragraph of the Pimentel amendment, as follows:

THE PRESIDENT, OR THE CHIEF EXECUTIVE OFFICER OR THE RESPONSIBLE OFFICER AND ANY MEMBER OF THE BOARD OF DIRECTORS OF THE COMPANIES CONCERNED WHO KNOWINGLY AGREED, CONSENTED OR CONDONED THE VIOLATION SHALL BE SUBJECT TO A FINE OF NOT LESS THAN ONE MILLION (P1,000,000) PESOS:

Senator Pimentel accepted the amendment to his amendment.

### **LACSON AMENDMENT TO THE AMENDMENT**

On the first paragraph of the Pimentel amendment, between the words TO and CONSUMERS, Senator Lacson proposed the insertion of the words NAPOCOR OR ULTIMATELY TO THE.

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Senator Pimentel accepted the amendment to his amendment.

### INQUIRIES OF SENATOR ROXAS

Should the 10% VAT on electricity would not be absorbed by household consumers, Senator Roxas asked who would absorb it. Senator Pimentel replied that the VAT on the transaction made by generation, transmission and distribution companies is prohibited from being passed on to the consumers. He stressed that it is the companies that are being prohibited from charging the VAT as cost in any manner or form and passing it on to end-users.

Senator Roxas asked if the distribution companies would shoulder the VAT since the end-users as well as the Napocor are already excluded. Senator Pimentel said that his reply is limited only to the text of the amendment and he could not clarify any other interpretations.

### INQUIRY OF SENATOR LACSON

Senator Lacson asked on the position of Senator Recto on the proposed amendments. The Chair stated that Senator Recto did not accept the proposed amendment.

Senator Lacson expressed hope that Senator Recto would change his mind.

Noting that the Members are supportive of the measure as seen in their amendments and so as not to delay the proceedings further, Senator Recto accepted the Pimentel amendment, as amended, stating that there is enough time to discuss it thoroughly in the bicameral conference.

Senator Osmeña suggested that the phrase "residential end-users" be used instead of "consumers, including but not limited to household" in the first paragraph of the Pimentel amendment.

Upon query of the Chair, Senator Pimentel replied that limiting it only to household end-users would drastically change the thrust of his amendment.

Senator Osmeña recalled that Senator Angara's amendment to the Pimentel amendment prevents the passing on of VAT to commercial and industrial users. Using the P10-million San Miguel Corporation electric bill as an example, Senator Osmeña stated that when San Miguel determines its costing, the

P10-million electric bill will be included in the computation of the cost of production as well as in the prices of its goods.

Senator Osmeña informed the Body that VAT is presently collected on power for commercial purchases, citing San Miguel which pays a VAT on power for the production of its beer and juices but also gives an input VAT to buyers of its products. He explained that his amendment merely seeks to collect the VAT earlier. On the other hand, he said, residential users are not paying any VAT on power unless they see a movie, go to a restaurant or buy a cellphone. He stressed that VAT is also paid on fuel because the cost of fuel is included in the price of the commercial product.

Replying to Senator Enrile's query, Senator Pimentel said that his amendment does not seek to remove Senator Enrile's amendment. But Senator Enrile pointed out that the Pimentel amendment changes the tenor of his amendment. He clarified that his amendment seeks to retain the exemption of the non-VATable character of electricity for residential end-users and he does not want to make his amendment ineffective should the Supreme Court decide adversely against the Pimentel amendment. He declined to accept an amendment to his amendment.

Replying to the Chair's query, Senator Pimentel said that his amendment is an insertion between the colon and the word "PROVIDED" on line 13 of page 7. But the Chair pointed out that the amendment would not make sense at that point because of the provision on line 5. Senator Pimentel proposed that the insertion be made on line 18 instead after the word "PROVIDED" so that the amendment of Senator Enrile would remain as previously intended.

Senator Recto clarified that when he accepted Senator Lacson's amendment to the Pimentel amendment, it was in lieu of Senator Enrile's amendment approved the day before. He recalled that when Senator Pimentel amended the Enrile amendment, the Body agreed to collapse these amendments for further discussion.

### SUSPENSION OF SESSION

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

*\*It was 6:37 p.m.*

**RESUMPTION OF SESSION**

At 7:15 p.m., the session was resumed.

**APPROVAL OF THE PIMENTEL AMENDMENT, AS AMENDED**

Submitted to a vote, with the majority voting in favor, the Pimentel amendment, as amended, was approved by the Body.

Senator Osmeña objected to the amendment as he pointed out that it would not be enforceable. He stated that government might lose more revenues if the provision is not limited to residential end-users.

Senator Roxas expressed his reservation on the amendment for reasons cited during the debate on the sector that would bear the VAT burden.

**REMARKS OF SENATOR RECTO**

Senator Recto said that in principle, he is against a "no pass-through" provision as this would not work in a VAT system. He believed that there is still time to rethink the amendment.

**RECONSIDERATION OF THE APPROVAL OF THE PIMENTEL AMENDMENT**

Upon motion of Senator Ejercito Estrada (J), the Body reconsidered the approval of the Pimentel amendment.

**EJERCITO ESTRADA (J) AMENDMENT**

As proposed by Senator Ejercito Estrada (J), there being no objection, the Body approved the following amendments to the Pimentel amendment:

1. On the second paragraph, delete the words and figure "ONE MILLION (P1,000,000) PESOS" and in lieu thereof, insert the words and figure TWO MILLION (P2,000,000) PESOS;
2. On line 2 of the third paragraph, delete the words and figure "TWO MILLION (P2,000,000) PESOS" and in lieu thereof, insert the words and figure THREE MILLION (P3,000,000) PESOS;

3. On line 3 of the fourth paragraph, delete the words and figures "THREE MILLION (P3,000,000) PESOS" and in lieu thereof, insert the words and figure FOUR MILLION (P4,000,000) PESOS

**REMARK OF SENATOR PANGILINAN**

Senator Pangilinan expressed his reservation on the Pimentel amendment.

**INQUIRY OF SENATOR PIMENTEL**

Senator Pimentel asked if there had been any change in the existing provisions on VAT on cooperatives. Senator Recto replied that the only change had been the deletion of lines 10 to 12 on page 12 of the bill which is expected to improve the lending capability of credit cooperatives.

**OSMEÑA AMENDMENT**

Senator Osmeña pointed out that subsection (N) on lines 13 to 17, page 12, had been marked for further deliberation by the members in view of the proposal to limit the VAT exemption to the sales of non-agricultural, non-elective, non-credit cooperatives.

On page 12, line 13, Senator Osmeña proposed the insertion of the word ANNUAL before the word "Sales" and the phrase BELOW TEN MILLION (P5,000,000) PESOS after the word "Sales."

Expressing concern that the amendment might kill cooperatives, Senator Biazon suggested that it focus on individual capital contribution. Senator Osmeña, however, noted that some cooperatives with P15,000 capitalization have been making a lot of money since they were organized 30 to 40 years ago. Further, he observed that while the cooperative law was meant to encourage small producers to come together for various business activities, cooperatives already enjoy exemptions from various taxes and duties. He suggested that big cooperatives be made to pay VAT so that those who buy equipment from them would have an input VAT. He reiterated the belief that the moment there is an exemption in the middle of the VAT chain, the final end-user ends up paying VAT twice.

Senator Biazon accepted the amendment.

