

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

SENATE

S.B. No. 1361

JS

Introduced by SENATOR JUAN PONCE ENRILE

EXPLANATORY NOTE

This bill proposes to amend Republic Act No. 9337 by exempting power from the coverage of the expanded Value Added Tax (VAT) which includes the generation, transmission and distribution of power.

One of the salient provisions of RA 9337 is to impose a ten percent (10%) VAT on the "sales of electricity by generation, transmission, and distribution companies", the effect of which will increase the cost of electricity by P0.592 per kilowatt hour (kWh) based on the 2005 estimates by the Department of Energy. Before the aforementioned law was enacted, distributed power was VAT zero-rated under the RA 9136 (EPIRA Law) while generated power was VAT-exempt under RA 6395.

In 2005, the government projected to earn P6.35 billion from the VAT on power and by 2006 it projected to generate P7.62 billion plus an additional P1.23 billion from the lifting of exemption of electric cooperatives. But if power will be VAT-exempt, the government estimated to earn P27.38 billion in 2005 under a twelve percent (12%) VAT regime.

Prior to the enactment of RA 9337, the cost of electricity in the Philippines was already one of the highest in Asia, which consequently crowds out investment. Moreover, the imposition of VAT on power will result to an additional P0.592 per kWh to be paid by the end-consumers as calculated by the Department of Energy (DOE), even after the two percent (2%) franchise tax was removed. Thus for a household with an average electricity consumption of 100 kWh a month, the VAT is estimated at P59.20, a quite substantial mount for minimum wage earner Filipinos.

In addition, the increased cost of power for the business sector means higher cost of doing business which in turn crowds out investment. The crowding out effect on investment of VAT on power will result to foregone opportunities such as employment, higher domestic income, etc. Thus there is an urgent need to exempt power from VAT.

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


JUAN PONCE ENRILE
Senator

SENATE

S.B. No. 1361

Introduced by SENATOR JUAN PONCE ENRILE

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

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

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

3 “SEC. 108. *Value-Added Tax on Sale of Services and Use or Lease of*
4 *Properties.* –

5 A. *Rate and Base of Tax.* – There shall be levied, assessed and
6 collected, a value-added tax equivalent to ten percent (10%) of gross
7 receipts derived from the sale or exchange of services, including the use or
8 lease of properties: *Provided,* That the President, upon the
9 recommendation of the Secretary of Finance, shall, effective January 1,
10 2006, raise the rate of value-added tax to twelve percent (12%), after any
11 of the following conditions has been satisfied:

12
13 “(i) Value-Added Tax collection as a percentage of Gross
14 Domestic Product (GDP) of the previous year exceeds two and four-fifth
15 percent (2 4/5%); or

16 “(ii) National government deficit as a percentage of GDP of the
17 previous year exceeds one and one-half percent (1 1/2 %).
18

19 The phrase “**sale or exchange of services**” means the performance
20 of all kinds of services in the Philippines for others for a fee, remuneration
21 or consideration, including those performed or rendered by construction
22 and service contractors; stock, real estate, commercial, customs and
23 immigration brokers; lessors of property, whether personal or real;
24 warehousing services; lessors or distributor of cinematographic films;

1 persons engaged in milling, processing, manufacturing or repacking goods
2 for others; proprietors, operators or keepers of hotels, motels, resthouses,
3 pension houses, inns, resorts; proprietors or operators of restaurants,
4 refreshment parlors, cafes and other eating places, including clubs and
5 caterers; dealers in securities; lending investors; transportation contractors
6 on their transport of goods or cargoes, including persons who transport
7 goods or cargoes for hire and other domestic common carriers by land
8 relative to their transport of goods or cargoes; common carriers by air and
9 sea relative to their transport of passengers, goods or cargoes from one
10 place in the Philippines to another place in the Philippines; [**SALES OF**
11 **ELECTRICITY BY GENERATION COMPANIES,**
12 **TRANSMISSION, AND DISTRIBUTION COMPANIES**]; services of
13 franchise grantees of electric utilities, telephone and telegraph, radio and
14 television broadcasting and all other franchise grantees of electric utilities,
15 telephone and telegraph, radio and television broadcasting and all other
16 franchise grantees except those under Section 119 of this code and non-life
17 insurance companies (except their crop insurances), including surety,
18 fidelity, indemnity and bonding companies; and similar services regardless
19 of whether or not the performance thereof calls for the exercise or use of
20 the physical or mental faculties. The phrase ‘**sale or exchange of**
21 **services**’ shall likewise include:

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

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

27 “(3) The supply of scientific, technical, industrial or commercial
28 knowledge or information;

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

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

37 “(6) The supply of technical advice, assistance or services
38 rendered in connection with technical management or administration of

1 *any scientific, industrial or commercial undertaking, venture, project or*
2 *scheme;*

3 “(7) *The lease of motion films, films, tapes and discs; and*

4 “(8) *The lease or the use or the right to use radio, television,*
5 *satellite transmission and cable television time.*

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

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

15
16 B. *Transactions Subject to Zero Percent (0%) Rate.* – The
17 *following services performed in the Philippines by VAT-registered persons*
18 *shall be subject to zero percent (0%) rate:*

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

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

31 “(3) *Services rendered to persons or entities whose exemption*
32 *under special laws or international agreements to which the Philippines is a*
33 *signatory effectively subjects the supply of such services to zero percent*
34 *(0%) rate;*

