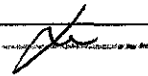


FOURTEENTH CONGRESS OF THE)
REPUBLIC OF THE PHILIPPINES)
First Regular Session)

8 FEB 11 AM 10:20

SENATE

COMMITTEE REPORT NO. 37

RECEIVED BY: 

Submitted by the Committee on Ways and Means and the Committee on Public Services
on FEB 11 2008

Re : P.S. Resolution Nos. 58 and 74

Recommending the adoption of the conclusions and recommendations of the Committees.

Sponsors : Senator Francis Escudero and Juan Ponce Enrile

MR. PRESIDENT:

The Committee on Ways and Means and the Committee on Public Services to which were referred P.S. Resolution No. 58, introduced by Senator Lacson, entitled:

"RESOLUTION
DIRECTING THE APPROPRIATE SENATE COMMITTEE TO REVIEW THE
PROPOSED REVENUE REGULATION INCREASING THE MINIMUM
MONTHLY/QUARTERLY GROSS RECEIPTS IN COMPUTING THE PERCENTAGE
TAX OF DOMESTIC CARRIERS AND KEEPERS OF GARAGES",

and P.S. Resolution No. 74, introduced by Senator Escudero, entitled:

"RESOLUTION
DIRECTING THE SENATE COMMITTEE ON WAYS AND MEANS TO INQUIRE IN AID
OF LEGISLATION INTO THE LEGALITY OF REVENUE REGULATION NO. 9-2007
ISSUED BY THE DEPARTMENT OF FINANCE UPON RECOMMENDATION OF THE
BUREAU OF INTERNAL REVENUE ON 04 JULY 2007 WITH THE END IN VIEW OF
ENACTING LEGISLATIVE MEASURES TO ADDRESS THE SAME"

have considered the same and have the honor to report the resolutions back to the Senate with the following findings and recommendations:

BACKGROUND:

- On 04 July 2007, the Secretary of the Department of Finance (DOF), upon the recommendation of the Commissioner of the Bureau of Internal Revenue (BIR) issued Revenue Regulation (RR) No. 9-2007 (Annex 1) prescribing the updated Minimum Quarterly Gross Receipts (MQGR) in computing the three percent (3%) tax on domestic carriers and keepers of garages as mandated under Section 117 of the National Internal Revenue Code (NIRC) of 1997, as amended by Republic Act (RA) No. 9337.
- The levels of MQGR prescribed under RR No. 9-2007 vis-à-vis the present levels under Section 117 of the NIRC are presented as follows:

Domestic Carrier	Minimum Quarterly Gross Receipts		Percentage Increase (%)
	Current Level Sec. 117 of NIRC)	Revised Level (RR No. 9-2007)	
<u>Jeepney for Hire</u>			
1. Manila and other cities	P2,400	P65,700	2,637.50%
2. Provincial	1,200	32,900	2,641.67%
<u>Public Utility Bus</u>			
1. Not exceeding 30 passengers	P3,600	P98,600	2,638.89%
2. Exceeding 30 but not exceeding 50 passengers	6,000	164,200	2,636.67%
3. Exceeding 50 passengers	7,200	197,100	2,637.50%

<u>Taxis</u>			
1. Manila and other cities	P3,600	P98,600	2,638.89%
2. Provincial	2,400	65,700	2,637.50%
<u>Car for hire (with chauffeur)</u>	P3,000	P82,100	2,636.67%
<u>Car for hire (without chauffeur)</u>	P1,800	P49,300	2,638.89%

3. The BIR decided to increase the levels of the MQGR "to shore up revenue collection and help ensure the government stays on track of its fiscal target for the year despite anemic revenues in the first half OF 2007"¹. The BIR also explained that the current levels of MQGR are outdated having been set based on the 1978 Consumer Price Index (CPI).

4. No public consultations with the concerned sector were conducted by the BIR on the proposed MQGR increase. The sentiments and consent of the affected transportation sector as well as the riding public were not taken into consideration during the drafting of the revenue regulation.

5. RR No. 9-2007 was published on August 02, 2007 and was scheduled to take effect on 18 August 2007. Its implementation, however, was suspended amid the outcry from the concerned transport sector and legislators.

The transport sector raised an uproar describing the regulation as oppressive and confiscatory, while Congress viewed the issuance as an intrusion on its legislative powers. It was only after the transport sector's threat to hold nationwide strikes that the BIR made consultations as initiated by Retired General Thompson Lantion of the Land Transportation and Franchising Board (LTFRB).

6. The legislative history of the percentage tax on domestic common carriers and keepers of garages is presented hereunder in order to fully understand the legality and regularity of the issuance of RR No. 9-2007, to wit:

6.1. Section 192, Chapter 1, Title V of Commonwealth Act (CA) No. 466, otherwise known as the National Internal Revenue Code of 1939² provided that keepers of garages, transportation contractors, persons who transport passengers or freight for hire, and common carriers by land, air, or water (except owners of boats taxed under the laws administered by the Bureau of Customs (BoC), owners of bancas, and owners of animal-drawn two-wheeled vehicles) were subject to percentage tax equivalent to one and one-half per centum (1½%) of their gross receipts. Those whose gross receipts do not exceed Two hundred pesos (P200.00) each quarter were exempt from the payment of the tax.