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### POINT OF CLARIFICATION OF SENATOR ENRILE

Assuming that a cooperative has an annual sale of over P10 million, Senator Enrile asked if this means that the cooperative would be imposed a VAT on all its sales or only to the extent of the excess over P10 million. Senator Osmeña said that the matter would be up to the judgment of the Body as he expressed hope that all sales of the cooperative would be subject to VAT to remove the distortions in the market. However, he expressed willingness to accept an amendment to the amendment.

At this juncture, the Chair inquired whether VAT should be imposed on all sales. Senator Osmeña replied in the affirmative as he reasoned that this would make it easier for the BIR to monitor its VAT collections on cooperatives.

Upon further query of Senator Enrile, Senator Osmeña affirmed that once annual sales exceed the P10-million mark, everything is subject to VAT.

### POINT OF CLARIFICATION OF SENATOR ROXAS

Senator Roxas inquired whether a cooperative with an annual sale exceeding P10 million would be imposed a VAT the subsequent year. Senator Osmeña explained that a cooperative with sales of P8 million in 2004 and P12 million in 2005 would only be imposed a VAT in 2006.

Asked what would happen if the sales of the cooperative fell below the P10 million threshold at the end of the year, Senator Osmeña clarified that as stated by Senator Recto, once an entity is VAT-registered, it remains registered. However, he opined that such entities should be registered if they want to. Moreover, he argued that big cooperatives have tremendous input VAT that could not be used anyway. This, he said, means that the cooperatives would be paying a VAT between 1% and 8% and there would be input VAT on final sale.

### SUSPENSION OF SESSION

Upon motion of Senator Roxas, the session was suspended.

*It was 7:30 p.m.*

### RESUMPTION OF SESSION

At 7:32 p.m, the session was resumed.

Senator Osmeña withdrew his proposed amendment.

### REMARKS OF SENATOR MADRIGAL

Senator Madrigal stated that upon suggestion of Senator Recto, her proposed amendment would be inserted on line 18, page 15 of the April 12 copy of the bill. Relative to this, she asked Senator Recto how the proposed amendment could be reworded as a general provision.

### MADRIGAL AMENDMENT, AS AMENDED

On page 17, after line 2, Senator Madrigal proposed the insertion of a new paragraph in Section 112 of the Code to read as follows:

THE INPUT TAXES TO BE ATTRIBUTABLE TO THESE COMPANIES SHALL BE ALLOCATED RATABLY BETWEEN THEIR VATABLE AND NONVATABLE BUSINESS.

Senator Recto proposed instead to amend Section 112(A) of the Code by inserting the following proviso after the word "sales" and the semicolon (;):

*PROVIDED, FINALLY, THAT FOR A PERSON MAKING SALES THAT ARE ZERO-RATED UNDER SECTION 108 (B) (C), THE INPUT TAXES SHALL BE ALLOCATED RATABLY BETWEEN ZERO-RATED AND NONZERO-RATED SALES.*

In reaction, Senator Madrigal proposed that the phrase "ZERO-RATED AND NONZERO-RATED SALES" be changed to VATABLE AND NONVATABLE BUSINESS.

Submitted to a vote, there being no objection, the Madrigal amendment, as amended by Senator Recto, was approved by the Body.

### PROPOSED AMENDMENT OF SENATOR ENRILE

Asked by Senator Enrile on the reason for bracketing the phrase "to the purchase of capital

goods or" on page 15, lines 23 and 24, Senator Recto replied that the preceding paragraph, which had already been voted upon, states that there shall be a rule to be applied on capital goods. In effect, he said, paragraph (B) only speaks of an input tax attributable to zero-rated sales. He said that the Body had already agreed to limit the tax credit to zero-rated sales.

Senator Enrile opined that the provision does not refer only to zero-rated sales because Section 10 (A) (3) of the Code states:

A VAT-registered person who is also engaged in transaction not subject to value-added tax shall be allowed tax credit as follows:

(A) x x x

(B) A ratable portion of any input tax which cannot be directly attributed to either activity

In view thereof, Senator Enrile asked why said phrase should be deleted. In reply, Senator Recto invited the Body's attention to lines 20 to 23 which refers to transactions consumed domestically that are subject to VAT and not only VAT-on-VAT. On the other hand, he said, lines 23 to 26 speak of zero-rated sales. He explained that input tax on zero-rated sales can be refunded or credited against internal revenue taxes. He invited Senator Enrile's attention to lines 20 to 26.

#### SUSPENSION OF SESSION

Upon motion of Senator Enrile, the session was suspended.

*It was 7:43 p.m.*

#### RESUMPTION OF SESSION

At 7:44 p.m., the session was resumed.

Senator Enrile concluded that if a VAT-registered person is not zero-rated, then the input VAT on his capital goods would have to be spread over five years, in which case he cannot use all his input tax even if he can do so; on the other hand, if the person is zero-rated, he can recover all input VATs.

Senator Recto stated that zero-rating is applicable to the export sector which the government wants to be competitive. Stressing that taxation is supposed to be uniform, Senator Enrile pointed out that in this case, one taxpayer can recover his input tax by installment, while the other can recover it all at one time. Senator Recto noted that such is practiced in many countries.

Senator Enrile asked why the provisions on the two types of taxpayers are lumped under subparagraph (B), in effect, changing the rule with respect to non-zero-rated VAT-registered taxpayer. Senator Recto stated that the matter was debated on many occasions and was already voted upon. He reiterated, however, that a person, whether or not he is an exporter, can credit his input tax on a movable capital good and get an immediate refund or a tax credit certificate.

#### SUSPENSION OF SESSION

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

*It was 7:49 p.m.*

#### RESUMPTION OF SESSION

At 7:50 p.m., the session was resumed.

#### FURTHER MADRIGAL AMENDMENTS

On page 17, on behalf of Senator Madrigal, Senator Recto proposed the insertion of the following proviso to the amended Section 112(A):

*PROVIDED, THAT THE INPUT TAX THAT MAY BE CREDITED IN EVERY QUARTER SHALL NOT EXCEED 90% OF THE OUTPUT TAX.*

#### SUSPENSION OF SESSION

Upon motion of Senator Recto, the session was suspended.

*It was 7:55 p.m.*

#### RESUMPTION OF SESSION

At 8:02 p.m., the session was resumed.



## MADRIGAL AMENDMENT

On page 15, line 23, after the word "quarters," Senator Madrigal proposed the insertion of the following proviso: *PROVIDED, THAT THE INPUT TAX INCLUSIVE OF INPUT VAT CARRIED OVER FROM THE PRESENT YEAR THAT MAY BE CREDITED IN EVERY QUARTER SHALL NOT EXCEED NINETY PERCENT (90%) OF THE OUTPUT TAX.*

## INQUIRY OF SENATOR ROXAS

Asked by Senator Recto if there would be stranded input VAT if a person stocks up on raw materials on the premise that its value would increase but does not produce any finished goods to sell, Senator Osmeña, who coauthored the provision, stated that there would be no stranded input VAT because it would just be carried over to the next quarter. He noted that quarter after quarter, the input VAT of a corporation becomes larger than the output VAT, hence, the government ends up owing it money eventually.

On whether an entity would have input VAT if it continues to purchase products subject to VAT, Senator Osmeña replied in the affirmative. He expounded that if a corporation would have sales of P1 million in a quarter, its output VAT would be P100,000. He said that if the corporation stocked up on inventory and its creditable input VAT is P120,000, its net VAT payable for the month would be zero, and he has a carry-over of P20,000. He added that the situation happens endlessly, the reason many BIR collectors complain because there is nothing to collect when corporations load up on inventory.

