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SESSION NO. 83

Tuesday, May 10, 2005

**THIRTEENTH CONGRESS
FIRST REGULAR SESSION**

SESSION NO. 83
Tuesday, May 10, 2005

CALL TO ORDER

At 4:21 p.m., the Senate President, Hon. Franklin M. Drilon, called the session to order.

PRAYER

Sen. Alfredo S. Lim read the prayer delivered by Gen. Guillermo A. Picache on April 28, 2005 at the Kapihan sa Club Filipino:

Almighty and Eternal God, creator of the universe,

We come before Your holy presence today to thank You for all the good things that You have generously given us.

Lord, we praise and thank You for the gift of life as we express our tribute to faith, as well as love and prayer to our Holy Father, Pope Benedict XVI, born on April 16, 1927, and elected Pope three weeks ago.

Heavenly Father, we are gathered this morning among distinguished members of the Senate who are all incorruptible, just and honorable; and to discuss issues that uplift our beloved country which is sliding fast towards perdition because of corruption, profligacy and mismanagement of our officials who do not govern justly, do not uphold the law and do not live according to Your will.

Lord, You said that leaders of this kind will suffer sudden and terrible punishments, and indeed, many abusive officials have already suffered "karmaic" punishments.

We pray that You touch the hearts and minds and move the consciences of those deserving of Your wrath, touch their hearts with Your loving hands, lest the restive military and police retirees, the young soldiers and officers in the active service who sympathize with them, the poor and the hungry masses, 28 million of them per last

survey, the neglected and the dispossessed in our midst, resort to destabilization moves, food riots and worst chaotic bloody demonstrations.

Lord, let there be a REVOLUTION OF THE HEART in our land; strengthen the Filipino hearts once again, pluck the string of patriotism in our hearts, that we may discipline our lives to walk the difficult paths, rather than take the easier and convenient ones to pelf and wealth.

Lord, set us free from avarice, rapacity and corrupt tendencies and from the predicaments we are in and enable us to seek once more the true, the good, the beautiful, the noble, the just and the high ideals some of us have lost.

Amen.

ROLL CALL

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

Angara, E. J.	Lacson, P. M.
Arroyo, J. P.	Lapid, M. L. M.
Biazon, R. G.	Lim, A. S.
Cayetano, C. P. S.	Madrigal, M. A.
Defensor Santiago, M.	Magsaysay Jr., R. B.
Drilon, F. M.	Osmena III, S. R.
Ejercito Estrada, J.	Pimentel Jr., A. Q.
Ejercito Estrada L. L. P.	Recto, R. G.
Enrile, J. P.	Revilla Jr., R. B.
Flavier, J. M.	Roxas, M.
Gordon, R. J.	

With 21 senators present, the Chair declared the presence of a quorum.

Senator Villar arrived after the roll call.

Senator Pangilinan was on official mission abroad.

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APPROVAL OF THE JOURNAL

Upon motion of Senator Cayetano, there being no objection, the Body dispensed with the reading of the Journal of Session No. 82 and considered it approved.

CONFERENCE COMMITTEE REPORT ON SENATE BILL NO. 1950 AND HOUSE BILL NOS. 3555 AND 3705

Upon motion of Senator Cayetano, there being no objection, the Body considered the Conference Committee Report on the disagreeing provisions of Senate Bill No. 1950, 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;

House Bill No. 3705, entitled

AN ACT AMENDING SECTIONS 106, 107, 108, 109, 110, AND 111 OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES;

and House Bill No. 3555, entitled

AN ACT RESTRUCTURING THE VALUE-ADDED TAX, AMENDING FOR THE PURPOSE TITLE IV OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES.

The Chair recognized Senator Recto to sponsor the report.

SPONSORSHIP SPEECH OF SENATOR RECTO

In sponsoring the report, Senator Recto read the following explanation of the Conference Committee on the disagreeing provisions of Senate Bill No. 1950 and House Bill Nos. 3555 and 3705:

1. The Senate version was adopted as the working draft;

2. Section 1 of the Senate version, amending Section 27 of the National Internal Revenue Code of 1997, as amended, was adopted as Section 1 of the reconciled version, with an amendment to replace the rate of "THIRTY TWO-PERCENT (32%)" with "THIRTY PERCENT (30%)" in subsection (A);

3. Section 2 of the Senate version, amending Section 28 of the Code, as amended, was adopted as Section 2 of the reconciled version with the following amendments:

3.1 The rate of "THIRTY-TWO PERCENT (32%)" was changed to "THIRTY PERCENT (30%)" in subsections (A)(1) and (B)(1);

3.2 The last proviso in subsection (B)(5)(b) was amended to read as:

"PROVIDED, THAT EFFECTIVE JANUARY 1, 2009, THE CREDIT AGAINST THE TAX DUE SHALL BE EQUIVALENT TO FIFTEEN PERCENT (15%), WHICH REPRESENTS THE DIFFERENCE BETWEEN THE REGULAR INCOME TAX OF THIRTY PERCENT (30%) AND THE FIFTEEN PERCENT (15%) TAX ON DIVIDENDS;"

4. Section 3 of the Senate version, amending Section 34 of the Code, as amended, was also adopted as Section 3 of the reconciled version with an amendment to replace the rate of "THIRTY-EIGHT PERCENT (38%)" with "THIRTY-THREE PERCENT (33%)" in the last proviso of subsection (B)(1);

5. Section 4 of the Senate version, which amends Section 106 of the Code, was adopted as Section 4 of the reconciled version with the following amendments, to wit:

5.1 A proviso was added in subsection (A) after the word "transferor;" to read as follows:

"PROVIDED, THAT THE PRESIDENT, UPON THE RECOMMENDATION OF THE SECRETARY OF FINANCE, SHALL, EFFECTIVE JANUARY 1, 2006, RAISE THE RATE OF VALUE-ADDED TAX TO TWELVE PERCENT (12%), AFTER ANY OF THE FOLLOWING CONDITIONS HAS BEEN SATISFIED:

(i) VALUE-ADDED TAX COLLECTION AS A PERCENTAGE OF GROSS DOMESTIC PRODUCT (GDP) OF THE PREVIOUS YEAR EXCEEDS TWO AND FOUR-FIFTH PERCENT (2 4/5%) OR

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(ii) NATIONAL GOVERNMENT DEFICIT AS A PERCENTAGE OF GDP OF THE PREVIOUS YEAR EXCEEDS ONE AND ONE-HALF PERCENT (1 ½%).”

5.2 Subsection (A)(2)(a)(6) was reworded to read:

“(6) THE SALE OF GOODS, SUPPLIES, EQUIPMENT AND FUEL TO PERSONS ENGAGED IN INTERNATIONAL SHIPPING OR INTERNATIONAL AIR TRANSPORT OPERATIONS.”

5.3 Subsection (D) and paragraph (1) thereof were deleted and thereafter the remaining paragraphs (2) and (3) became as subsections (D) & (E), respectively;

6. A new Section was introduced seeking to amend Section 107 of the Code, to become Section 5 of the reconciled version, to wit:

“SEC. 5. Section 107 of the same Code, as amended, is hereby further amended to read as follows:

“SEC. 107. *Value-Added Tax on Importation of Goods.* –

(A) *In General.* – There shall be levied, assessed and collected on every importation of goods a value-added tax equivalent to ten percent (10%) based on the total value used by the Bureau of Customs in determining tariff and customs duties, plus customs duties, excise taxes, if any, and other charges, such tax to be paid by the importer prior to the release of such goods from customs custody: *Provided*, That where the customs duties are determined on the basis of the quantity or volume of the goods, the value-added tax shall be based on the landed cost plus excise taxes, if any: *PROVIDED, FURTHER*, THAT THE PRESIDENT, UPON THE RECOMMENDATION OF THE SECRETARY OF FINANCE, SHALL, EFFECTIVE JANUARY 1, 2006, RAISE THE RATE OF VALUE-ADDED TAX TO TWELVE PERCENT (12%), AFTER ANY OF THE FOLLOWING CONDITIONS HAS BEEN SATISFIED:

(i) VALUE-ADDED TAX COLLECTION AS A PERCENTAGE OF GROSS DOMESTIC PRODUCT (GDP) OF THE PREVIOUS YEAR EXCEEDS TWO AND FOUR-FIFTH PERCENT (2 4/5%) OR

(ii) NATIONAL GOVERNMENT DEFICIT AS A PERCENTAGE OF GDP OF THE PREVIOUS YEAR EXCEEDS ONE AND ONE-HALF PERCENT (1 ½%).

(B) x x x .”

7. Section 5 of the Senate version, amending Section 108 of the Code, was rehashed and adopted as Section 6 of the reconciled version, with the following amendments:

7.1 A proviso was added in subsection (A) after the word “properties:” to read as follows:

“*PROVIDED*, THAT THE PRESIDENT, UPON THE RECOMMENDATION OF THE SECRETARY OF FINANCE, SHALL, EFFECTIVE JANUARY 1, 2006, RAISE THE RATE OF VALUE-ADDED TAX TO TWELVE PERCENT (12%), AFTER ANY OF THE FOLLOWING CONDITIONS HAS BEEN SATISFIED:

(i) VALUE-ADDED TAX COLLECTION AS A PERCENTAGE OF GROSS DOMESTIC PRODUCT (GDP) OF THE PREVIOUS YEAR EXCEEDS TWO AND FOUR-FIFTH PERCENT (2 4/5%) OR

(ii) NATIONAL GOVERNMENT DEFICIT AS A PERCENTAGE OF GDP OF THE PREVIOUS YEAR EXCEEDS ONE AND ONE-HALF PERCENT (1 ½%).”

7.2 The second paragraph of subsection (A) was reworded to read:

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

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cargoes for hire and other domestic common carriers by land [, air and water] relative to their transport of goods or cargoes; COMMON CARRIERS BY AIR AND SEA RELATIVE TO THEIR TRANSPORT OF PASSENGERS, GOODS OR CARGOES FROM ONE PLACE IN THE PHILIPPINES TO ANOTHER PLACE IN THE PHILIPPINES; SALES OF ELECTRICITY BY GENERATION COMPANIES, TRANSMISSION, AND DISTRIBUTION COMPANIES; services of franchise grantees of ELECTRIC UTILITIES, telephone and telegraph, radio and television broadcasting and all other franchise grantees except those under Section 119 of this Code and non-life insurance companies (except their crop insurances), including surety, fidelity, indemnity and bonding companies; and similar services regardless of whether or not the performance thereof calls for the exercise or use of the physical or mental faculties. The phrase 'sale or exchange of services' shall likewise include:"

- 7.3 Subsection (B)(2), (4), (6), and (7) were reworded to read as follows:

"(2) Services other than those mentioned in the preceding paragraph RENDERED TO A PERSON ENGAGED IN BUSINESS CONDUCTED OUTSIDE THE PHILIPPINES OR TO A NONRESIDENT PERSON NOT ENGAGED IN BUSINESS WHO IS OUTSIDE THE PHILIPPINES WHEN THE SERVICES ARE PERFORMED, the consideration for which is paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas* (BSP);"

"(4) Services rendered to [vessels] PERSONS engaged [exclusively] in international shipping OR INTERNATIONAL AIR TRANSPORT OPERATIONS, INCLUDING LEASES OF PROPERTY FOR USE THEREOF; [and]"

"(6) TRANSPORT OF PASSENGERS AND CARGO BY AIR OR SEA VESSELS FROM THE PHILIPPINES TO A FOREIGN COUNTRY; AND"

"(7) SALE OF POWER OR FUEL GENERATED THROUGH RENEWABLE SOURCES OF ENERGY SUCH AS, BUT NOT LIMITED TO, BIOMASS, SOLAR, WIND, HYDROPOWER, GEOTHERMAL, OCEAN ENERGY, AND OTHER EMERGING

ENERGY SOURCES USING TECHNOLOGIES SUCH AS FUEL CELLS AND HYDROGEN FUELS."