6.2. RA No. 39³ increased the tax to two per centum (2%) and withdrew the exemption of owners of boats taxed under the laws administered by the BoC. Again, the tax was based on the actual gross receipts, with the exemption of those whose gross receipts per quarter do not exceed P200.

6.3. Under RA No. 2025⁴ the basis of the 2% tax was changed from quarterly to monthly gross receipts. The law also withdrew the exemption of contractors whose gross receipts do not exceed P200 per quarter.

6.4. Section 38 of RA No. 6110⁵ included keepers of cars for rent or hire driven by the lessee in the coverage of the tax. The law also provided minimum monthly gross receipts in each particular case as a guide in determining the percentage tax, still pegged at 2%, as follows:

Autocalesa:

- 1. Manila and other cities P 200.00
- 2. Provincial 100.00

Jeepney for hire:

- 1. Manila and other cities P 400.00
- 2. Provincial 200.00

Public utility bus:

- 1. Not exceeding 30 passengers P 600.00
- 2. Exceeding 30 but not exceeding 50 passengers 1,000.00
- 3. Exceeding 50 passengers 1,200.00

¹ Michelle Remo, "To Increase Tax Collection, BIR Bears Down on Transport Operators", Philippine Daily Inquirer, August 03, 2007

² Enacted June 15, 1938, effective July 1, 1939

³ Took effect on October 1, 1946

⁴ Approved and effective June 22, 1957

⁵ Approved August 4, 1969, effective September 1, 1969

<u>Taxis:</u>	
1. Manila and other cities	P 600.00
2. Provincial	400.00
<u>Car for hire (with chauffeur)</u>	P 500.00
<u>Car for hire (without chauffeur)</u>	300.00

- 6.5. Presidential Decree (PD) No. 1457⁶ together with Proclamation No. 1861⁷ changed the basis of the 2% tax from monthly to quarterly gross receipts and provided levels of minimum quarterly gross receipts for each particular case as follows:

<u>Autocalesa:</u>	
1. Manila and other cities	P 1,200.00
2. Provincial	600.00
<u>Jeepney for hire:</u>	
1. Manila and other cities	P 2,400.00
2. Provincial	1,200.00
<u>Public utility bus:</u>	
1. Not exceeding 30 passengers	P 3,600.00
2. Exceeding 30 but not exceeding 50 passengers	6,000.00
3. Exceeding 50 passengers	7,200.00
<u>Taxis:</u>	
1. Manila and other cities	P 3,600.00
2. Provincial	2,400.00
<u>Car for hire (with chauffeur)</u>	P 3,000.00
<u>Car for hire (without chauffeur)</u>	1,800.00

- 6.6. Under PD No. 1959⁸, the rate of tax was raised to 3% while the levels of minimum quarterly gross receipts remained.
- 6.7. RA No. 8424⁹ (also known as the National Internal Revenue Code of 1997) retained the 3% tax as well as the levels of minimum quarterly gross receipts, except the category on *autocalesa*, viz:

“Sec. 117. *Percentage Tax on Domestic Carriers and Keepers of Garages.* - Cars for rent or hire driven by the lessee, transportation contractors, including persons who transport passengers for hire, and other domestic carriers by land, air or water, for the transport of passengers, except owners of bancas and owners of animal-drawn two wheeled vehicles, and keepers of garages shall pay a tax equivalent to three percent (3%) of their quarterly gross receipts.

“x x x.

“In computing the percentage tax provided in this Section, the following shall be considered the minimum quarterly gross receipts in each particular case:

“Jeepney for hire –	
“1. Manila and other cities	P 2,400
“2. Provincial	1,200
“Public utility bus . –	
“Not exceeding 30 passengers	P 3,600
“Exceeding 30 but not exceeding 50 passengers	6,000
“Exceeding 50 passengers	7,200
“Taxis –	
“1. Manila and other cities	P 3,600
“2. Provincial	2,400
“Car for hire (with chauffeur)	3,000
“Car for hire (without chauffeur)	1,800.”

⁶ Approved and made effective June 11, 1978

⁷ Issued June 5, 1979, declaring the effectivity of the minimum quarterly gross receipts

⁸ Issued October 10, 1984; effective October 15, 1984

⁹ Enacted December 11, 1997

6.8. When the NIRC of 1997 was amended by RA No. 9337¹⁰ (also referred to as the R-VAT Law), the 3% tax was amended to cover domestic carriers by land for the transport of passengers since domestic carriers by land relative to the transport of goods or cargoes, and domestic carriers by air and sea relative to their transport of passengers, goods or cargoes have been made subject to the value-added tax (VAT) currently set at twelve percent (12%).