Furthermore, Senator Osmeña stated that he suggested to the BIR to limit creditable input VAT in a quarter because by doing so, it would eventually catch up with the corporation when the finished goods would have been sold. Apparently, he noted, the accountants can stretch it for years and even inflate the corporation's assets and inventory. Citing the previous example of P1 million sales and output VAT of 100,000, he explained that limiting the amount of input VAT credit to P90,000 would result in a carryover of P30,000 which can go on endlessly until it is used up, in effect, nothing is stranded.

Senator Roxas expressed concern that it could result in undue or inordinate interference in specific

business decisions of the entire business sector. He said that the cash flow impact of uncreditable input tax or deferred or delayed credit of the input tax would influence purchase decisions of the domestic economy. He added that if corporations would only be allowed to credit 90% of its output VAT, their decisions would be affected by such a parameter.

Asked by the Chair if he was objecting to the amendment, Senator Roxas replied in the affirmative.

In response to the points raised by Senator Roxas, Senator Osmeña stated that the carried over cost is going to be very small since there would be quarters when the output VAT is more than the input VAT. He said that the provision would help the BIR since it has been difficult for the collectors to go after corporations that have constantly showed that their input VAT is larger than their output VAT. Further, he stated that corporations manufacture receipts that show purchases of supplies in order to claim input VAT. He said the provision minimizes the claims so the BIR could collect at some time.

Senator Osmeña agreed that there would be some cost for those who religiously pay VAT. However, he said that most people do not pay VAT which is why collection efficiency is at 50% today. Although the provision would not plug the loopholes entirely, the BIR would be able to collect at least 1% net VAT, he added.

Senator Roxas argued that rather than being beneficial, the proposed amendment would have a negative impact. He said that the provision would constrict decision-making on the part of those who pay VAT religiously and would not make cheaters honest. He warned that the proposed amendment would be a very dangerous precedent because the country might revert to a centrally planned economy where government tells people how to run business.

Noting that the Body has approved an amendment to allow the input VAT on capital expenditures to be credited, Senator Roxas stated that business entities are being asked to make a five-year, interest-free loan to the government while constraining the expenses on capital expenditures on operations and inventories by deferring the crediting of their input VAT. He asserted it would be a distortion of the VAT system.

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Senator Osmeña countered that the bill provides a capex on income tax rate (32%) and the reduction of 42% on allowable deduction for interest expense, hence, there is nothing wrong in asking a capital to pay at least 1% VAT on his sales in a given operation.

Senator Roxas argued that 1% could spell the difference in having a profitable month or meeting a payroll. He stated that he had made his objection known and would pursue the matter in the appropriate parliamentary manner.

Accepting the Madrigal amendment, Senator Recto clarified that while he agreed with the observations of Senator Osmeña, he also understood the objections raised by Senator Roxas. He admitted that 1% VAT on gross sales shall be the minimum payment in view of the minimum corporate income and the 3% percentage tax on gross sales below P550,000. He underscored there is nothing wrong in requiring an individual who grosses more than P750,000 to at least pay 1% VAT.

#### **VOTING ON THE MADRIGAL AMENDMENT**

Submitted to a vote and with 13 senators voting in favor, 4 against and 1 abstention, the Madrigal amendment was approved by the Body.

Senator Enrile abstained.

#### **EXPLANATIONS OF VOTES**

*By Senator Roxas*

Senator Roxas expressed in strongest terms his reservations on the Madrigal amendment because of the undue interference by the government in business decisions that properly belong to the entrepreneur. He believed that the amendment would make the economy less competitive and would have the unintended consequence of reducing or paring down the amount of domestic demand for goods because purchases would be deferred if input VAT could not be credited in any event. However, he said that if the amendment could help the BIR in its efforts, the BIR could then help in other ways without unduly interfering in the decision-making of businesses.

*By Senator Osmeña*

Senator Osmeña agreed that as pointed out by Senator Recto, anybody who has gross sales below

P550,000 pays 3% tax, but he is exempt from VAT; however, those who make more than P750,000 should not complain that he is made to pay 1% VAT.

#### **REMARKS OF SENATOR LACSON**

Senator Lacson said he was not too keen on deleting the brackets on lines 3 to 8, page 17, but he wanted to make it of record that in the caucus of March 17, 2005, there was an agreement among the Members to delete the bracket. He said that Members could pursue it if they so wish.

#### **REMARKS OF SENATOR ENRILE**

Adverting to page 15, lines 25 and 26, Senator Enrile noted that the provision thereon is subject to the provisions of Section 112 because Section 110 (B) deals with the matching of input tax and output tax. However, he opined that Section 112(B) contemplates a cessation of business and there is the balance of unrecovered input VAT. If the subparagraph (B) on line 20 to 26, page 15, are deleted, he concluded it would grant the VAT-registered taxpayer the right to claim back whatever excess input tax he has not applied against an output tax.

Senator Recto clarified that there would be no need for Section 112(B) on page 17; therefore, it would be deleted.

#### **SUSPENSION OF SESSION**

Upon motion of Senator Enrile, the session was suspended.

*It was 8:22 p.m.*

#### **RESUMPTION OF SESSION**

At 8:24 p.m., the session was resumed.

#### **PROPOSED AMENDMENT OF SENATOR ENRILE**

On page 17, Senator Enrile proposed the retention of subparagraph (B) on lines 3 to 8 because it not only deals with capital goods of zero-rated VAT-registered taxpayer but covers also the capital goods of a VAT-registered person who might not be zero-rated. He opined that Section 110 deals with the transaction of a VAT-registered person whether zero-rated or not.

*tb*  
*tb*

Senator Recto did not accept the amendment, saying that when the Body voted to put cap on the crediting of VAT inputs on capital good for 59 months involving P23 billion, it decided to delete Section 112(B). If the amendment would be accepted, he said that the approval of the amendment to put a cap would then be rendered useless.

#### SUSPENSION OF SESSION

Upon motion of Senator Villar, the session was suspended.

*It was 8:26 p.m.*

#### RESUMPTION OF SESSION

At 8:29 p.m., the session was resumed.

#### MOTION OF SENATOR GORDON

Sharing the sentiment of Senator Angara, Senator Gordon moved for the reconsideration of the approval of the amendments to line 3, page 23, by restoring the 3% tax. He explained that there are only two remaining European airlines in the country, Lufthansa and KLM, after British Airways, Pakistani Airways and Air France pulled out. He lamented that the fuel cost of international airways, including PAL, has been rising tremendously and has been affecting tourism.

Since the government is looking for money, Senator Enrile explained that he proposed the amendment to spread the burden among all sectors of the economy. He said that if the government does not want money, then his amendment could just well be deleted.

Senator Gordon believed that on the contrary, more money could be realized if the government would be able to retain international travel that has begun to rise.

There being no objection, the motion for reconsideration of the approval of the Enrile amendment was approved.

#### GORDON AMENDMENT

On page 15, line 3, as proposed by Senator Gordon and accepted by the Sponsor, there being no objection, the Body approved the retention of the figure 3%.

#### MOTION OF SENATOR ANGARA

On Section 121, page 24, lines 10, 11, 16 and 19, Senator Angara proposed to keep the 5% and 1% rates on banks and non-bank financial institutions performing quasi-banking functions because increasing the rates of loans with five years maturity and less from 5% to 7% would amount to a 40% increase in interest rates; likewise, increasing the rates from 1% to 3% for loans with maturity in excess of five years would increase the GRT by 200% and would translate equally to a 200% increase in interest rate.