- 7.4 The entire subsection (C) was deleted.

8. Section 6 of the Senate version, amending Section 109 of the Code, was also adopted as Section 7 of the reconciled version with the following amendments:

- 8.1. Subsections (K), (P), and (Q) were amended to read as follows:

"[(q)] (K) Transactions which are exempt under international agreements to which the Philippines is a signatory or under special laws, except those under Presidential Decree No. [s. 66,] 529 [and 1590];"

"[(w)] (P) Sale of real properties not primarily held for sale to customers or held for lease in the ordinary course of trade or business, or real property utilized for low-cost and socialized housing as defined by Republic Act No. 7279, otherwise known as the Urban Development and Housing Act of 1992, and other related laws, RESIDENTIAL LOT VALUED AT ONE MILLION FIVE HUNDRED THOUSAND PESOS (P1,500,000) AND BELOW, house and lot, and other residential dwellings valued at TWO MILLION FIVE HUNDRED THOUSAND PESOS (P2,500,000) [One million pesos (P1,000,000)] and below: *Provided*, That not later than January 31, [st of the calendar year subsequent to the effectivity of this Act and each calendar year] 2009 AND EVERY THREE (3) YEARS thereafter, the amountS HEREIN STATED [of One million pesos (P1,000,000)] shall be adjusted to [its] THEIR present valueS using the Consumer Price Index, as published by the National Statistics Office (NSO);"

"[(x)] (Q) Lease of a residential unit with a monthly rental not exceeding TEN THOUSAND PESOS (P10,000) [Eight thousand pesos (P8,000)]: *Provided*, That not later than January 31,[st of the calendar year subsequent to the effectivity of Republic Act No. 8241 and each calendar year] 2009 AND EVERY THREE (3) YEARS thereafter, the amount HEREIN STATED [of Eight thousand pesos (P8,000)] shall be adjusted to its present value using the Consumer Price Index as published by the National Statistics Office (NSO);"

- 8.2. Two new subsections were inserted to become subsections (S) and (T), to wit: *MS*

“(S) SALE, IMPORTATION OR LEASE OF PASSENGER OR CARGO VESSELS AND AIRCRAFT, INCLUDING ENGINE, EQUIPMENT AND SPAREPARTS THEREOF FOR DOMESTIC OR INTERNATIONAL TRANSPORT OPERATIONS;”

“(T) IMPORTATION OF FUEL, GOODS AND SUPPLIES BY PERSONS ENGAGED IN INTERNATIONAL SHIPPING OR AIR TRANSPORT OPERATIONS;”

- 8.3. Subsection (aa) was transposed to become subsection (U), to read as follows:

“(U) SERVICES OF BANKS, NON-BANK FINANCIAL INTERMEDIARIES PERFORMING QUASI-BANKING FUNCTIONS, AND OTHER NON-BANK FINANCIAL INTERMEDIARIES; AND”

- 8.4 The original subsection (z) was further amended and relettered as subsection (V) to read as:

“[(z)] (V) Sale or lease of goods or properties or the performance of services other than the transactions mentioned in the preceding paragraphs, the gross annual sales and/or receipts do not exceed the amount of ONE MILLION FIVE HUNDRED THOUSAND PESOS (P1,500,000) [Five hundred fifty thousand pesos (P550,000)]: *Provided*, That not later than January 31, [1st of the calendar year subsequent to the effectivity of Republic Act No. 8241 and each calendar year] 2009 AND EVERY THREE (3) YEARS thereafter, the amount HEREIN STATED [of Five hundred fifty thousand pesos (P550,000)] shall be adjusted to its present value using the Consumer Price Index as published by the National Statistics Office (NSO);”

9. Section 7 of the Senate version, amending Section 110 of the Code, was adopted as Section 8 of the reconciled version with the following amendments:

- 9.1. The phrase “except automobiles, aircraft and yachts” in subsection (A)(1)(a)(v) was deleted;
- 9.2. The amount of “SIX HUNDRED SIXTY THOUSAND PESOS (P660,000)” in the last proviso of subsection (A)(2)(b) was changed to “ONE MILLION PESOS (P1,000,000);”
- 9.3. Subsection (B) was reworded to read:

“(B) *Excess Output or Input Tax.* – If at the end of any taxable quarter the output tax

exceeds the input tax, the excess shall be paid by the VAT-registered person. If the input tax exceeds the output tax, the excess shall be carried over to the succeeding quarter or quarters: *PROVIDED*, THAT THE INPUT TAX INCLUSIVE OF INPUT VAT CARRIED OVER FROM THE PREVIOUS QUARTER THAT MAY BE CREDITED IN EVERY QUARTER SHALL NOT EXCEED SEVENTY PERCENT (70%) OF THE OUTPUT VAT: *PROVIDED, HOWEVER*, THAT any input tax attributable [to the purchase of capital goods or] to zero-rated sales by a VAT-registered person may at his option be refunded or credited against other internal revenue taxes, subject to the provisions of Section 112.”

10. Section 8 of the Senate version, amending Section 111 of the Code, was adopted as Section 9 of the reconciled version with an amendment to insert the phrase “AND PACKED NOODLE-BASED INSTANT MEALS” after the words “cooking oil” in subsection (B);

11. Section 9 of the Senate version, amending Section 112 of the Code, was adopted as Section 10 of the reconciled version with an amendment to replace the phrase “VARIABLE AND NON-VARIABLE BUSINESS” in the final proviso of subsection (A) with “ZERO-RATED AND NON-ZERO-RATED SALES”;

12. Section 10 of the Senate version, amending Section 113 of the Code, was entirely adopted as Section 11 of the reconciled version;

13. Section 11 of the Senate version, amending Section 114 of the Code, was adopted as Section 12 of the reconciled version with an amendment to reword subsection (C), to read as follows:

“(C) *Withholding of [Creditable] Value-Added Tax.* - The Government or any of its political subdivisions, instrumentalities or agencies, including government-owned or -controlled corporations (GOCCs) shall, before making payment on account of each purchase of goods [from sellers] and services [rendered by contractors] which are subject to the value-added tax imposed in Sections 106 and 108 of this Code, deduct and withhold [the] A FINAL value-added tax [due] at the rate of FIVE PERCENT (5%) [three percent (3%)] of the gross payment THEREOF [for the purchase of goods, and six percent (6%) on gross receipts for services rendered by contractors, on every

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sale or installment payment which shall be creditable against the value-added tax liability of the seller; or contractor: *Provided, however,* That in the case of government public works contractors, the withholding rate shall be eight and one-half percent (8.5%): *Provided, [further,]* That the payment for lease or use of properties or property rights to nonresident owners shall be subject to ten percent (10%) withholding tax at the time of payment. For [this purpose] PURPOSES OF THIS SECTION, the payor or person in control of the payment shall be considered as the withholding agent.
x x x .”

14. Sections 12, 13, 14, and 15 of the Senate version were adopted as Sections 13, 14, 15, and 16 of the reconciled version, respectively;

15. Sections 17 and 18 of the Senate version were also adopted as Sections 17 and 18 of the reconciled version;

16. Section 19 of the Senate version, amending Section 236 of the Code, was adopted as Section 19 of the reconciled version with an amendment to change “TWO (2) YEARS” to “THREE (3) YEARS” in paragraph (H);

17. Section 20 of the Senate version, amending Section 237 of the Code, was adopted as Section 20 of the reconciled version;

18. Section 21 of the Senate version was amended and adopted as Section 21 reconciled version, to read as:

“SEC. 21. Section 288 of the same Code, as amended, is hereby further amended to read as follows:

“SEC. 288. *Disposition of Incremental Revenues.* -

(A) x x x .

(B) x x x .

(C) x x x .

(D) *INCREMENTAL REVENUE FROM THE VALUE-ADDED TAX* - FIFTY PERCENT (50%) OF THE LOCAL GOVERNMENT UNIT'S SHARE FROM THE INCREMENTAL REVENUE FROM THE VALUE-ADDED TAX SHALL BE ALLOCATED AND USED EXCLUSIVELY FOR THE FOLLOWING PURPOSES:

1. FIFTEEN PERCENT (15%) FOR PUBLIC ELEMENTARY AND

SECONDARY EDUCATION, TO FINANCE THE CONSTRUCTION OF BUILDINGS, PURCHASES OF SCHOOL FURNITURE AND IN-SERVICE TEACHER TRAININGS;

2. TEN PERCENT (10%) FOR HEALTH INSURANCE PREMIUMS OF ENROLLED INDIGENTS AS A COUNTERPART CONTRIBUTION OF THE LOCAL GOVERNMENT TO SUSTAIN THE UNIVERSAL COVERAGE OF THE NATIONAL HEALTH INSURANCE PROGRAM;

3. FIFTEEN PERCENT (15%) FOR ENVIRONMENTAL CONSERVATION TO FULLY IMPLEMENT A COMPREHENSIVE NATIONAL REFORESTATION PROGRAM; AND

4. TEN PERCENT (10%) FOR AGRICULTURAL MODERNIZATION TO FINANCE THE CONSTRUCTION OF FARM-TO-MARKET ROADS AND IRRIGATION FACILITIES.

SUCH ALLOCATIONS SHALL BE SEGREGATED AS SEPARATE TRUST FUNDS BY THE NATIONAL TREASURY AND SHALL BE OVER AND ABOVE THE ANNUAL APPROPRIATION FOR SIMILAR PURPOSES.

E. THE AMOUNT OF FIFTEEN MILLION PESOS (P15,000,000) SHALL BE ALLOCATED FOR A PUBLIC INFORMATION AND EDUCATION PROGRAM TO BE ADMINISTERED BY THE BUREAU OF INTERNAL REVENUE, EXPLAINING CLEARLY TO BUSINESSES THEIR REGISTRATION, INVOICING AND REPORTING REQUIREMENTS UNDER THE VALUE-ADDED TAX RULES. SUCH PROGRAM SHOULD INCLUDE SEMINARS AND VISITS TO TAXPAYERS TO FAMILIARIZE THEM WITH THE TAX, AND THE DEVELOPMENT AND PUBLICATION OF EASY-TO-READ GUIDES ON THE VALUE-ADDED TAX.”

19. Paragraph (2) of Section 23 (Repealing Clause) of the Senate version was transposed as Section 22 of the reconciled version, to read as follows:

“SEC. 22. *Franchises of Domestic Airlines.* - The provisions of P.D. No. 1590 on the franchise tax of Philippine Airlines, *1/8*

Inc., R.A. No. 7151 on the franchise tax of Cebu Air, Inc., R.A. No. 7583 on the franchise tax of Aboitiz Air Transport Corporation, R.A. No. 7909 on the franchise tax of Pacific Airways Corporation, R.A. No. 8339 on the franchise tax of Air Philippines, or any other franchise agreement or law pertaining to a domestic airline to the contrary notwithstanding:

- (A) The franchise tax is abolished;
- (B) The franchisee shall be liable to the corporate income tax;
- (C) The franchisee shall register for value-added tax under Section 236, and to account under Title IV of the National Internal Revenue Code of 1997, as amended, for value-added tax on its sale of goods, property or services and its lease of property; and
- (D) The franchisee shall otherwise remain exempt from any taxes, duties, royalties, registration, license, and other fees and charges, as may be provided by their respective franchise agreement”.