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

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

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

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

10
11 **SEC. 2.** Section 109 of the same Code, as amended, is hereby further amended
12 to read as follows:

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

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

20 “Products classified under this paragraph shall be considered in
21 their original state even if they have undergone the simple processes of
22 preparation or preservation for the market, such as freezing, drying,
23 salting, broiling, roasting, smoking or stripping. Polished and/or husked
24 rice, corn grits, raw cane sugar and molasses, ordinary salt, and copra
25 shall be considered in their original state;

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

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

36 “(D) Importation of professional instruments and implements,
37 wearing apparel, domestic animals, and personal household effects
38 (except any vehicle, vessel, aircraft, machinery, other goods for use in the

1 manufacture and merchandise of any kind in commercial quantity)
2 belonging to persons coming to settle in the Philippines, for their own use
3 and not for sale, barter or exchange, accompanying such persons, or
4 arriving within ninety (90) days before or after their arrival, upon the
5 production of evidence satisfactory to the Commissioner, that such
6 persons are actually coming to settle in the Philippines and that the change
7 of residence is bona fide;

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

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

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

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

18 “(I) Services rendered by individuals pursuant to an employer-
19 employee relationship;

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

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

28 “(L) Sales by agricultural cooperatives duly registered with the
29 Cooperative Development Authority to their members as well as sale of
30 their produce, whether in its original state or processed form, to non-
31 members; their importation of direct farm inputs, machineries and
32 equipment, including spare parts thereof, to be used directly and
33 exclusively in the production and/or processing of their produce;

34 “(M) **POWER GENERATION COMPANIES AND THE**
35 **ELECTRICITY SOLD BY THEM TO THEIR CUSTOMERS AS**
36 **WELL AS THE TRANSMISSION OF ELECTRICITY BY THE**
37 **NATIONAL TRANSMISSION COMPANY AND ITS**
38 **DISTRIBUTION BY A DISTRIBUTION UTILITY COMPANY;**

1 **PROVIDED, HOWEVER, THAT ANY LAW TO THE CONTRARY**
2 **NOTWITHSTANDING, INCLUDING SECTION (B) OF**
3 **REPUBLIC ACT NO. 9136, POWER GENERATION COMPANIES**
4 **SHALL IN NO CASE BE VALUE ADDED TAX ZERO-RATED;**

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

8 “(O) [N] Sales by non-agricultural, non-electric and non-credit
9 cooperatives duly registered with the Cooperative Development
10 Authority: *Provided*, That the share capital contribution of each member
11 does not exceed Fifteen Thousand Pesos (P15,000.00) and regardless of
12 the aggregate capital and net surplus ratably distributed among the
13 members;

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

15 “(Q) [P] Sale of real properties not primarily held for sale to
16 customers or held for lease in the ordinary course of trade or business, or
17 real property utilized for low-cost and socialized housing as defined by
18 Republic Act No. 7279, otherwise known as the Urban Development and
19 Housing Act of 1992, and other related laws, residential lot valued at One
20 Million Five Hundred Thousand Pesos (P1,500,00.00) and below, house
21 and lot, and other residential dwellings valued at Two Million Five
22 Hundred Thousand Pesos (P2,500,000.00) and below: *Provided*, That not
23 later than January 31, 2009 and every three (3) years thereafter, the
24 amounts herein stated shall be adjusted to their present values using the
25 Consumer Price index, as published by the National Statistics Office
26 (NSO);

27 “(R) [Q] Lease of a residential unit with a monthly rental not
28 exceeding Ten Thousand Pesos (P10,000.00): *Provided*, That not later
29 than January 31, 2009 and every three (3) years thereafter, the amount
30 herein stated shall be adjusted to its present value using the Consumer
31 Price Index, as published by the National Statistics Office (NSO);

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

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

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

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

6 “(W) [V] Sale or lease of goods or properties or the performance
7 of services other than the transactions mentioned in the preceding
8 paragraphs, the gross annual sales and/or receipts do not exceed the
9 amount of One Million Five Hundred Thousand Pesos (P1,500,000.00):
10 *Provided*, That not later than January 31, 2009 and every three (3) years
11 thereafter, the amount herein stated shall be adjusted to its present value
12 using the Consumer Price Index, as published by the National Statistics
13 Office (NSO);

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

18
19 **SEC. 3. Implementing Rules and Regulations.** – The Secretary of Finance
20 shall, upon the recommendation of the Commissioner of Internal Revenue, promulgate
21 the necessary rules and regulations for the effective implementation of this Act. Upon
22 issuance of the said rules and regulations, all former rules and regulations pertaining to
23 value-added tax shall be deemed revoked.

24
25 **SEC. 4. Repealing Clause.** – All laws, or provisions of laws, which are
26 inconsistent herewith, are hereby repealed or amended accordingly.

27
28 **SEC. 5. Separability Clause.** – If any provision of this Act is subsequently
29 declared unconstitutional, the validity of the remaining provisions hereof shall remain in
30 full force and effect.

31
32 **SEC. 6. Effectivity Clause** – This Act shall take effect fifteen (15) days
33 following its publication in the Official Gazette or in any newspaper of general
34 circulation.

35
36 *Approved,*

37
38
39 *pmv/vat*