He believed that the increases are inappropriate at this time because the ones who would be most affected are the micro-enterprises and small-scale enterprises. More painfully, he said, the housing sector which is now slowly picking up would be devastated by the 200% increase in interest rates.

Senator Enrile clarified that he proposed the amendment because he believes that the financial institutions are the most capable taxpayers in the country. He felt, however, that many Members were reluctant to impose the burden on the more affluent members of the economic society.

Asked by Senator Villar on the estimated revenue losses as a result of the amendment, Senator Recto disclosed that it is P2 billion to P6 billion.

Senator Enrile maintained that his amendment would have given the government an additional income of approximately P8.2 billion. He then proposed to withdraw all his amendments.

Senator Angara stated that even if a 40% or a 200% increase is imposed, the potential gain may not be forthcoming, and that, in fact, it might kill business activities that are slowly building up in the country. Moreover, he asserted that the burden of taxation is not going to fall on the economically capable person but on the housing sector including the micro- and small-scale businesses. He noted that the rich can pay the 40% or 200% increase in interest rate, unlike the OFWs and the government employees who have been given the opportunity to borrow for housing.

Stating that he was not objecting to the proposed amendment of Senator Angara, Senator Villar

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clarified that he merely wanted to put on record how much the amendment was going to cost the government as Senators Enrile and Recto gave two different amounts. Relative thereto, Senator Angara said that the amounts were premised on an increase in the interest rate, thus, it is not money at hand.

At this point, Senator Pimentel remarked that the Enrile amendments had been accepted the previous day, thus, it is already a provision in the proposed Act by virtue of the vote of the Members. He opined that Senator Enrile cannot give up on his position, adding that the expected revenue to be raised by the Enrile amendment is too much to give up at this point. However, he stated that he also understood the explanation of Senator Angara as regards the effect of the increase in rate on small depositors, OFWs and the like. He argued that the Enrile amendment targets the banks and their reaction to the additional tax burden is something that has to be seen.

Senator Angara stated that it would be ideal if some banks are the target of the taxation burden because they are capable of absorbing the increase. As records show, he asserted that banks would pass on the extra cost to the borrowers by converting the same into higher interest rates that, ultimately, the borrowers would shoulder.

#### **PROPOSED AMENDMENT TO THE AMENDMENT**

On page 24, line 10, Senator Arroyo proposed that the figure "7%" be changed to "5%," the old rate, to maintain the status quo. He stated that subsections (c) and (d) providing for a 7% GRT could be retained since they only affect banks. Hopefully, he said, the arrangement would satisfy the government's need for revenues and, at the same time, take into account the needs of borrowers.

Asked by Senator Angara whether he was proposing the restoration of the 5% and 1% GRT, Senator Arroyo replied in the affirmative.

#### **REMARKS OF SENATOR ROXAS**

Senator Roxas agreed that an increase in GRT represents an increase in cost of funds to the financial institutions that would probably lead to an upward movement in interest rates charged to borrowers. He disagreed, however, that it would

lead to a 200% jump in interest rate as a housing loan of 12% would not become 36%. He clarified that a percentage increase of 5% to 7% would not translate into a percentage increase in interest rate being charged to the borrower.

As regards the small and medium enterprises, Senator Roxas noted that they are already paying much higher interest rates at "5-6" and that their problem is access to credit. He concurred with Senator Angara that the formal sector, regardless of size, would be impacted by higher interest rates; but that would not be the case for those in the micro-sector.

Relative to the proposed amendment of Senator Arroyo, Senator Roxas contended that this only partially addresses the issue because financial institutions look at the entire cash flow and financial statements. Finally, he expressed reservation on the proposed amendment to restore the present rates.

Senator Recto shared the views of Senator Roxas as he explained that the effect on interest rates would be roughly 1/3 of 1%. He said that he would prefer that government make money by increasing the rates rather than the Central Bank increasing interest rates on government to curb inflation. He clarified however, that he would abide by the collective decision of the Body if it so desires to accept the Angara amendment.

Upon query of Senator Pimentel, the Chair clarified that the issue at hand is the amendment of Senator Angara as amended by Senator Arroyo. The motion for reconsideration, it said, is only with respect to lines 10 and 11, page 24, to restore the present rates in Section 121 of the National Internal Revenue Code.

#### **APPROVAL OF MOTION FOR RECONSIDERATION**

Submitted to a vote and with 12 senators voting in favor and one against, the motion for reconsideration of the approval of the amendments to lines 10 and 11, page 24, was approved.

#### **ANGARA AMENDMENT, AS AMENDED**

Submitted to a vote and with 12 senators voting in favor and 5 against, the proposed amendments of

Senator Angara to change the figure "7%" on line 10 to "5%" and the figure "3%" on line 11 to "1%," page 24, was approved.

### **RECONSIDERATION OF THE APPROVAL OF THE AMENDMENT**

Upon motion of Senator Recto, there being no objection, the Body reconsidered the approval of the amendments lines 16 and 17, page 25.

### **RECTO AMENDMENT**

Senator Recto stated that it would be best to apply the same provision on banks to non-bank financial intermediaries performing quasi-banking functions.

As proposed by Senator Recto, there being no objection, the Body approved the deletion of Section 17 on lines 4 to 22, page 25, and lines 1 to 7, page 24. He explained that there is no amendment to said section.

### **RECONSIDERATION OF THE APPROVAL OF THE AMENDMENT**

Upon motion of Senator Osmeña, there being no objection, the Body approved the reconsideration of the approval of the amendments to Section 18 on lines 8 to 24, page 26.

### **OSMEÑA AMENDMENT**

On page 26, as proposed by Senator Osmeña and accepted by the Sponsor, there being no objection, the Body approved the deletion of Section 18 on lines 8 to 24.

### **PROPOSED AMENDMENT OF SENATOR ROXAS**

Senator Roxas pointed out that having different excise tax rates for aviation turbo jet fuel and kerosene would promote technical smuggling because to avoid the same tax on aviation turbo jet fuel, kerosene is brought in at 0% rate and mixed with additives to produce aviation gas.

On page 28, Senator Roxas proposed that line 17 be amended to read as "(g) AVIATION TURBO JET FUEL, PER LITER VOLUME CAPACITY, ZERO (P0.00)."

Senator Recto said that while he does not know whether aviation turbo jet fuel could be considered as a socially sensitive product, the proposal would entail a loss of roughly P5 billion in revenues from excise tax and VAT.

Senator Roxas requested that his proposal be put to a vote.

### **INQUIRIES OF SENATOR PIMENTEL**

Asked by Senator Pimentel on the distinction between aviation turbo jet fuel and kerosene, Senator Recto said that additives are mixed with kerosene to produce aviation turbo jet fuel.

In reply to further query, Senator Recto pointed out that while the Senate version does not intend to amend the present excise tax rate on aviation turbo jet fuel of P3.67, it proposes the reduction of the excise tax rate on kerosene from P0.60 to P0.00 because it is a socially sensitive product.

### **VOTING ON THE PROPOSED ROXAS AMENDMENT**

Submitted to a vote and with 3 senators voting in favor and 10 against, the proposed amendment of Senator Roxas was not approved.

### **PROPOSED AMENDMENT OF SENATOR BIAZON**

Senator Biazon said that the objective of the measure is to generate revenues to address the fiscal crisis which, according to experts, might result in the collapse of the Philippine economy. He pointed out that by allowing the use of incremental revenue from VAT for some projects, the very objective of the sin tax and lateral attrition measures be negated.