20. Section 22 (Implementing Rules and Regulations) of the Senate version was adopted as Section 23 of the reconciled version;

21. The Repealing Clause of the reconciled version should read as follows:

“SEC. 24. *Repealing Clause.* - The following laws or provisions of laws are hereby repealed and the persons and/or transactions affected herein are made subject to the value-added tax subject to the provisions of Title IV of the National Internal Revenue Code of 1997, as amended:

- (A) Section 13 of R.A. No. 6395 on the exemption from value-added tax of National Power Corporation (NPC);
- (B) Section 6, fifth paragraph of R.A. No. 9136 on the zero VAT rate imposed on the sales of generated power by generation companies; and
- (C) All other laws, acts, decrees, executive orders, issuances and rules and regulations or parts thereof which are contrary to and inconsistent with any provisions of this Act are hereby repealed, amended or modified accordingly.”

22. Sections 24 (Separability Clause) and 25 (Effectivity Clause) were adopted as Sections 25 and 26 of the reconciled version, respectively.

Finally, the title of the reconciled version shall read:

“AN ACT AMENDING SECTIONS 27, 28, 34, 106, 107, 108, 109, 110, 111, 112, 113, 114, 116, 117, 119, 121, 148, 151, 236, 237 AND 288 OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES”

In case of conflict between the statements/ amendments stated in this Explanation and the provisions of the reconciled version in the accompanying Conference Committee Report, the provisions of the latter shall prevail.

INQUIRIES OF SENATOR LACSON

Asked by Senator Lacson why he sponsored the report “with a heavy heart,” Senator Recto replied that as the Chair of the Committee on Ways and Means as well as of the Senate panel in the Bicameral Conference Committee, it was his duty to defend the bill. He stated that he followed his conscience and did draft the standby provision which was a product of consensus-building. He stated that he worked with 22 senators, 250 congressmen and 30 conferees and knew that he cannot win or have his way all the time. Being a legislator, he said, is indeed a humbling experience.

Further, Senator Recto explained that almost 95% of the reconciled version was based on the Senate version and the only difference was that certain provisions proposed by the House were incorporated therein. He recalled that both Malacañang and the House wanted a 12% VAT, so the conferees agreed on a standby authority. He stated that while he wanted a higher hurdle rate, he was not able to get his way.

Asked how he stood up to the pressure, Senator Recto replied that the only pressure he felt came from the senators and the congressmen. He recounted that in the last two meetings, the Secretary of Finance was invited to explain why the President wanted a 12% VAT even if the same revenue target of P80 billion can be achieved with a 10% VAT. He said that it was understandable for the Executive to want more.

Noting that the country has borrowed P700 million a day in the first quarter of 2005, Senator Recto remarked that the debt stock would

continue to increase even with a 10% VAT or a 12% VAT since the principal is not being paid and only the interest is being settled. He cited that 32% or P280 to P290 billion of the national budget goes to interest expense while the budget for health is just P10 billion.

Senator Recto maintained that without a VAT bill and other necessary administrative measures, the country's debt would continue to increase. He recalled that in his sponsorship speech, he stated that there are a thousand reasons why the VAT bill should not be passed but there is one good reason to pass it, that is to unburden their children from paying for all the debts incurred.

Senator Lacson asserted that in setting certain conditions to accomplish something, there is either an offer of incentives or a threat of punishment. On the first condition that the tax collection as a percentage of GDP of the previous year should exceed 2.8%, asked who would be punished, Senator Recto explained that the first condition deals with the time frame, meaning the President cannot raise the VAT rate before January 1, 2006. He pointed out that the President and the House wanted a 12% VAT starting on July 1, 2005, when the inflation rate shall be at 8.5%, as world oil prices are increasing. He pointed out that at 12% VAT without mitigating measures like the reduction in excise taxes and in the franchise tax on power would be too much to bear.

Senator Recto argued that the impact on consumers would be lessened because the President can only raise the VAT after following certain conditions and only after January 1, 2006. He posited that the time frame would give the President time from now until January 1, 2006, to negotiate with creditors to arrange for the possible reduction in principal debt obligations. The second condition that he originally proposed, he explained, was a VAT tax effort of 4% on the belief that at 10% VAT, P95 billion should be generated at 100% efficiency. He revealed that the 4% tax effort was lengthily discussed in the meeting since he held that 10% VAT should be tried out first and, if it turns out to be insufficient, then an increase could be made. The negotiations with House ended up with the figure of 2 4/5 %, he added.

Asked if President Macapagal Arroyo participated in the meetings, Senator Recto replied that it

was Finance Secretary Purisima who attended the meeting. He noted that nothing prohibits the panel from inviting the alter ego of the President like Secretary Purisima.

Asked how much pressure was exerted by Malacañang, Senator Recto replied that pressure came from both Malacañang and the House but one had to be open to reason and logic.

On who is being threatened to be punished under the first condition, Senator Recto explained that it is not a punishment but a reward system, an incentive to the Chief Executive to be able to raise the VAT to 12%.

On the second condition, Senator Recto clarified that it stemmed from the financial values that his parents taught him: not to spend more than what one earns. He explained that the national government is spending more than what it earns that, in international standards, should be about 3% of GDP. He clarified that a deficit of more than P75 billion would allow the President to increase the VAT to 12% but this would mean government has to borrow P75 billion and the debt stock, again, would increase.

Senator Recto clarified that even if the bill providing for a rate of 10% VAT to 12% VAT is passed into law, the country may still not see the light at the end of the tunnel. Additionally, he cited calculations showing that even at 12%, the interest expense as a percentage of the budget would be 39% by 2009 which is much more than the current 32%.

Senator Lacson wondered what the basis for comparison would be considering that the standby authority for the President to raise the VAT rate from 10% to 12% takes effect on January 1, 2006, and the law takes effect in July 2005. Senator Recto replied that since the government makes the budget for one whole year, the basis would be the VAT collection for whole of 2005. However, he clarified that the President cannot immediately raise the rate to 12% on January 1, 2006, since it takes about 30 to 90 days to calculate the national government deficit or the VAT collection. Moreover, he explained that the hike from 10% to 12% was not intended to be automatically implemented in the original proposal submitted by the Senate panel as the President could calibrate the increase by only 1/2% to 1% to address any shortfall. *AR*

Upon further query, Senator Recto explained that it was not Malacañang but the legal luminaries in both the House and Senate who did not agree with the proposal. He said that the lawyer-members of the two Houses expressed concern that the Constitution would be violated if the authority to determine the VAT rate increase was delegated to the President. Further, he said that he was told that the President could hike the rate from 10% to 12% only one time.

ACKNOWLEDGEMENT OF THE PRESENCE OF GUESTS

At this juncture, Senator Cayetano acknowledged the presence of the members of the *Liga ng mga Barangay* of the Municipality of Dumarao, Capiz, headed by Vice Mayor Edgardo Arancillo.

INQUIRIES OF SENATOR LIM

At the outset, Senator Lim read into the record the column of Solita Collas-Monsod, entitled *Adding Insult to Injury*:

It is becoming increasingly obvious that our Congress – or more accurately, some of its very influential members – are up to their old tricks again, a variant of ye olde hand-is-faster-than-eye shell game. They complicate what is simple, thereby confusing the public (including, arguably, well-meaning colleagues), like the con artists who convince their marks of the benefit of particular schemes, when the hapless victims are actually being robbed.

Witness the latest sin tax. Our legislators pretended concern for the poor, (the poor should not be deprived of the simple joys of smoking or drinking by raising sin taxes). But keeping those taxes low actually hurt the poor; not discouraging smokers and drinkers, increases the risk of their health and livelihood as well as the risks to their families and the community through secondary smoke inhalation and alcohol-related violence; and the foregone revenues impair the ability of the government to pursue social and economic programs and to avoid financial collapse with the inevitable burden of the poor.

Not only does the new sin tax law harm the poor, it benefits special interests by retaining the “poison pill” provision which was inserted in the original law during previous bicameral committee negotiations. That poison pill freezes the base of the sin taxes at 1996 price levels, which costs the government at least minimum P20 billion annually in foregone tax revenues, per estimates of the Department of Finance and the Bureau of Internal Revenue, based on actual cigarette sales. It may be unnecessary to point out, but I will, anyway, that the person who has gained the most from this provision is Lucio Tan, who is into both cigarette (No. 1 in the country) and beer (No. 2) production.

To heap insult on injury, these legislators then claimed that the new sin tax bill would result in tax revenue increases of about P17 billion, when more credible independent estimates put this closer to between P4 and P6 billion. And they had the gall to show outrage when the international credit rating agencies and multilateral financial institutions described the bill as “watered-down,” with the former downgrading the Philippines credit rating anyway.

The same is happening to the new VAT measures. The reader will recall that the UP 11 paper estimated that in order to avert a financial collapse and put the country on a sustainable development path, the government had to implement revenue-raising or cost-cutting measures.
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Expanding the coverage of the VAT (i.e., eliminating exemptions) and increasing its rate from 10% to 12%, in that order, was one of the measures recommended, as were halving the congressional pork barrel, reducing the IRA allotments to local governments, and correcting the infirmities in the original sin tax law.

So, what happened to the VAT? The House of Representatives first raised the VAT rate to 12 percent, which, of course, raised a storm of (valid) criticisms that the increased tax burden will be borne by those

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unfortunate enough not to be included among the exemptions. The House labored some more and passed House Bill No. 3705 which Speaker Jose de Venecia claimed will "maximize new revenues while providing the necessary safety nets to protect the Filipino masses especially the poor from undue tax burden."

Unfortunately, the expected benefits from the pro-poor provisions – a multi-tiered VAT rate system (of 4, 6, 8 and 12 percent), no pass-on provisions, (prohibiting petroleum product sellers and power-generating companies from passing the tax burden to consumers), and sparing the poor from the VAT on doctors' and lawyers' bills – may not come to pass at all, either because of legal constraints or the lack of administrative capability from an already strained bureaucracy. Additionally, these provisions open the gates to graft and corruption as companies attempt, by hook or by crook, to be classified under lower tax categories, and officials use their discretionary powers to increase rent-seeking activities, with consequent loss of revenues. The road to hell is indeed paved with good intentions.

But while there are doubts about the benefits to the poor, no doubt about the additional benefits to the rich. Because the bill which purports to remove exemptions, **adds** another exemption. It exempts from VAT the activities of international air transport operations (importation or lease of aircraft, importation of fuel, aircraft goods and supplies). Plus, it zero-rates services rendered to these aircraft, which means that even as the operator pays no VAT, he is entitled to a refund to any input VAT he pays! Another insult to another injury to the Filipino people.

The beneficiaries of new exemptions under House Bill No. 3705 include the wealthiest families in the country. But the most conspicuous would be – guess who? – the same person who benefits from the watered down sin taxes, Lucio Tan.

Does the Senate version correct matters? Alas, no congratulations to the Senate this

time. The Senate version, if anything, gives special interest even more advantages.

Senator Lim expressed confusion over the conflicting figures submitted for the VAT computations.

For his part, Senator Recto opined that columnist might have been misinformed. He stated that there was nothing to consider because not only had he read the columns but that these were also considered when the committee report was crafted and when the bicameral conference was held. However, Senator Lim believed that Senator Recto ought to be reminded of the warning given by the columnist. He proceeded to quote a second column by Ms. Monsod, to wit:

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 the principal author, Sen. Ralph G. 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 of Representatives 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.

Whoa, there. While the Recto version looks and sounds good, it does not 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 collection) – and Recto's estimates of what his proposal

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will bring are not going to be an exception. So I'm not worried about that. What is very worrisome, though, is that the Public Finance Institute of the Philippines (PFIP), an independent entity headed by Dr. Angel Yiongco, 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.