Further, Senator Biazon said that there are important legislative programs that remain unfunded such as the AFP Modernization Law which is crucial to the preservation of the security of the nation, the Agriculture and Fisheries Modernization Act which concerns the life of the country, and the grant of benefits to military retirees and veterans, but he was not asking for the earmarking of any of the proceeds from the measure for these concerns because it would go against the efforts of the Executive department in addressing the fiscal problem of the country.

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On pages 34 to 36, Senator Biazon then proposed the deletion of Section 288(D).

### INQUIRIES OF SENATOR RECTO

Senator Recto asked the Chair if his acceptance of the proposed amendment of Senator Biazon would negate the committee's acceptance of the Cayetano amendment to earmark a certain amount of the incremental revenues for environmental concerns. The Chair replied in the affirmative as it clarified that the proposed amendment of Senator Biazon is to delete the whole section, in which case the acceptance of the Cayetano amendment would become academic.

Senator Recto stated that he understood all the points raised by Senator Biazon as well as the advocacies of many of the senators, nevertheless, he would prefer to set aside 20% from the incremental revenue for social services. He expressed the belief that when the Senate passes a tax measure, it should show the public that a part of it is intended for certain social services. He did not accept the proposed amendment of Senator Biazon, stating that he would be willing to be outvoted.

In reaction, Senator Biazon said that he has also strongly advocated reproductive health and family planning for which reason, he could insist on apportioning the incremental revenue for the purchase of condoms and contraceptives to address the galloping population growth. Since the basic objective of the VAT bill is to address the fiscal deficit of government, he stated that he would be willing to defer action on his advocacies. He asked for a division of the House on his proposed amendment.

### REMARKS OF SENATOR CAYETANO

Senator Cayetano explained that her proposal to earmark a specific amount for environmental concerns was not a matter of advocacy but of preserving the country's natural resources which, if left unprotected, would not sustain economic growth nor prevent economic decay. She observed that in the midst of the discussions on the VAT, economists, activists, columnists and concerned citizens have pointed out the alarming decline of public spending on basic social services.

While there can be no argument against the need to cut expenditures, she lamented that such

cuts are hitting basic services. She pointed out that the education secretary had to plead for the rebuilding of schools that were devastated by typhoons and, in one recent incident, several students in one public school died from food poisoning because school authorities were unable to provide them safe nutrition. She added that foreign official grants had to be cancelled because the government could not provide counterpart funds.

Senator Cayetano asserted that for these reasons, the Committee proposed the earmarking of 20% of the incremental revenues for health and education. She strongly believed that to truly address social welfare issues, environmental concerns like reforestation should also be addressed.

In this regard, she recalled the tragedies in Aurora and Quezon that prompted no less than President Macapagal-Arroyo to call attention to the need to refocus on environment and reforestation. She also cited Leonardo Camacho who wrote in an article in the *Business World* that managing natural resources while fostering economic development is the smartest thing to do. There is no choice between ecology and environment, she underscored.

Senator Cayetano lamented that today, economics is being taught in schools without any consideration of its most fundamental component, the ecology on which all economic life depends. She added that economic thinking does not regard deforestation, soil degradation, air and water pollution are caused by economic activities.

Stressing that a reforestation program is urgently needed to provide food security, Senator Cayetano believed further that without it, rivers and reservoirs would dry up. On the other hand, she argued that reforestation could convert barren land into productive land which could sustain and increase the income of upland farmers, alleviate poverty, address the problem of insurgency in the countryside, protect and conserve forest resources and biodiversity, prevent disasters and ensure a healthy environment.

She reiterated her proposal not only to earmark 5% of the revenues for the reforestation program but also to retain the allocations for health and education. She stated that her support for the VAT bill was hinged on the understanding that it would address basic social services and environmental issues.

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## SUSPENSION OF SESSION

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

*It was 9:25 p.m.*

## RESUMPTION OF SESSION

At 9:27 p.m., the session was resumed.

At this point, Senator Osmena informed the Body that Senator Cayetano had agreed to his suggestion to substitute a blanket provision that at least 25% of the incremental revenues from VAT shall be spent on social services and environment, the apportionment of which shall be left to the Executive department.

Senator Biazon clarified that he was not against the earmarking of part of the incremental revenues for those concerns but it must be related to the objective of the measure which is to address the fiscal deficit. He pointed out, however, that the House members also have their concerns that they would push for during the bicameral conference.

Senator Recto noted that the proposed amendment of Senator Biazon would, in effect, remove the P15 million allocation for the taxpayers education program. He proposed that the deletion should be only up to line 11, page 36.

Senator Biazon accepted the proposed amendment to his amendment.

At this point, Senator Recto did not accept the proposed amendment to delete Section 288.

Submitted to a vote and with 9 senators voting in favor and 6 against, the Biazon amendment, as amended, was approved.

## EXPLANATION OF VOTE

*By Senator Angara*

Explaining his affirmative vote, Senator Angara stated that he supported the earmarking of funds for education, health and environment as he stressed that education has been his principal advocacy. In fact, he added, he had authored many education reform laws. As for health, he recalled that

he authored the Philippine Health Insurance Corporation Law. As regards environment, he believed that it would be reasonable to allocate money for it because his home province of Aurora was devastated by a typhoon. However, he believed that funding for these concerns should not be sourced from the VAT law but specifically from the sin tax law and gaming and lotteries.

Senator Angara said that in all civilized countries, earnings from gaming and lotteries are earmarked for social causes and even for environment, arts and culture. He wondered where the P30-billion annual revenues of Pagcor and PCSO went, whether these funded the construction of a school building or a hospital.

He expressed regret that he could not join Senators Cayetano and Flavier in supporting the proposed earmarking of revenues from the VAT measure for the causes as he agreed with Senator Recto that the specific purpose for updating and overhauling the VAT system is to cope with the rising financial crisis.

## RECTO AMENDMENT

On page 8, lines 33 and 34, as proposed by Senator Recto, there being no objection, the Body approved the rewording of subsection (7) as follows:

SALE OR IMPORTATION OF RENEWABLE SOURCES OF ENERGY, SUCH AS, BUT NOT LIMITED TO BIOMASS, SOLAR, WIND, HYDRO-POWER, GEOTHERMAL, OCEAN ENERGY AND OTHER EMERGING ENERGY SOURCES USING TECHNOLOGY SUCH AS FUEL CELLS AND HYDROGEN FUELS.

## PROPOSED AMENDMENT OF SENATOR LACSON

Before proposing his amendment to the Repealing Clause on page 38, Senator Lacson stated that he agrees with the view aired by Senate President Drilon in one of the caucuses that a special law will always prevail over a statute or law of general application. He expressed concern that since the law touches the franchise tax of entities, they might raise the issue before the Supreme Court that could strike the law down. He noted that the

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Supreme Court ruled on January 12, 1990, that "a special and local statute applicable to a particular case is not repealed by a later statute which is general in its terms, provisions and applications even if the terms of the general act are broad enough to include cases in the special law unless there is manifest intent to repeal or alter the law." He said he would be willing to withdraw his proposed amendment if Senator Recto could justify that the VAT law would raise much more taxes than the existing one.

Asked how much revenue is being collected from the 2% franchise tax on airlines, specifically PAL, Senator Recto replied that the government has not collected a single centavo as he pointed out that under its charter, PAL shall pay 2% tax or income tax whichever is lower. He added that PAL in fact, has declared losses, the more reason to subject it to VAT.