Noting the wide disparity in the figures, Senator Lim said that although he was more inclined to believe the estimates of Senator Recto as he did not know Mr. Yiongco, the matter should be nonetheless clarified.

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 the 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 foregone 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 this estimate. 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 interindustry 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 the 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 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 expected increase in revenue of P64 billion, the government

gets little or nothing additional at best, and may experience a decrease in revenue at worst!

Senator Lim said that he has been advocating the repeal of the "poison pill provision" of the sin tax law. He pointed out that former Finance Secretary Jose Camacho posited that the government is losing P28 billion to P40 billion a year because the present tax rate is based on the 1996 value of cigarettes which was P5 compared to the current price of P25 to P28. He wondered why Congress could not repeal that "poison pill provision" which has caused P320 billion damage to the country for the last eight years. He said that such amount could have been applied to the country's foreign debts to reduce the 33% allocation for interest payment in the current budget.

Senator Lim recalled that the President, at the opening of Congress, requested the Legislature to cooperate in generating additional revenues. He expressed hope that the Committee would still be able to see the truth and answer why Fortune, Philip Morris and other big tobacco corporations are being protected to the detriment of ordinary taxpayers. In reply, Senator Recto pointed out that the sin tax law is not an issue and that the bicameral conference committee report can no longer be amended. He stressed that the issue is whether or not the bill should be passed into law. He stated that the points raised by Senator Lim had been taken up over and over during the deliberations on the bill and these have not fallen on deaf ears.

Senator Recto pointed out that the gross sales of the cigarette industry is P40 billion a year so it cannot be claimed that an additional P40 billion would be raised from the industry. He noted that the biggest shortfall ever of more than P50 billion occurred in 2002 when then Finance Secretary Camacho did not properly collect the taxes and it affected the whole economy.

Regarding the revenue estimates on VAT, Senator Recto stated that all pertinent data came from the Department of Finance and Senators Osmeña, Enrile, Madrigal, Arroyo, Villar, Biazon, and Gordon were members of the Senate panel. He noted that Secretary Purisima clearly stated that the 10% VAT, or the so-called Recto version, would yield P95 billion at 100% VAT efficiency; on the other hand, the 12% VAT would yield roughly P150 billion.

On Solita Monsod's position that it should be a single rate and that the rate should be increased first before the exemption is lifted, Senator Recto affirmed that the rate is indeed single which the President would probably increase to 12% by next year; in fact, what happened was the exemption was first lifted before the rate was increased. He stressed that he did not allow the excise tax on petroleum and the franchise tax on power to remain untouched, as had been proposed by Ms. Monsod and Malacañang. He revealed that whether the rate is 10% or 12% the increase in prices for consumer would be 6% to 7% for electricity, and diesel, 3%. He appealed to Senator Lim to support the bill whose provisions, except the decrease on excise taxes on socially sensitive products and franchise tax on power, were prescribed by the UP School of Economics. He added that the "no pass-on provision" is not included in the bill.

While he agreed to a certain extent with Senator Recto, Senator Lim said that he was only voicing out the concern of experts like former Finance Secretaries Camacho, Vicente Jaime, Jesus Estanislao, Ernesto Leung, Roberto de Ocampo, and Monsod that the computation is wrong. Adverting to 2003 financial report, he stated that the gap was not only P40 billion but P42,974.03 billion based on the 2000 current market price. He said that it is worth mentioning that prices in 2003 were lower compared to the present prices.

Senator Recto countered that he does not readily listen to finance secretaries whose advice led the government to over-borrow, hence, the national debt is already 136% of GDP.

REMARKS OF SENATOR DEFENSOR SANTIAGO

Senator Defensor Santiago stated that people live in an imperfect world, and the bill at issue is an imperfect bill. Quoting Justice Oliver Wendell Holmes who said that, "The life of the law has not been logic. It has been experience," she stated that if a man loves the law and loves to eat sausages, he should not watch either the law or the sausage being made, for in making the law, compromise is the buzzword or the keyword. Therefore, she said, no matter what reservations a legislator has, it is incumbent upon him/her to support the bill that has been produced at so much effort including nocturnal meetings of the bicameral conference

panel. She believed that "those who can, do; those who cannot, criticize."

Senator Defensor Santiago stated that she would vote for the bill notwithstanding that it is not a perfect bill in the light of her own proposition which she argued as strongly as she could during the deliberations. She submitted that VAT should be increased to 12% with a temporary exception for power and gasoline. She believed that power should not be subject to VAT at this time because by next year, under the EPIRA, a new tax called by the euphemism "universal charge" would be imposed on the Filipino public at the same time as the VAT. This, she stressed, is intolerable. Likewise, she believed that gasoline should not be placed under the VAT regime because oil prices all over the world have been rising.

As regards the standby authority of the President, Senator Defensor Santiago opined that it is constitutional because it is a principle in law that when the constitutionality of a statute is questioned in the Supreme Court, the presumption is in favor of constitutionality. She said that out of interdepartmental courtesy, the Supreme Court presumes that legislators know the law just as much as the Justices. She concluded that in such instances, Justices would hesitate to strike down a law on the basis of unconstitutionality. The second ground, she said, is that it is also an accepted principle in law that although the Constitution vests legislative power in Congress, that power can be delegated as long as two conditions are met: the statute must be complete when it leaves the legislative branch and goes to the Executive for signature; and the law must set standards which shall be sufficient enough to guide the action of the Executive. She said that the two requirements are present in the law as Senator Recto had explained.

With regard to Article VI, Section 28 paragraph (2) of the Constitution, Senator Defensor Santiago stated that since it does not mention domestic tax such as the VAT, others have pointed out that the power to determine VAT cannot be delegated by Congress. She posited that if the principle of statutory construction was applied, a law must be construed in the concept it is written. She believed that some have reasonably concluded that the constitutional provision is intended to apply only to international trade as it mentions tariff rates imposed on either exports or imports, export quotas,

tonnage and wharfage dues. However, she said that if such were the case, under the principle of statutory construction, the provision does not apply to domestic tax or the VAT.

On reports that a member of the House of Representatives would file a petition in the Supreme Court to have the VAT Law declared unconstitutional on the ground that its contents bear no recognizable affinity with the bills as originally proposed and discussed by both Houses of Congress, Senator Defensor Santiago cited the case of *Tolentino vs. Secretary of Finance* wherein the Supreme Court ruled that for as long as titles of the bills are recognizably similar to each other, what goes into the bills is the business of Congress. In view of the ruling, she believed that the proposed action of the congressman is already dead in the water.

Senator Defensor Santiago stated that although she finds the bill imperfect, she would still vote in favor of it. She said that it is imperative that the government raise the funds under the proposed Act before the end of the year, otherwise, there could be a fiscal crisis by next year.

REMARKS OF SENATOR PIMENTEL

Responding to the remarks of Senator Defensor Santiago, Senator Pimentel explained that Article VI, Section 28, paragraph (2) of the Constitution speaks of the authority of the President given by Congress to "fix within specified limits and subject to such limitations and restrictions as it may impose, tariff rates, import and export quotas, tonnage and wharfage duties, and other duties or imposts within the framework of the national development program of the Government." He observed that there is nothing in the provision that would justify giving the President standby authority over a tax measure. He posited that the authority is only given because imported goods have fluctuating values, therefore, it cannot be predicted what impost to levy when these come in from all over the world. He concluded that the standby authority granted in the reconciled bill is unconstitutional.

Senator Pimentel stated that the Minority would challenge the measure, specifically the standby authority, and they have from now until the end of the year to do it.

INQUIRIES OF SENATOR OSMEÑA

Asked by Senator Osmeña to clarify if Pagcor and other companies entering into ventures with the same would now be subject to corporate income taxes, Senator Recto replied in the affirmative as he opined that nobody should be exempt from corporate income tax.

Senator Osmeña suggested that the charter of Pagcor be studied. Senator Recto believed that if Pagcor is exempt from duties and VAT, the importations of its partners are not necessarily exempt from corporate income tax.

The Chair clarified that the partner of Pagcor in a joint venture is a separate entity. It said that if Pagcor enjoys exemptions, the same should not extend to the partner.

SUSPENSION OF SESSION

Upon motion of Senator Osmeña, the session was suspended.

It was 5:52 p.m.

RESUMPTION OF SESSION

At 5:53 p.m., the session was resumed.

Senator Osmeña read Section 13, subsection 2 of the Pagcor Charter to wit:

- a. *Franchise Holder.* No tax of any kind or form, income or otherwise, as well as fees, charges, or levies of whatever nature, whether national or local, shall be assessed, collected on the franchise on the corporation, meaning Pagcor, nor shall any form of tax or charge attached in any way to the earnings of the corporation, except a franchise tax of five percent (5%) of the gross revenue or earnings derived by the corporation from its operation under this franchise.

Such tax shall be due and payable quarterly to the national government and shall be in lieu of all kinds of taxes, levies, fees, or assessment of any kind, nature or description, levied, established or collected by any municipal, provincial and national government authority.

- b. *Others.* The exemption is herein granted for earnings derived from the operations conducted under the franchise, specifically from payment of any tax, income or otherwise, as well as any form of charges, fees, or levies, shall inure to the benefit of and extend to corporations, associations and agencies or individuals with whom the corporation or operation has any contractual relationship in connection with the operations of the casinos authorized to be conducted under this franchise and to those receiving compensation or remuneration from the corporation or operator as a result of essential facilities furnished or technical services rendered to the corporation or operator and goes on.

Senator Osmeña stated that from the language of the provision, anybody who does business with Pagcor enjoys the same exemptions on duties, fees, income tax and even municipal fees. He said that he proposed the removal of Pagcor from the exemption because it is unfair that Pagcor and those big corporations that do business with Pagcor do not pay any income taxes.

Adverting to the standby provision, asked why it was necessary for the Secretary of Finance to recommend an increase in VAT, Senator Recto replied that it is just procedural. He said that the idea is not new since Section 27 of the Tax Code provides "the President, upon recommendation of the Secretary of Finance may, effective January 1, 2000, allow corporations an option to be taxed at 15% of its gross income... after the following conditions have been satisfied."

As regards the option of the President not to raise the VAT rate on January 1, 2006 even if the Secretary of Finance recommended it, Senator Recto supposed that it would happen only if the Secretary did not recommend it.

Senator Osmeña argued that the conditions are two-fold: the value-added tax collection as a percentage of GDP of the previous year must exceed 2 4/5% and the national government deficit as a percentage of the GDP, of the previous year must exceed 1 1/2%.

Asked if it is a must that one or all the conditions must be met, Senator Recto replied that it

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could be either one of the conditions in which case, the President would be mandated to raise the VAT rate to 12%. He said that while he preferred that all the conditions be met, the conferees decided otherwise.

On whether President Macapagal Arroyo has the option to raise the VAT to either 10.5%, 11% or 12%, Senator Recto replied that it is either 10% or 12%.

Upon further query, Senator Recto said that the VAT collection as a percentage of the GDP was 2 4/5% in 2004. He clarified that the provision speaks of "exceeding" 2 4/5%.

Senator Osmeña posited that with the lifting of the exemptions it stands to reason that the VAT collection as a percentage of the GDP would be much higher than 2.5%, thus, if the government collected more, then it would be allowed to tax more. Senator Recto agreed, adding that such is the reason why it was placed at a low of 2 4/5%.

Senator Osmeña, however, disagreed as he said that the VAT collection is roughly about P138 billion if it is based on a P5.3 trillion economy. Senator Recto pointed out that the standby authority was one of the suggestions made in caucus, adding that the idea was whether to have a low bar, a medium bar or a high bar. He remarked that in a way, it is an incentive because the rate would be increased if collections were made. However, he noted the public's demand that before raising taxes, government should collect them first.