Asked how much is the expected revenue from airlines, Senator Recto replied that it is roughly P600 million.

Senator Lacson did not pursue his proposed amendment in the hope that franchise holders would not seek the Supreme Court ruling on the issue.

#### **RECTO AMENDMENT**

In view of the Biazon amendment, on page 3, line 10, as proposed by Senator Recto, there being no objection, the Body approved the insertion of lines 12 to 23 of page 36 as Section 27(D).

#### **SUSPENSION OF SESSION**

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

*It was 9:43 p.m.*

#### **RESUMPTION OF SESSION**

At 9:45 p.m., the session was resumed.

#### **OSMEÑA AMENDMENT**

On page 2, line 5, as proposed by Senator Osmeña, and accepted by the Sponsor, there being no objection, subject to style, the Body approved the insertion of Section 27(C) of the NIRC, amended as follows:

(C) *Government-owned or -Controlled Corporations, Agencies or Instrumentalities.* - The provisions of existing special or general laws to the contrary notwithstanding, all corporations, agencies, or instrumentalities owned or controlled by the Government, except the Government Service and Insurance Systems (GSIS), the Social Security Sytem (SSS), the Philippine Health Insurance Corporation (PHIC), the Philippine Charity Sweepstakes Office (PCSO) [and the Philippine Amusement and Gaming Corporation (PAGCOR),] shall pay such rate of tax upon their taxable income as are imposed by this Section upon corporations or associations engaged in a similar business, industry, or activity.

#### **DRILON AMENDMENT**

Apropos the Osmeña amendment, as proposed by the Chair and accepted by the Sponsor, there being no objection, the Body approved the insertion of the word "AND" after the acronym "PHIC."

#### **RECTO AMENDMENT**

On the title of the bill, as proposed by Senator Recto, there being no objection, the Body approved the deletion of the figures "118", "122" and "124".

#### **TERMINATION OF THE PERIOD OF INDIVIDUAL AMENDMENTS**

There being no other individual amendment, upon motion of Senator Pangilinan, there being no objection, the Body closed the period of individual amendments.

#### **APPROVAL OF SENATE BILL NO. 1950 ON SECOND READING**

Submitted to a vote, with the majority voting in favor, Senate Bill No. 1950 as amended was approved on Second Reading.

#### **PRESIDENTIAL CERTIFICATION**

Upon direction of the Chair, Secretary Yabes read the president's certification as to the necessity of the immediate enactment of Senate Bill No. 1950, to wit:

*Yabes*



**MALACANANG  
MANILA**

March 11, 2005

HON. FRANKLIN M. DRILON  
Senate President  
Philippine senate  
Pasay City

Dear Senate President Drilon;

Pursuant to the provisions of Article VI, Section 26 (2) of the 1987 Constitution, I hereby certify to the necessity of the immediate enactment of Senate Bill No. 1950, under Committee No. 16, entitled:

**AN ACT AMENDING SECTIONS 27, 28, 34, 106, 109, 110, 111, 112, 113, 114, 116, 117, 119, 125, 148, 236, 237, AND 238 OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES**

to meet the public emergency arising from the urgent need of broadening the tax base by plugging the loopholes in the existing VAT system, simplifying its collection through a uniform rate and expanding its coverage, making its effects more equitable and just on the country's so-called sensitive sectors.

Best wishes,

Very truly yours,  
(Sgd) Gloria M. Arroyo

Cc. HON. JOSE C. DE VENEZIA  
Speaker  
House of Representatives  
Quezon City

**INQUIRY OF SENATOR ENRILE**

Upon query of Senator Enrile, the Chair affirmed that the Body has already voted on Second Reading on the bill.

Senator Enrile manifested his negative vote, on Second Reading, on the bill. The Chair instructed that the negative vote of Senator Enrile be recorded.

Asked by Senator Enrile why the measure was certified, Senator Pangilinan explained that the bill sought to avert a looming fiscal crisis.

Thereafter, Senators Pimentel, Ejercito Estrada (J), Ejercito Estrada (L), Lacson, Madrigal, and Cayetano cast a negative vote.

**PARLIAMENTARY INQUIRY  
OF SENATOR ROXAS**

Senator Roxas asked the result of the voting.

**SUSPENSION OF SESSION**

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

*It was 9:56 p.m.*

**RESUMPTION OF SESSION**

At 10:03 p.m., the session was resumed.

Upon resumption, the Chair announced that Senators Cayetano, Ejercito Estrada (J), Ejercito Estrada (L), Lacson, Madrigal and Pimentel cast a negative vote. He clarified that Senator Enrile who also cast a negative vote was changing his vote.

**EXPLANATIONS OF VOTE**

*By Senator Enrile*

Senator Enrile stated that he would have maintained his negative vote but in view of the precarious situation in the Chamber, he acceded to the request of the Senate President to vote in favor of the measure despite the fact that all his amendments were not approved. This would show, he stressed, that the Opposition is not obstructionist but is a constructive partner in attaining what is good for the country.

*By Senator Villar*

Senator Villar stated that he wanted to vote against the bill, not because he did not want the revenues that would be raised but because he disagreed on putting the entire fate of the nation in the VAT. He did not believe that the bill was the only measure that could address the fiscal deficit as there are better measures than the VAT bill. He stressed that the Body should have given priority to other revenue measures which would have hit the consumers least as well as bills which would protect certain industries. He explained that he was voting *yes* simply because he felt that a closer cooperation between the Senate and the Executive Department is needed to address the fiscal problem as soon as possible.

*AS*  
*ye*

*By Senator Angara*

Explaining his affirmative vote, Senator Angara said that addressing the fiscal deficit is only half of the problem. He agreed that the fiscal void needs to be filled in order to avert economic collapse but the greater void to fill is the social one. He stressed that the classrooms are rotting and students are suffering from lack of well-trained teachers; primary health care is suffering and rural infrastructure is in disarray. He stressed that these basic services are intended to make the people more efficient and productive, yet these services are being neglected. He stated that he was voting for the measure in order for the Body to respond to these crying needs.

Senator Angara said that the next bigger step to take is for the Executive department to allocate funds to address the infrastructure needs of the countryside. He said that the Body's work in passing the measure is just half-done because the next half is to review and tighten the country's expenditures. He stressed that the Body might have passed the biggest revenue source for the country but it must plug the almost bottomless pit into which these revenues are being poured without a trace.

*By Senator Roxas*

Senator Roxas stated that his vote is barely affirmative because the good that he sees in the passage of the bill barely surpasses the ill-effects of some of the provisions. He said that not all taxes collected course their way to the broader economy. He believed that his amendments which were not accepted would have corrected the infirmities of the bill

*By Senator Biazon*

Explaining his affirmative vote, Senator Biazon believed that the bill is one of the components needed to address the fiscal crisis. But the effect of the law, he stressed, would depend on the capability and the will power of the Executive department to enforce it.

Senator Biazon said that he wanted to send a message to the President that the passage of the expanded VAT bill along with the lateral attrition law would lead to increased revenue collection but its success would depend on the Executive department's capability to collect taxes efficiently.

*By Senator Lacson*

In explaining his negative vote, Senator Lacson clarified that he was not being an obstructionist but he merely wanted to convey the message that there are many things that government can do and should do to counteract the fiscal crisis.