Senator Osmeña remarked that the 2 4/5% is lower than the present collection rate target even without a VAT bill since the target was P175 billion as the Secretary of Finance himself maintained. However, Senator Recto clarified that it is the actual VAT collection effort as a percentage of GDP.

Senator Osmeña argued that, in effect, the Congress is giving a target of P138 billion when DoF itself said that its target was P175 billion. Senator Recto doubted the statement of the DoF Secretary as regards the 25% targeted increase since this is only possible if the inflation rate went up by 17%. Senator Osmeña opined that the DoF is being rewarded for a low collection rate and suggested that the department be given an incentive

if the P175 billion targeted this year would be collected without the increase in VAT.

Senator Recto reiterated that his original position was a VAT tax effort of 4%, however, the conferees compromised and it was reduced to 2 4/5%. He noted that the difference of 2 4/5% and 4% is P5 billion at 10% VAT.

On the projected national government deficit this year, Senator Recto explained that at first, Malacañang and the House wanted the Consolidated Public Sector Deficit (CPSD) pegged at 1% which was too low. He recalled that he disagreed to the proposal because taxes relate to the national government deficit and not to the CPSD that includes the deficits of the local government and the GOCCs.

Considering that the Philippines is a highly indebted country, Senator Recto preferred a national government deficit of 2.5%; however, he said that the rate arrived at was 1½% as a product of compromise and consensus.

Asked about the projected national government deficit in nominal terms, Senator Recto replied that it was roughly P178 billion to P180 billion or 3.8% of P5.3 trillion. Senator Osmeña calculated that ½% of said amount is roughly P75 billion to P80 billion. Senator Recto pointed out with P80 billion on the deficit side, VAT could still be raised from 10% to 12% since the P80 billion would still be borrowed.

Citing lines 20 to 24, page 8 of the report, Senator Osmeña inquired if the provision means that any service consumed outside the country by anyone with a business abroad is zero-rated. Senator Recto replied in the affirmative.

On "services rendered to persons engaged in international shipping or international air transport operations including leases of property for use thereof," Senator Osmeña inquired if this includes domestic sales. Senator Recto replied in the negative, stating that Section 112 identifies products that are, in effect, exported or consumed externally or the transport of passengers and cargo from the Philippines that are zero-rated. He confirmed that it is allocated ratably between zero-rated and non-zero-rated.

Replying to queries on the importation of power or fuel-generated through renewable sources of *me*

energy particularly "biomass," Senator Recto said that they would be subject to VAT if they are imported and the tax refunded if they are zero-rated.

Adverting to lines 25 to 27, page 14, asked whether "automobiles, aircraft and yacht" are bracketed, Senator Recto replied in the affirmative. He clarified that the provision is found in the House version, disclosing that during the meeting, it was explained that if such are used for trade or business and the importers paid VAT on them, then the VAT input should be creditable.

Noting that a businessman could import yachts for chartering for tourists and his VAT input should be creditable, Senator Osmeña queried if the business should be credited in case the person used the yachts for pleasure. Senator Recto noted that if the yachts were used otherwise, then there is no VAT output, thus, there is no credit.

As regards the rent-a-car business, Senator Recto stated that VAT is already paid upon the importation or the purchase of an automobile; if it is rented out to a client, then the owner deducts his VAT input and remits the difference to the government.

On the observation that the owner can load up on the VAT input only on the sales of services, Senator Recto replied that it does not really matter since the owner already paid the VAT in advance when he imported the vehicle.

Adverting to the provision on *Excess Output or Input Tax*, asked if the input tax would include the VAT input which was not credited the previous year, Senator Recto replied in the affirmative. Senator Osmeña recalled that the original Senate amendment placed the percentage rate at 90% but apparently, the conferees agreed on 70%. He said that at a future date, the provision could be amended to restore the 90% as originally proposed. Senator Recto admitted that the 3% gross tax was one of the imperfections of the bill. He pointed out that those with a lower gross margin would be affected.

Reiterating that the DoF targeted a P175 billion collection for 2005, Senator Osmeña observed that the Senate version would have generated P95 billion at 100% efficiency. He added that P65 billion at 70% efficiency was a factor that the DoF claimed to be realistic and possible to collect. He posited that if the Senate bill had been passed in the Conference

Committee as is, it is safe to assume that the P175 billion plus the P65 billion would have brought the total VAT collection to P240 billion. Assuming that the President would increase VAT from 10% to 12% in January 2006, he stated that it means a 20% or P48 billion increase in VAT collection, therefore, government could easily target a P288 billion revenue for 2006.

Senator Osmeña pointed out that the impact of the increase is P113 billion because under the standby provision being given to the President, the estimate is practically double what the Senate approved.

On whether the Finance Secretary indicated to the Senate that only P65 billion in incremental revenues is needed but there was some arm-twisting from the Bigger House, Senator Recto agreed.

To the observation that the way the Members of the Bigger House conducted themselves was a slap on the face or a pinch on the Senate, Senator Recto stated that it was a shock to him and other conferees that the Bigger House and the Executive department wanted more than P65 billion. Nevertheless, he said that government needs all the revenues it could get to reduce the deficit and fund certain infrastructure and social projects.

Asked how the Senate would take this in view of the fact that the Executive department is asking the Senate to consider several tax measures, Senator Recto stated that there would be no other tax measures to be considered except for the fiscal incentives bill. However, he said that if the Bigger House passes a revenue measure and it is transmitted to the Senate, he is obligated to at least hear the measure although it does not necessarily mean that he would sponsor it on the floor.

Pointing out that Article VI, Section 27 (2) of the Constitution provides that "the President shall have the power to veto any particular item or items in an appropriation, revenue, or tariff bill," Senator Osmeña wondered how sure is Congress that the President would not veto provisions in the bill that she did not like.

Senator Recto stated that the President listens to the Finance Secretary who expressed willingness, during the meeting, to retain the provision on corporate tax rate increases. Nevertheless, *AL*

he said that if the President vetoes certain items in the bill, he would be willing to listen to the reaction of the Members.

Senator Osmeña believed that it was total insincerity, deceit and mendacity on the part of the Finance Secretary and the President to ask for P65 billion initially and ask double the amount after the bill was passed by the Senate. Giving what the President wants, he pointed out, is like giving her a blank check to shape the tax bill. He said that if the corporate income tax rate provision is removed, the burden falls on the lower- and middle-income brackets.

MANIFESTATION OF THE CHAIR

The Chair manifested that there are no more inquiries on the report so the Body would be voting on it.

SUSPENSION OF SESSION

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

It was 6:30 p.m.

RESUMPTION OF SESSION

At 6:36 p.m., the session was resumed.

The Chair stated that every senator would be given the opportunity to explain his vote after the result of the nominal voting has been announced.

Thereupon, Secretary Yabes called the roll for nominal voting.

APPROVAL OF THE CONFERENCE COMMITTEE REPORT

The result of the voting was as follows:

In favor

Angara	Lapid
Biazon	Magsaysay
Cayetano	Recto
Defensor Santiago	Revilla
Drilon	Roxas
Flavier	Villar
Gordon	

Against

Arroyo	Lim
Ejercito Estrada (J)	Madrigal
Ejercito Estrada (L)	Osmeña
Enrile	Pimentel
Lacson	

Abstain

None

Submitted to a vote, with 13 senators voting in favor, 9 against, and no abstention, the Conference Committee Report on the disagreeing provisions of Senate Bill No. 1950 and House Bill Nos. 3705 and 3555 was approved.

MANIFESTATION OF SENATOR VILLAR

Senator Villar stated that he would just submit a written explanation of his vote.

EXPLANATIONS OF VOTES

The following Senators explained their votes:

By Senator Enrile

All my years in the Senate, I can hardly recall a more contentious piece of legislation than the one before us this afternoon. We spent many months discussing it in the Ways and Means Committee, and many months more debating it on the floor of the Senate. When we finally voted on it, there were recriminations. And when we finally met with our counterparts from the House in the bicameral conference, we spent weeks of further discussion before an acceptable version was finally hammered out.

Today, we have to make our individual decisions. Time has long passed. We can no longer skirt our duty to make a choice. Delay is fatal.

I likened our situation to that of a man afflicted with the serious heart ailment. He either goes through a life-threatening and chancy surgery for a heart bypass and hopefully, survive or wait for that fatal day when a massive heart attack will occur and possibly, he will die.

I was for a 10% value added tax. I favored the expansion of the coverage of the value added tax through a removal of many of the exemptions. I was for the removal of the zero rate for generation companies. I insisted on "no VAT" on electricity especially on electricity consumed directly by residential end users. This was in line with the position I took when we considered the passage of the EPIRA, Republic Act No. 9136 in June of 2001 in this Senate and with my political platform when I ran for a seat in the Senate in the national elections of May 2004. I was against the increase of the corporate income tax rate from 32% to 35%.

But all my proposals were, by and large, not adopted in the present measure under consideration. And because of the foregoing consideration, I voted *No* to the measure and let the people and history judge.

By Senator Ejercito Estrada (J)

Tayo po ay nahaharap sa isang mabigat na desisyon sa ating mga buhay bilang mga senador sapagkat sa kasalukuyan ay nahaharap tayo sa pagtalakay at pagpasa ng isang panukalang batas na maaaring maging dahilan ng mas lalong paghihirap ng ating sambayanan. Ito po ay ang kontrobersiyal na VAT bill.

Marami po ang nagsasabi na kinakailangang ipasa natin ito sapagkat ito ang makakapagpaangat ng pagtingin ng ating mga pinagkakautangan sa buong mundo at ito ay mag-aalis ng krisis pinansiyal sa ating pamahalaan.

Once again, the Members of this august Chamber are called upon to exercise the legislative powers granted to them by the fundamental law of the land. That is to pass judgment on the measure pending before us, the very controversial VAT bill.

Much has been said and done and in fact, it has resulted in polarizing Philippine society into two opposing camps.

From the onset, the VAT bill's journey through this august halls of the Senate was met with stiff resistance. From the committee

level and well into the plenary sessions, we have placed on record the arguments, the sentiments, the opinions, the projections and rationale for the passage of the VAT bill. At pagkatapos ng lahat ng ito, isang bagay na lamang ang natitira upang gawin at tupdin ng Mataas na Kapulungan na ito — ang hatulan kung ang panukalang ito ay ating isasabatas o ating ibabasura.

Hindi na kailangang pag-usapan pa ang bawat detalye ng panukalang batas na ito sapagkat sa aking kaisipan, ang VAT bill ay isang karagdagang pahirap sa ating mamamayan lalo na ngayon. Katakut-takot na pabigat sa buhay ang dumarating sa ating mga kababayan sa gitna ng walang humpay na pagtaas ng gasolina.

A miracle cure or not, I still harbor doubts on the efficacy of this administration-prescribed antidote. Kinakailangan kuno na ang panukalang batas na ito ay dapat ipasa. Ngunit sa aking pananaw, ito ay hindi kailanman dapat ipataw sa ating mga mahihirap na kababayan.

Ang panukalang batas na ito ay lalong magpapahirap sa lahat ng ating mga kababayan lalo na ang maliliit na kawani ng pamahalaan, magsasaka, mangingisda at buong masang Pilipino sapagkat ito po ang magiging dahilan ng pagtaas ng lahat ng bilihin na lalong magpapahirap sa mga karaniwang tao.

Ang pagkakaalis ng probisyong nagbabawal sa pagpapasa ng karagdagang VAT sa mga mamimili ay isang mariing dagok sa ating mga mamamayan sapagkat kitang-kita na po na ang karagdagang VAT ay ipapasa na naman sa ating mga kababayan. At bilang isang patunay na ang ating mga kababayan ay masusuong sa mas malalim na paghihirap ay ang karapatang ibinigay ng bicameral conference committee kay Gng. Arroyo na siyang magtatakda ng mga karagdagang VAT na aayon sa kanyang pag-iisip.

Kung ating pong hihimayin ang nakaraan, ako po ay nakakasigurong paghihirap na naman ng masang Pilipino ang darating sapagkat kailanman ay hindi ko nakitaan ng pagmamalasakit ang kasalukuyang pamahalaan sa ating maliliit na mamamayan. *ff*

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My colleagues of this august Body, while I fully understand the depth and scope of my responsibilities as a duly elected legislator, I would like to place on record that there is a higher responsibility that has been placed on my shoulders by no less than the sovereign people of this land — and that is to scrutinize and evaluate every piece of proposed legislation that passes through this Chamber and ensure that it would redound to the ultimate benefit of the common *tao*.

This has been my solemn vow even before I became a member of this august Chamber — to exert all effort to craft and enact legislative measures that would not only sustain but perpetuate the Filipino way of life for all, rich or poor, young or old, privileged or underprivileged, and I do not intend to renege on that vow today. And with my conscience as my guide, I found the measure before us today to be wanting. Tinimbang ngunit kulang.

In my humble opinion, we need to craft a law that will balance the interests of government and the private sector. A law that will address the urgent need of government for fiscal stability without sacrificing the individual welfare of the people. Let us not be cowered into passing a bill just because the specter of a financial ruin, real or imagined, is dangled before us like a Damocles sword by the Executive Branch of the government.

Need I remind this Body that this is a tax measure? Once allowed to leave this Chamber and become a law, it will pervade every human activity in the country. Like Pandora's box, this measure, if approved, will take on a life on its own and encompass every facet of Filipino life. This, I cannot allow. I strongly believe we need to study this measure further in an objective and apolitical manner.

Sa akin pong palagay ay dapat nating panatilihin ang kasalukuyang umiiral na VAT sa halip na ito ay taasan. Napakarami pang paraan ang maaaring gawin ng pamahalaang Arroyo upang tumaas ang koleksiyon ng buwis. Kinakailangan lamang ang marubdob na pagpapatupad ng pagkolekta ng mga

buwis at bawasan ang malawakang anomalya sa pamahalaan. Hindi ito ang tamang panahon upang dagdagan natin ang paghihirap ng ating mga kapwa Pilipino.

Kaya ako po ay matinding tumututol sa pagpasa sa panukalang batas na ito at nawa ay huwag tayong sisihin ng ating mga kababayan sa darating na panahon na kung saan ay nakikinita ko na ang matinding pagdarahop ng ating mga kababayan.

By Senator Ejercito Estrada (L)

I express my *no* vote on the amended VAT bill.

The compromise version of the VAT bill is worse than the Senate version as it is now coupled with more loopholes and undesirable provisions. Now, I have more reason to believe that this proposed measure should not be a part of history as it will definitely cause hardships to all Filipinos.

I previously voted "No" for the passage of this bill on Third Reading. I stood up before this Chamber to express my dissatisfaction over the intents of the proposed measure. As I recall, I dissented because the proposed measure will affect the masses and it will cause massive corruption in the government.

Noon tinanong ko: Sino ba ang may kasalanan ng fiscal crisis na ito? Sino ba ang may kasalanan na walang pera ang kaban ng gobyerno? Hindi ang mamamayang Pilipino. Bakit sila ngayon ang pahihirapan natin?

Now, after the proposed measure has passed through the bicameral conference committee, it is now more burdensome to all Filipinos as it did not only give an opportunity for the eventual increase of the effective percentage by the President from 10% to 12% by year 2006. This provision technically gave Mrs. Arroyo special authority to increase the VAT after certain conditions are met. Knowing the present administration, these conditions will be surely met when the first day of January 2006 comes.

The deletion of the "no pass-on provision" on electricity and petroleum

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products like diesel and gasoline is what most of the Members of this Chamber are worried about. I, for one, am worried as the VAT will now be borne by the consumers who are the end users of the commodities. Juan de la Cruz will now try to endure the heat of summer and the darkness of the nights just to make sure that he or she will not get hit point-blank by the scrapping of this provision. This present government really pushed our masses to live within the times of the stone age or, let me say, the dark ages as Juan de la Cruz is now given the challenge to make the most out of his basic pay.

Senator Pimentel exerted all efforts in introducing this provision. But I am deeply saddened by the fact that the aforesaid provision could no longer be found in the proposed measure.

Why was it scrapped at the last minute? What prompted the members of the bicameral conference committee to remove the aforesaid provision? That is the only provision which most of our countrymen could smile about but where is it now?

My heart now bleeds as the VAT bill will surely hit the masses.

By merely examining the newspapers, the fares for all jeepneys already increased by P2. This is without the VAT bill yet. What are we going to expect then after this Chamber ratifies this piece of legislation? More wishful thinking?

We have heard enough promises and misrepresentations; we have endured enough pains. We do not need this VAT and I will stand against its ratification as I understand what the people feel and what their future will become. By continually imposing burdens on the people, it is not far from today that this country will be a country of robbers, crooks and haven of hoodlums.

By Senator Lim

Preliminary, Senator Lim requested that the two columns of Solita Collas Monsod entitled *Adding insult to injury* and *Not quite fill the bill*

and the document *Revenue Impact of the Proposed Tax Rate Schedule* be placed in the Record. He then proceeded to explain his vote.

For whom do the bells toll? Is it against the interest of the common *tao* or shall we keep the bells ringing in the ears of these corporations that are laughing all the way to the bank?

I am casting a *no* vote and this is my explanation.

According to the late President Ramon Magsaysay, "Those who have less in life should be given more in law." But what appears now, *sabi nga ni* Senator Jinggoy Estrada, "Tinimbang ka ngunit kulang," because the dice is loaded against one's favor dahil pag tinimbang po ay para doon sa mga mayayaman with vested interests.

I may sound a broken record or may even be chastised for being *makulit* or persistent in insisting on my proposal to repeal, if not amend, the seventh subparagraph of subsection C(4) of Section 145 — the infamous "poison pill provision" of Republic Act No. 8424, otherwise known as the Tax Reform Act of 1997. So be it!

But for as long as what I am fighting for is for the highest interest of the country and the most practical solution to our financial woes with no additional burden on our poor constituents but certainly a heavy toll on the fortunes and riches of the few oligarchs, I shall not rest in my crusade but will pursue it till kingdom come.

I just want to make it of record that whenever there is another proposed tax measure, the Chamber will find me standing here and again fighting for what I believe is the right thing to do — the repeal of the "poison pill provision."

Last year, while we were deliberating on the sin tax measure, which eventually became the new sin tax law, I took the opportunity of suggesting a very substantial improvement on the sin tax proposal by deleting the last paragraph of Section 145, which reads:

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"The classification of each brand of cigarettes based on its average net retail price as of October 1, 1996, as set forth in Annex D, shall remain in force until revised by Congress"

I urged the deletion because once we do away with the fixed 1996 retail price of selected cigarettes of favored manufacturers, we could generate a revenue of P40 billion annually, compared to what we are getting by merely increasing the sin tax rates where we are supposed to realize P10 billion to P12 billion a year. Even if we peg the annual losses in revenue at P40 billion since 1997 as a result of the "poison pill provision," in a span of eight years, the government suffered a loss of P320 billion in terms of uncollected revenues. Iyan po, kuwarta ng bayan na hindi natin kinukubra dahil sa pagtatanggol natin dito sa mga mayayamang nagpapayaman pa hanggang ngayon.

The government suffered a loss of P320 billion in terms of uncollected revenues. Had we only done that, I am sure our foreign debt could have been substantially reduced. I cannot conceive of any justifiable reason up to now why this government is stubborn in refusing to repeal said "poison pill provision," which evidently benefits only the selected brands of cigarettes and their makers.

Result! The administration complains that the revenue generated from the amended sin tax is inadequate. The remedy: It decided to increase the VAT rate from 10% to 12%. That is where we are now.

As we tackled the new VAT proposal, I revived my proposal to delete said paragraph of Section 145 with the hope that this Chamber would finally seriously consider my views; after all, the objective was to increase the VAT rate. However, since it involved an amendment to the Tax Code, I considered it opportune to incorporate my suggestion to delete the pertinent paragraph of Section 145, the "poison pill provision".

I thought that when we voted on the measure, a majority of our colleagues would

join me. However, on recounting, my proposal lost by a vote.

This is not a solitary position. No less than former Secretary Solita Monsod claims that we could collect an additional P22 billion to P40 billion revenues by amending or repealing the oft-repeated three-word "poison pill provision".

In this regard, former Secretary Camacho asserts that we lost P28 billion in potential tax take from Fortune, P10.8 billion from La Swerte, and P2.52 billion from Sterling, these mighty corporations.

Parenthetically, this view posited by Secretary Monsod that an additional revenue from P22 billion to P40 billion can be generated through the said repeal or amendment of the so-called "poison pill provision," enjoys the common sentiment of our five financial experts, namely: Jose Camacho, Vicente Jaime, Jesus Estanislao, Roberto de Ocampo and Ernesto Leung. All of them were former Secretary of the Department of Finance.

I do not begrudge the statement of the distinguished Senator from Batangas, Senator Recto, that he does not believe former Secretary Camacho. But for the record, Her Excellency, President Gloria-Macapagal Arroyo, believes in her Secretary of Finance because she appointed Secretary of Finance Camacho and right now she has also appointed Secretary Purisima. I realized then that my proposal has been gaining ground and eliciting support from our colleagues little by little. As a noted sweepstakes dealer's slogan runs: "Ang umaayaw ay hindi nagwawagi at ang nagwawagi ay hindi umaayaw." Hindi pa ako umaayaw dahil alam ko magwawagi din ang ating bayan sa kahulihulihan.

Frankly, it is not only in this august halls that I had fought tooth and nail for the repeal of the said "poison pill provision". In the many public conventions, conferences and gatherings, national in scope and significant in objectives, attended by men and women of various religious, economic and political persuasions, which I was privileged to address, I intoned with equal

vigor and determination, to push for the repeal of said "poison pill provision". Alas, the captivated or captive audience not only fully concurred with my proposal but pressed and urged me to continue my fight. "Ipaglaban mo ang kapakanan ng bayan, Senator Lim, and we are all behind you." As all right-thinking persons are behind us.

That is why I stand again this time reiterating my sentiments and those of the people for the repeal of the "poison pill provision".

Indeed, the pulse of the people and their plaintive cry is: "Stop increasing the VAT." Their clamor is: "Repeal the poison pill provision." People whom I talked and rubbed elbows with could not understand as I also could not understand why in the Senate and Congress for that matter, we are persistent in increasing the VAT rate or expanding its coverage when we do not expect substantial revenues from it. On the other hand, once we repeal the poison pill in the Tax Code we are sure to generate from P40 to P42 billion annually. Masyado naman tayong mayaman na ayaw nating tanggapin itong P40 billion to P42 billion.

Yes, I consider it a betrayal of the people's faith and trust if I shall not vote *NO* on the report. I hope that my colleagues will finally relent and join me in my vote with the hope that with the report's disapproval, it will leave this Congress with no recourse but to pursue my proposal to repeal the "poison pill provision" of the Tax Code.

I assure you that we will achieve the predicted revenue of P40 billion once that is done, will not only assuage the people's despair, especially the poor, for the worsening economic conditions we are experiencing now, but will brighten up our hope for international understanding on our sincerity in mending our poorly managed economy to bring about a favorable climate for investment, reforms and tranquility.