*By Senator Gordon*

In explaining his affirmative vote, Senator Gordon conceded that he did so with hesitation since he felt that the objectives of the measure had not been clarified. He said that he failed to see how Senate Bill 1950 could enhance opportunities for tourism, agriculture, environment and education.

Moreover, he noted that the looming fiscal crisis was the result of 40 years of negligence and how the government conducted its fiscal affairs as seen in the unused resources such as nuclear plants and airports. He believed that the message behind the voting on the bill showed that all the Members are inclined to come up with new tax policies as this is an opportunity to strengthen the nation if the money is well spent. However, he lamented that the problem of revenue leakages such as untrammelled smuggling would not get the nation anywhere. He believed that people are hesitant to pay taxes because they are afraid that these would not go to the intended government projects.

Even as he commended Senator Recto and the other Members for their efforts to come up with a better bill, Senator Gordon expressed hope that the measure would be a message for government to be responsible in spending its vital resources in order to help uplift the nation's standard of living.

*By Senator Osmeña*

In explaining his affirmative vote, Senator Osmeña read a quote from a VAT textbook which states that "to tax and to please no more than to love and to be wise is not given to men." Relative thereto, he conceded that no tax bill would make the people happy unless it is one that would reduce taxes. As a member of the Minority, he believed that the proclivities of the administration for introducing new tax measures should be tempered. He pointed out that the latest survey by Pulse Asia and SWS showed that people would not be averse to paying new taxes provided that corruption is curbed, exemptions are removed, there is higher efficiency

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in tax collection, tax cheats are sent to jail and that the poor are not made to suffer so much as a result of such laws. He congratulated Senators Recto and Pangilinan and Senate President Drilon and likewise commended Senator Enrile for having attended every meeting and caucus on the bill. Despite the delay in the passage of the measure, he believed that the Body has fulfilled its duty to the people by ensuring that it has searched all possible avenues to find revenues without raising the 10% rate on VAT. He said that he felt gratified for having played a role in shaping such a critical measure. He expressed hope that the VAT measure would help fund the fiscal deficit of government and important social service programs as well, and give the people hope that the country would be able to get out of the fiscal crisis.

*By Senator Madrigal*

In explaining her negative vote, Senator Madrigal said that more than the Members of the Majority who did not get their amendments passed, she should have voted in the affirmative as many of her amendments were approved by the Body. However, she clarified that she wanted to send a message to the administration that while there are alternative means for raising revenues, she is objecting to the continuing corruption which has made the public hesitant about paying their taxes. Quoting the Latin maxim *Fiat justitia, pereat coelum*, she lamented that there had not been much justice in the way the administration tried to bully the senators and even blame the Senate for the not-so rapid passage of the bill.

Ending with a quote from British Prime Minister William Pitt who said that "Necessity is the plea of every infringement of human freedom. It is the argument of tyrants and the creed of slaves.," Senator Madrigal expressed hope that necessity would not be done to darken freedom in the country.

*By Senator Magsaysay*

In explaining his affirmative vote, Senator Magsaysay started with a quotation "there is no gain unless there is pain." He observed that in the past few weeks, the younger senators have shown their sterling accomplishment in seeing the bill through. He commended senior senators like Senator Enrile whose reversal of vote proved his love for the country and sent a good message of unity of national interest.

Moreover, he noted that despite initial disparity and partisanship, the Members, through the leadership of the Senate President, had finally accomplished their goal. He stated that more critical than the passage of the bill is the manner by which it would be implemented and how the reforms would be continued, pointing out that a lot of members of the Executive department are not serious enough to reform themselves and their agencies. Further, he said that management issues such as unfit appointments had not been strongly addressed with a showing of strong political will. He expressed hope that the measure would encourage more people to become determined and serious in their task, and offer heroic leadership for an honest, effective and responsive government. He warned that providing the funds for the public treasury without seeing where these monies are going would only result in a half-baked effort that would have made the work of the Senate useless.

*By Senator Ejercito Estrada (J)*

In explaining his negative vote, Senator Ejercito Estrada (J) said that he was aware that helping craft laws for the progress and development of the nation is his primary duty as a legislator that includes authoring and lobbying for the passage of measures to promote the development and progress of the nation. However, he stressed that his loyalty remains with the Filipino people and as such, he said that he is duty-bound to study every bill that passes through the Chamber and vote down those that would only subscribe to the benefit of a privileged few. In closing, he said that he found Senate Bill No. 1950 wanting. Nevertheless, he clarified that his negative vote does not mean that he does not love his country.

*By Senator Ejercito Estrada (L)*

In explaining her negative vote, Senator Ejercito Estrada (L) said she was voted into office to look after the welfare of the Filipino people, many of whom are poor and suffering for lack of food and medicine. She wondered why Filipinos are being made to suffer the burden of shouldering more taxes when they are not responsible for the fiscal crisis. This, she stated, is the reason why she believed that Senate Bill No. 1950 is unnecessary. She said that what is needed is a more effective tax collection and for government to put an end to corruption.

In closing, she underscored that it is the responsibility of the Members to lighten the heavy burden of the people.

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*By Senator Pimentel*

In explaining his negative vote, Senator Pimentel said that he cast the vote not as a reaction or reflection on the capacity of Senator Recto as he lauded the Sponsor for doing a good job at presenting the positive aspects of the bill. However, he pointed out that the whole premise of the VAT law is intended to address the fact that the government has lost a lot of money.

He agreed with the argument Senator Ejercito Estrada (L) that there is no reason for the people to pay for the misdeeds and corruption of the present administration.

Further, he said that he could not support a measure that has no visible direction to address the basic problems of the nation due to the utter corruption that would negate the additional funds coming to the public treasury. He argued that unless the web of corruption in the administration is not destroyed, there would be no positive changes for the nation in the immediate future even if the government imposes a thousand VATs.

Senator Pimentel took exception to insinuations that if a senator voted against the bill, he is being an obstructionist. He did not think that simply because some members were willing to stand up and say "no" to the bill for reasons that they believe as cogent and desirable for the people, they could be accused of being obstructionists while those who voted for the bill were the only ones who love their country. He wished that some members would refrain from attributing ill motives to those who voted against the bill or insinuating that since they entertained opposite views, they are the bad people. He decried the "holier than thou" attitude of some senators who seem to imply that those in the Opposition who voted according to their conscience are enemies of the State, and they play an unworthy role in the Senate.

Senator Pimentel explained that he voted "no" because he would have wanted to see some allocations for social services that the country should be equally concerned with. He sympathized greatly with the deletion of the 5% that Senator Cayetano wanted to earmark for environmental concerns that, apparently, have not been attended to.

But in all honesty, he said, it is not so much the specific acts of omission in the proposed bill that he

was worried about but the whole idea that it would be alright for the government to raise all kinds of taxes because the administration has mishandled the funds of the nation. He stated that he has always believed that the best way government could have handled the matter was to collect the uncollected taxes under the 10% regime of VAT.

Senator Pimentel cautioned that given the experience of government, in case there is a compromise in the bicameral conference and the Senate version is not accepted, there is no certainty that government can collect more money from the people. As records show, he noted that the VAT collection is about 35% to 40% which means that there are a lot of leakages, thus, the primary action of the government should have been to plug the leakages, collect the taxes and run after tax evaders. He expressed hope that these could still be done at some future time.

Senator Pimentel underscored that he voted "no" not because he was being an obstructionist Opposition or that he did not love his country; rather, he believed that the welfare of the people is more primordial over and above the impressions of some members.