What is appalling, more than my objection to the revision of the VAT Law for its resultant burden on the poor and the underprivileged, is the final version

contained in the report of the Bicameral Conference Committee which gives the President of the Republic the discretion to increase the VAT rate to 12% in 2006.

I vehemently object to the report because of the objectionable flaws that characterize it, impinging as it does upon constitutionality and for obvious illegality.

First, vesting in the President the discretion and authority to increase or not to increase the VAT rate from 10% to 12% in 2006 constitutes an undue delegation of legislative power. Article VI of the Constitution vests in Congress alone the power to enact laws.

Second, vesting in the President the power to increase the VAT rate practically grants her the power to tax which is unconstitutional because under Section 24, Article VI, only Congress can impose taxes.

Third, whether in the Senate or House version of the new VAT bills that both Houses separately approved prior to sending them to the bicameral conference committee, no such provision delegating upon the President the power to increase the VAT rate at her discretion ever appeared, much less, discussed on the floors of both Chambers. Indeed, the reconciled version is unconstitutional because it practically arrogated unto itself the law-making power. The bicameral conference committee should limit itself to adjustment, reconciliation and harmonizing of the contrasting versions of both Chambers but not to introduce an entirely new subject or provision that was never deliberated upon, nay approved, on Third Reading by either Chamber. In so doing, the bicameral committee conference has violated Section 26, paragraph 2 of Article VI of the Constitution. The bicameral conference committee became a scam.

Lastly, by granting the President discretion to increase the rate later, Congress has abdicated its constitutional mandate to legislate. Kung ganoon ang mangyayari, buti pa buwagin na ang Kongreso, total hindi nito kayang gampanan ang kaniyang tungkulin.

Masakit mang isipin, ngunit ako ay nalulungkot na parang mawawalan ng

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saysay ang nakamit nating tagumpay na maibalik ang lehislatura noong EDSA I matapos tayong sumailalim sa mga dikretong ginawa lamang ng mga hindi halal na mambabatas.

Ngayon gusto nating ibigay sa Pangulo ang karapatang magpataw ng buwis sa ating mamamayan. Mali po ito.

We were elected by the people to perform our duties by enacting laws and safeguarding their rights and interests.

If we cannot decide now which rate to impose, why give that task to the President? Why burden her with that decision? Why are we shirking our responsibility? Why do we not convene again, deliberate fully, and decide at that opportune time the validity of increasing the rate to 12%?

Finally, I am strongly and vehemently objecting to the deletion of the no pass-on provision considering that it will unreasonably and unduly burden the poor. In short, it will only benefit the affluent corporations at the expense of the poor but hard working citizens.

I, therefore, strongly vote against the motion to ratify the report. I vote 40 billion times *no* to remind everyone of the P40 billion we are losing every year in favor of the cigarette manufacturers.

By Senator Madrigal

The clarion call of two centuries ago is known to us all: "Taxation without representation is tyranny!" But what happens when the representatives of the people are given no choice but to impose a tyrannical form of taxation? A callous Executive, imposing such a legislative agenda on the people's representation, is State-sponsored misery.

Congress has valiantly sought to harmonize the two versions of the Value Added Tax Bill. Honest differences in opinion exist, but are both primarily motivated by a desire to alleviate the tax burden of our people. But what is the response of the Executive to Congress' taking its legislative role seriously? Scornfulness and an overbearing insistence on a law

drafted according to its terms. The Executive Department has demonstrated that it is more interested in deliberating doing wrong, than on deliberately doing good.

All the efforts of the Executive are aimed at inflicting higher taxes on our people, the majority of whom are the poor. All the energies that the legislature, and specifically, this Chamber, have expended to serve the public interest, have been willfully set aside and thwarted. Thwarted by an administration only interested in covering up a basic flaw in its governance—the willful, and shameful refusal of the administration to admit the true fiscal situation of the country. The brainpower of our people's representatives has been shunted aside, and instead, Congress is being told, ordered, and instructed—not even asked—not to make life better for our people, but merely, and disgracefully, to frantically raise funds to make up for the persistent and irrational squandering of public funds by the administration.

That is why I say that both by commission and omission, the Executive Department is more interested in perpetrating, with single-minded deliberateness, a deliberate wrong. Even my colleagues in the Majority who were interested in deliberately doing good, who wanted to moderate the Executive's initial demands, have found that they have wasted their time deliberating on these bills. This steady, inexorable, steamroller-like pressure from the Executive, in order to crush the public under a greatly-expanded burden of taxes—how else can it be described except as callous? This unstoppable, pitiless, process undertaken by the Executive Department, despite a population groaning for a tax relief—how else, can it be referred to, except as the machinations of an indifferent representation? How else can the end result of the administration's efforts to get a VAT law strictly according to its own terms be construed as anything but inflicting misery on our people?

The Value Added Tax Bill reminds me of the fairy tale of the golden goose. In this case, the golden goose is the Filipino people, *AP*

and the golden eggs, the taxes they pay. Now the bills, in their various permutations and even mutations, laid before this Chamber are all for naught. The Palace has decreed that the only objective of this law is to put the squeeze on the golden goose, supposedly without actually strangling it. This attempt is wishful thinking. These bills will strangle our people, though perhaps for the wealthy and privileged, the choking sensation will be less than the fiscal suffocation immediately experienced by the poor.

We should always bear in our mind a remark made in the old session hall of this Chamber by Don Claro M. Recto. Referring to two equally obnoxious pieces of legislation emanating from both chambers of Congress, he quoted an old saying: "What is sauce for the goose is sauce for the gander." The phrase means, what is good enough for me is good enough for you. Corollary to this, in terms of the workings of Congress, is that what is not good enough for me should not be good enough for you: this is why we have a bicameral system. When the two chambers of Congress pass bills whose provisions are not in harmony, the differences are threshed out in the bicameral conference committee.

This presupposes, however, that both chambers are divided by an honest difference in opinion; that, furthermore, the two chambers are motivated by a desire to serve the country; that, finally, the Executive will leave Congress to do its legislative duty. But if at least one side is less interested in serving the people, and more concerned instead with serving the selfish interests of its patrons, then there is no honest difference of opinion and there can be no meeting of the minds; for to meet a selfishly-motivated version of a bill half-way is to surrender to the wrongful motivation of that bill. It would result in a tainted law, a law unfit for a democratic people.

We should ask ourselves: Are the present efforts of both Houses an attempt to come to an honest meeting of the minds, on the basis of the genuine interests and needs of our constituents? Or is it an effort to inflict on our constituents something inimical

to their lives, dangerous to our presently precarious economic situation, and injurious to the credibility and effectiveness of our mandates as public servants?

Both Houses of Congress have tried to come to a meeting of the minds so that the Executive's request for a way to generate around P60 billion in additional revenue would be met.

In a dastardly turn of events, the Executive department surprised the Senate panel with a pronouncement that this Chamber's version is unacceptable to the Palace because, apparently, raising P60 billion is not enough. The Executive Department now wants a revenue target of P100 billion-P200 billion. This, after both chambers had been asked to move with dispatch in order to pass a necessary law. This, after both chambers had sincerely and conscientiously operated under certain assumptions provided by the Executive Department itself.

In trying to justify this sudden and unilateral amendment to the legislative frame of reference, Secretary Purisima mentioned that our debt to GDP level is way out of line and not sustainable. The country is not operating in a benign environment and thus, our ability to borrow will be challenged. Reluctantly, Secretary Purisima said that if we do not raise revenue target to P100 billion-P200 billion in new revenue, then there will be a financial meltdown in the country.

This sudden, unilateral statement of desire on the part of the Executive guarantees that our goose is cooked, never mind whatever sauce the cooks have bubbling away, awaiting the gander. All of us in Congress have met time and again to find ways to alleviate the impact of our legislation on the poor. Instead, the Executive has made it clear that all it is interested in is maximizing income for the government through the maximum squeezing of the poor. The Executive behaves as if it assumes the Philippine Senate is a silly goose, incapable of recognizing an unfair deal. But we know an unfair deal when we

see it, and we know what a presidential diktat is when we experience it; and we know that our people will condemn us for succumbing to it.

The Executive's sudden change of its express intent, its last-minute modification of its stated aims, reduces our efforts in Congress to posturing; both sides, dominated by the Majority, are being made to appear as merely quibbling over whether the goose should be slowly starved to death in the hope the goose will squeeze out a few more golden eggs before it dies, or that the goose is slaughtered immediately on the misguided assumption that opening up its cadaver will reveal a cache of golden eggs. The assumption, in either case, that will be made by our people is the same; what Congress is really debating is what sauce is more palatable for covering up the dead goose.

We, in this Chamber, should not be a party to the propagation of a false assumption; we cannot be made parties to an administration scheme to inflict not only additional taxes, but in percentages and across-the-board amounts not even contemplated by either the Executive or Congress when the Palace first asked the legislature to tackle this topic.

When we were called upon to deliberate on the VAT, we were faced with some major problems, and asked to rescue the State when its bankruptcy was — and continues to be — a direct consequence of the policies of this administration.

The first big problem was that the collection efforts of the government continued to fall woefully short of where they should be, in terms of VAT collected. And this is without either Chamber of Congress touching a single provision governing VAT. The Executive Department has a great deal of explaining to do about its inability to get its bureaucrats to do their jobs—and yet, even as it misgoverns, we have been called upon to bail the Executive out.

The second big problem is that government is spending more and more, while its income is neither growing to meet expenses nor are its expenses being trimmed to

sufficiently take into account the sad fiscal state of the Republic.

Instead of a clarion call for responsible spending, efficient collections, and a rationalization of the tax policy of the State, the people of this country have been subjected to a confusing buzz emanating from the busy little bees of this administration. Bees all abuzz with buzzwords, but who seem only capable of producing honey. Honey for themselves, mind you, and not even a brisker turnover of the economy, so everyone's lives improve.

We all know the saying, "no money, no honey." After recklessly spending money to acquire the temporary love of its allies, this administration now bombards Congress with bills—the biggest bill of all being the bill of payments due for the cost of its wanton spending of the public's money, the tabulated costs of its reckless and addictive borrowings of funds.

Now we all know that the country's fiscal crisis is one of the biggest challenges confronting us today. What too few of us realize is how this year marks the eighth straight year that the National Government has been in a deficit. In the old days, this would have been two straight presidential terms; today, it is equivalent to a presidency and a third. Yet all the administration can do is propose a palliative remedy: the passage of so-called fiscal reform measures. The VAT measures before Congress are the third fiscal reform measure we have been asked to deliberate upon in a little less than a year. *I must ask: Is there rhyme, or reason to these measures, or are they band-aid piled upon band-aid?*

Since 1997, the national government borrowed more than what has been programmed for each year. In 2001, for example, programmed borrowing was at P177.3 billion but what was actually borrowed during the year was P274.8 billion, or P97 billion over the target.

The National Government deficit for the year 2001 was estimated at P85 billion but the government ended up with a P147 billion deficit instead — or a difference

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of P82 billion. Close to 100% under assumption of the shortage of funds; or close to 100% more than the government could already not afford.

If this government has been borrowing more than what has been programmed, then it is incontestably true that this administration is spending far, far, beyond its reach. To the ordinary worker who toils in the streets everyday, this is a situation impossible to justify. If the government is spending beyond its means, they ask, then why should they bear the burden?

I emphasize this point in view of the fact that even with the government's proposed tax measure in place, the projected revenue for this year can only amount to P758 billion. The total debt service (interest plus principal payments) will amount to P645 billion, or 85% of the government's projected revenues. That would leave the government a measly P113 billion to finance its 2005 budget of P606 billion, net of debt service. To cover the massive shortfall, government would again have to borrow, thus further adding to the debt burden.