*By Senator Cayetano*

In explaining her negative vote, Senator Cayetano stated that she has gone out of her way to explain to the people the need to pay taxes so that the government can build enough school buildings, provide good health care services, ensure safety of the people in the streets and in their homes, and pay the country's debts. She recalled that throughout the numerous caucuses and debates, she sought to support the theory of the VAT chain espoused by Senator Recto to make VAT an effective tool for economic progress. Likewise, she said, the allocation of incremental revenue from VAT for basic services was paramount to her support for the VAT bill as economists and financial experts have harked on the need to address the debt burden.

While acknowledging that the country has a debt and a looming financial crisis that must be addressed, she stressed that there is also a health crisis, an education crisis and an environment crisis. She posited that a small allocation of the VAT revenues to educate children, provide medicine for the sick, and rebuild the forests, all of which redound

to the benefit of the economy, would not have derailed the objective of plugging the financial deficit. She believed that passing the VAT bill should not have been a choice between economic stability and basic social services because the government could have both.

Senator Cayetano stated that she would continue to support the President's initiatives with the same fervor and continue to push for her advocacies to protect the environment and provide basic social services to the people.

*By Senator Revilla*

Senator Revilla stated that it was indeed difficult to make a major decision on the measure as there is need to balance the country's financial problem with the sentiments of the people. But at the end of the day, he believed that the Body has to enact a law that would help the government generate revenues but not at the expense of the poor.

With a heavy heart, he voted "yes" on the bill as he believed that it would be for the common good.

#### **APPROVAL OF SENATE BILL NO. 1950 ON THIRD READING**

In view of the presidential certification, upon motion of Senator Pangilinan, there being no objection, the Body considered, on Third Reading, Senate Bill No. 1950.

Pursuant to Section 67, Rule XXIII of the Rules of the Senate, upon motion of Senator Pangilian, there being no objection, Secretary Yabes read only the title of the bill, to wit:

AN ACT AMENDING SECTIONS 27, 28, 34, 106, 108, 109, 110, 111, 112, 113, 114, 116, 117, 119, 121, 125, 148, 151, 236, 237 AND 288 OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES.

Secretary Yabes called the roll for nominal voting.

#### **RESULT OF THE VOTING**

The result of the voting was as follows:

#### *In favor*

Angara	Magsaysay
Arroyo	Osmefia
Biazon	Pangilinan
Drilon	Recto
Enrile	Revilla
Flavier	Roxas
Gordon	Villar

#### *Against*

Cayetano	Lacson
Ejercito Estrada (J)	Madrigal
Ejercito Estrada (L)	Pimentel

#### *Abstain*

None

With 14 senators voting in favor, six against, and no abstention, the Chair declared Senate Bill No. 1950 approved on Third Reading.

#### **CONFERENCE COMMITTEE ON SENATE BILL NO. 1950 AND HOUSE BILL NO. 3555**

Upon nomination by Senator Pangilinan, there being no objection, Senate President Drilon designated the following as members of the Senate panel in the Bicameral Conference Committee on the disagreeing provisions of Senate Bill No. 1950 and House Bill No. 3555: Senators Recto, Villar, Arroyo, Gordon and Roxas on the part of the Majority; and Senators Osmefia, Enrile, Angara and Madrigal on the part of the Minority.

#### **REQUEST OF SENATORS ROXAS AND GORDON**

Senator Roxas suggested the addition of Senator Biazon as member of the Bicameral Conference Committee on the part of the Majority and that the Minority also nominate an additional conferee.

Senator Gordon also requested that Senator Biazon be included in the Bicameral Conference Committee.

#### **SUSPENSION OF SESSION**

Upon motion of Senator Pangilinan, the session was suspended.

*It was 10:41 p.m.*

*W*

**RESUMPTION OF SESSION**

At 10:42 p.m., the session was resumed.

Senator Roxas withdrew his membership from the bicameral conference committee, explaining that his personal schedule might prevent him from attending the conference.

That being the case, the Chair designated Senator Biazon as member of the bicameral conference committee replacing Senator Roxas.

**HOUSE CONCURRENT RESOLUTION NO. 16**

Upon motion of Senator Pangilinan, there being no objection, the Body considered 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.

Secretary Yabes read the text of the resolution, to wit:

RESOLVED BY THE HOUSE OF REPRESENTATIVES, THE SENATE CONCURRING, That both Houses of the Congress of the Philippines hold a joint session on April nineteen, twenty hundred and five, at four in the afternoon in the Session Hall of the House of Representatives, to receive and hear the address of His Excellency Pervez Musharraf, President of the Islamic Republic of Pakistan.

**ADOPTION OF HOUSE CONCURRENT RESOLUTION NO. 16**

Upon motion of Senator Pangilinan, there being no objection, House Concurrent Resolution No. 16 was adopted by the Body.

**HOUSE CONCURRENT RESOLUTION NO. 17**

Upon motion of Senator Pangilinan, there being no objection, the Body considered House Concurrent Resolution No. 17, 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.

Secretary Yabes read the text of the resolution, to wit:

RESOLVED BY THE HOUSE OF REPRESENTATIVES, THE SENATE CONCURRING, That both Houses of the Congress of the Philippines hold a joint session on April twenty-seven, twenty hundred and five, at four-thirty in the afternoon in the Session Hall of the House of Representatives, to receive and hear the address of His Excellency Hu Jintao, President of the People's Republic of China.

**ADOPTION OF HOUSE CONCURRENT RESOLUTION NO. 17**

Upon motion of Senator Pangilinan, there being no objection, House Concurrent Resolution No. 17 was adopted by the Body.

**MANIFESTATION OF SENATOR PANGILINAN**

Senator Pangilinan manifested his desire to submit a written explanation of his vote on Senate Bill No. 1950.

**REQUEST OF THE CHAIR**

The Chair requested the Majority Leader to inform his counterpart in the House of Representatives about the request of the Minority Leader that in the seating arrangement during the joint sessions, only the presiding officers of both Houses be allowed to sit in the podium and that the visitors be escorted at the appropriate time to address the Joint Assembly.

Senator Pangilinan assured the Chair that he would relay to his counterpart the said request.

**PROPOSED SENATE RESOLUTION NO. 234**

Upon motion of Senator Pangilinan, there being no objection, the Body considered Proposed Senate Resolution No. 234, entitled

A RESOLUTION URGING THE DEPARTMENT OF FOREIGN AFFAIRS TO INVESTIGATE THE APPARENT VIOLATIONS OF THE PROVISIONS OF THE VIENNA CONVENTION ON DIPLOMATIC RELATIONS AND INTERNATIONAL PRINCIPLES OF RECIPROCITY COMMITTED BY THE UNITED STATES CUSTOMS SERVICE DURING THE DIPLOMATIC MISSION OF SENATOR LUISA P. EJERCITO ESTRADA TO THE UNITED STATES.

**ADOPTION OF PROPOSED SENATE  
RESOLUTION NO. 234**

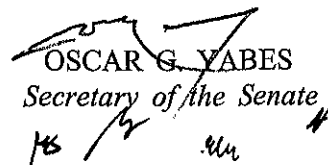
Upon motion of Senator Pangilinan, Proposed Senate Resolution No. 234 was unanimously adopted.

**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 Monday, April 18, 2005.

*It was 10:51 p.m.*

I hereby certify to the correctness of the foregoing.

  
OSCAR G. YABES  
Secretary of the Senate

Approved on April 20, 2005