Therefore, this bill does not address the problem of poor collections, and it attempts to sweep under the rug the causes of the problem it aims to fix. If government operates on a deficit, it is incumbent upon us to ask why. And if the reason is a bloated public debt that eats up collections, forcing us to borrow more to cover the shortfalls imposed by the debts of this Republic — why, it should be obvious that we must retire our debt. And perhaps retire the officials responsible for the metastizing amount of our foreign debt.

I believe I am not remiss in reminding my colleagues that it is incumbent upon us never to be careless in deliberating on proposed legislation. I know many of my colleagues pride themselves on avoiding terminological inexactitudes, as Churchill would have put it. This includes the duty to properly comprehend the nature of the taxes we propose to impose.

Finally, the present administration has inserted a provision in this bill, giving itself

authority that should never be given to it, and which, if given, would subvert the very principle of checks and balances in our constitutional system. The President demands, and the Majority seems slavishly inclined to give something called "standby authority."

The standby authority is a cunning insertion into the bill tantamount to Congress agreeing to a 12% VAT rate. The provision assures such a rate since it lays down a justification for action not on an eventuality, but a reality. To add insult to injury, this particular provision gives the President of the Philippines the power to impose a permanent policy of taxation; the proposed provision I have read is not time-bound. It imposes no limits, leaves no room for review, and provides for no oversight. This provision might as well permit a president to impose a 12% VAT rate if there are three sequential days of rain in a given month.

My colleagues in this Chamber know that I insist on Congress jealously guarding its powers of taxation, since they are part of the power of the purse which all legislatures must guard and defend as one of their most hard-earned and fundamental governing duties. Taxation is inherently a legislative function since it is an inherent power of sovereignty which resides in the people — the people who elect us as their representatives. Being legislative in nature, the power to tax then may not be delegated except under certain, clearly defined conditions and circumstances. We may, for example, delegate the power to tax to local governments, though in all cases, we may only delegate when allowed under the Constitution; and do any delegating when the delegation relates merely to administrative implementation of the law, the kind of implementation that, from time to time, may call for some degree of discretionary powers for other branches of government. But in every instance, the powers we delegate must be subject to a set of sufficient standards expressed by law, or implied from the policy and purposes of an enabling law.

The provision the administration wants is open-ended, insufficient in form and

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substance, and represents a surrender to the Executive of some of the most important powers of the legislature.

I must be clear about this: In asking for this law, Congress neither expected nor should be expected to approve a law surrendering its powers, and which reverses centuries of legislative practice in the handling of the power of taxation. This law attempts a legislative novelty, which is how rulers aiming to subvert the sovereignty of the nation, begin to creep toward dictatorship.

Why is it that this Chamber has been asked to attempt a travesty of the separation of powers, instead of fixing a defective state of affairs? In pressing Congress for action, the Executive has refrained from asking Congress to introduce reforms to the current system. The whole reason the Executive has demanded action from Congress is its claim that the current system is flawed. And yet, where are the fixes to the flaws? The Executive seems uninterested; callous; only interested in suddenly raising quotas, regardless of the consequences; only keen to arrogate for itself powers reserved for the legislature.

We are being asked to play deaf, dumb, and blind. We have been asked not to inquire into institutional lapses. We have been urged to turn a blind eye to the obvious weaknesses of the system, which range from insufficient collections and unrealized revenue because of opportunities given the public and officials to defraud the government. When we tried to correct the fundamental problem, which is a shortfall in government income, not by plugging the leaks, or reducing the debt that siphons off the vast majority of income earned, or even placing a debt cap on government borrowings, we have been told this is not the government's immediate concern. Instead, we have been told by the administration that our duty is to put an additional squeeze on the public; to add to the burdens of the poor, by favoring certain interests and industries; we have been commanded to forget about the distinct probability that industries faced with additional VAT payments will pass on their tax burden to an already burdened population.

In lobbying for its desired version of a VAT law, the administration has displayed the mentality of a torturer. It adopts the tried and tested methodology of professional torturers who torture their victims to the point of death, only to revive them and torture them some more. The Senate has passed a bill; and yet, in trying to integrate it with the version of the House, we have been asked to ignore our conscience, set aside our duties, and be slaves to the administration's selfish legislative desires.

I cannot support such strong arm, such pitiless, such terribly, awfully contemptuous behavior on the part of the Executive.

I therefore vote *NO* to the Bicameral Conference Committee Report. The moves of the Executive with regard to Congress' and this Chamber's efforts to do its duty and deliberate on these bills have been characterized by deceit and total dishonesty.

The sauce for the goose may be good for the gander in the eyes of the administration. But I, for one, will not be a party to such an effort. To ensure that, as far as our country and people are concerned, we are party to a law that says our goose is cooked, is a betrayal of the people we have been elected to serve. I will not betray our people. I will not inflict misery on the poor. I will not be a party to the administration's efforts to foist upon us the shame and dishonor that come as a result of the misadministration of the people's money.

MANIFESTATION OF SENATOR LACSON

Senator Lacson manifested that part of the explanation of his vote pays tribute to Senator Arroyo for his principled stand during the bicameral conference but since the latter was not around, he would submit a written explanation.

REMARK OF THE CHAIR

The Chair stated that Senators Angara and Osmeña would be invited to submit written explanations of their votes.

He

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EXPLANATIONS OF VOTES

(Continuation)

By Senator Roxas

I voted *yes* for this measure. Early on when the proposal for a VAT was first raised in this as well as in other fora, I, after having studied the matter, likened it to a chemotherapy for cancer for the patient.

The cancer that our country is presently enduring is the cancer of a weakened financial condition. This weakened financial condition manifests itself in the inordinately high percentage of the budget that we use simply to pay interest. The number is about one-third of the funds.

It is also manifested in various other vital signs if we will continue with the patient-doctor metaphor, other vital signs such as percentage of the GDP that is our national debt and so on and so forth.

This cancer, if untreated, will result in overwhelming and widespread misery for the entire nation. So it is the chemotherapy or surgery or whatever cure may be necessary so that we can excise this cancer, this cancer of a weakened financial condition.

And so, in the course of the deliberations, in committee as well as here in the plenary, this Representation endeavored, together with all the other colleagues, to draft as ideal a version of this cure as possible, so that Juan de la Cruz, while undergoing this chemotherapy, will not have to undergo inordinate pain or inordinate unnecessary cost.

In balancing out all of the various concerns and interests in working towards this idealized impositions, this Representation always proceeded from three basic values. First, the utility of the measure, the second is equity of the burden, and third is maintaining the incentive for domestic trade and commerce in the business and in the country so that the economy will continue to thrive even as we impose this chemotherapy on the cancer.

In the course of the debates, this Representation lost the vote on exempting

from VAT the power sector, and now it turns out from the bicameral conference committee report, this Representation lost his advocacy for maintaining a higher corporate income tax rate as a way of equalizing the burden *vis-à-vis* the ordinary consumer. And so, we come to an assessment of the utility or the use of this measure. We will still provide the cure that we sought in the beginning of the effort. I believe that, notwithstanding these failures, the lowering of the income tax from 30% which, I believe, is unnecessary in view of the burden that the rest of the people will have to share and in view of the VATing of the power sector, these two weaknesses still are insufficient to scuttle the measure.

We need this chemotherapy, the version that the bicameral conference committee is asking us to vote on is not the best that we could have done. But to not do it and to not vote for it could even be worse. Indeed, we need to strengthen our national financial condition because this is a platform for the delivery of service so that we can, in fact, create the jobs and incomes and livelihoods for Juan dela Cruz. The beginning and the end of all these is Juan dela Cruz. Unfortunately, Juan dela Cruz, together with the rest of the people, is going to bear the burden of this chemotherapy. But I believe that this chemotherapy is better than if we just allow Juan dela Cruz to continue on with the cancer unabated which shall definitely lead to his demise. Accordingly, I voted *yes*.

By Senator Cayetano

I thank the members of the Bicameral Conference Committee for their collective wisdom in including a provision that allocates a certain percentage of the incremental revenue from the VAT bill for programs in education, health, environment and agriculture. I have always supported economic reforms but have also been and will continue to push for policies and programs which address social issues at the same time. As I previously said in the explanation of my vote on the Senate version of the VAT bill, it should not be a choice between economic stability and basic social services. We could

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have both. And now, we have both. Thanks to the efforts of the members of the bicameral committee.

I agree with the position of the Senate panel chair, Senator Recto, that 10% should be enough to generate the required revenues. As it is, we now have a standby provision granting the President the power to raise the VAT rate from 10% to 12% under certain conditions. This provision has raised questions on its constitutionality. I, too, have my reservations. But, everything considered, including different legal arguments, I chose to support the bill in the hope that it will address our economic situation.

We have done our part as legislators. It is my prayer that the campaign against graft and corruption will be strengthened and the revenue-generating agencies of the government will work for a more efficient and increased tax collection.

May God bless our country.

MANIFESTATION OF SENATOR CAYETANO

At this point, Senator Cayetano manifested that Senators Magsaysay and Villar had submitted their written explanations of votes while Senators Gordon, Angara and Pimentel had reserved the right to submit theirs.

EXPLANATIONS OF VOTES

The following senators submitted their written explanations of votes:

By Senator Magsaysay

I vote *yes* with some concerns. Primarily, on the provision to VAT the energy sector and on the increase of the corporate tax from 32% to 35%.

We, as a society, are no longer competitive as a country to attract foreign capital particularly in manufacturing, which could give us many more jobs.

I would have voted for a 12% VAT, which, in effect, answers the Executive's needs to address the yawning financial

deficit. The net effect to the consumers is small, not even 2% on the cost of books, clothes, processed food. But the effect is strong, positive to our creditors. I fear the tentative decision of the 2-step bicam version. But as a good member of the Majority, or as an administration soldier-in-political decision, all these concerns are set aside and I accept and vote YES to the Bicam version.

Thank you and let us move forward to keep empowering our governance.


By Senator Villar

My stand has been and still is against an increase in the current VAT rate. I firmly believe that the leakages should be plugged first, and I submit that lifting all exemptions and putting the previously exempted private business within the VAT chain, hence subjecting them to audit trail, would be a major step in plugging the leaks.

Yes, I signed the compromise VAT report of the bicameral conference. Mine though is a CRITICAL YES.

With the long period spent on the bill, the options left are to accept the compromise agreement or reject the bill totally. I am not for rejecting the bill in its entirety. I want the lifting of exemptions – for the reason I have earlier stated. I would have wanted a public impact mitigating measure in the form of a pass-through prohibition with respect to the energy sector. However, I can also see that the reduction in excise taxes on fuel would allow the energy companies to absorb the cost of VAT and minimize the pass-on effect on the end-consumer.

In voting a critical *yes*, I looked at the bill as a whole and for me, it still does contain the essential features I have advocated: no exemption, force the Executive to improve collection efforts, and still have a 10% VAT.

The delegation of authority to the President shall force the Executive to deliver better collection performance. In giving this authority, we are telling the President to try 



the 10% rate first, and when all things fail and she has no more option left, then that is when the 2-percentage points increase can be considered.

Our total economy has already suffered in waiting for the VAT bill. Under the circumstances, I believe the bicameral version is the best option now.


ADJOURNMENT OF SESSION

Upon motion of Senator Cayetano, there being no objection, the Chair declared the session

adjourned until three o'clock in the afternoon of the following day.

It was 7:45 p.m.

I hereby certify to the correctness of the foregoing.


OSCAR G. YABES
Secretary of the Senate
ps *alu* *AK*

Approved on May 16, 2004