7. The BIR justified the issuance of the revenue regulation by using as reference Section 128(A)(4) and Section 244 of the NIRC, to wit:

“Sec. 128. *Returns and Payment of Percentage Taxes.* –

“(A) *Returns of Gross Sales, Receipts or Earnings and Payment of Tax.* –

“(1) x x x;

“(2) x x x;

“(3) x x x;

“(4) *Determination of Correct Sales or Receipts.* – When it is found that a person has failed to issue receipts or invoices, or when no return is filed, or when there is reason to believe that the books of accounts or other records do not correctly reflect the declaration made or to be made in a return required to be filed under the provisions of this Code, the Commissioner, after taking into account the sales, receipts or other taxable base of other persons engaged in similar businesses under similar situations or circumstances, or after considering other relevant information may prescribe a minimum amount of such gross receipts, sales or taxable base and such amount so prescribed shall be *prima facie* correct for purposes of determining the internal revenue tax liabilities of such person.”

“x x x”

“Sec. 244. *Authority of the Secretary of Finance to Promulgate Rules and Regulations.* – The Secretary of Finance, upon recommendation of the Commissioner, shall promulgate all needful rules and regulations for the effective enforcement of the provisions of this Code.”

8. The power of the Collector (now Commissioner) of Internal Revenue to make assessments, and the authority of the Secretary of Finance to promulgate rules and regulations have been features of the Tax Code since 1939, viz:

8.1. CA No. 466 (NIRC of 1939)

“Section 15. *Power of Collector of Internal Revenue to make assessments.* — When a report required by law as a basis for the assessment of any national internal-revenue law shall not be forthcoming within the time fixed by law or regulation, or when there is reason to believe that any such report is false, incomplete, or erroneous, the Collector of Internal Revenue shall assess the proper tax on the best evidence obtainable.”

“x x x.

“Section 338. *Authority of Secretary of Finance to promulgate rules and regulations.* — The Secretary of Finance, upon recommendation of the Collector of Internal Revenue, shall promulgate all needful rules and regulations for the effective enforcement of the provisions of this Code.”

8.2. PD No. 1158 (NIRC of 1977)

“Section 16. *Power of the Commissioner to make assessment and prescribe additional requirements for tax administration and enforcement.*

“(a) Examination of returns and determination of tax. – After a return is filed as required under the provisions of this Code, the Commissioner shall examine it and assess the correct amount of tax. The tax or deficiency tax so assessed shall be paid upon notice and demand from the Commissioner. Any return, statement or declaration

¹⁰ Approved May 24, 2005; effective July 1, 2005

filed in any office authorized to receive the same shall not be withdrawn: Provided, That the same may be modified or changed by filing an amended return, statement or declaration.

“x x x.

“When it is found that a person has failed to issue receipts and invoices in violation of the requirements of Section 108 and 238 of this Code, or when there is reason to believe that the books of accounts or other records do not correctly reflect the declarations made or to be made in a return required to be filed under the provisions of this Code, the Commissioner, after taking into account the sales, receipts, income or other taxable base of other persons engaged in similar businesses under similar situations or circumstances or after considering other relevant information may prescribe a minimum amount of such gross receipts, sales, and taxable base, and such amount so prescribed shall be prima facie correct for purposes of determining the internal revenue tax liabilities of such persons.”

“x x x.

“Section 245. *Authority of Secretary of Finance to promulgate rules and regulations.* – The Secretary of Finance, upon recommendation of the Commissioner, shall promulgate all needful rules and regulations for the effective enforcement of the provisions of this Code.”

8.3. RA No. 8424 (NIRC of 1997)

“Section 128 (A) (4). *Determination of Correct Sales or Receipts.* - When it is found that a person has failed to issue receipts or invoices, or when no return is filed, or when there is reason to believe that the books of accounts or other records do not correctly reflect the declarations made or to be made in a return required to be filed under the provisions of this Code, the Commissioner, after taking into account the sales, receipts or other taxable base of other persons engaged in similar businesses under similar situations or circumstances, or after considering other relevant information may prescribe a minimum amount of such gross receipts, sales and taxable base and such amount so prescribed shall be prima facie correct for purposes of determining the internal revenue tax liabilities of such person.”

“x x x.

“Section 244. *Authority of Secretary of Finance to Promulgate Rules and Regulations.* - The Secretary of Finance, upon recommendation of the Commissioner, shall promulgate all needful rules and regulations for the effective enforcement of the provisions of this Code.”

9. On the belief that the issuance of RR No. 9-2007 is an encroachment by the BIR and DOF upon the prerogative of Congress and that said agencies went beyond their delegated authority pursuant to the National Internal Revenue Code of 1997, as amended, the Committee on Ways and Means and the Committee on Public Services conducted a public hearing on P.S. Resolution Nos. 58 and 74, introduced by Senators Lacson and Escudero, respectively.¹¹

Represented during the public hearing were the different concerned transport group, namely:

1. Mr. Allan Simundac - Metro Manila Intercity Bus Operators Association (MMBOA)
2. Mr. Homer Mercado - Provincial Bus Operators Association of the Philippines
3. Mrs. Zenaida Maranan - Federation of Jeepney Operators and Drivers Association of the Philippines (FEJODAP)
4. Mr. George San Mateo - Pagkakaisa ng mga Samahan ng Tsuper at Opereytor Nationwide (PISTON)
5. Ms. Claire Dela Fuente - Intercity Metro Manila Bus Operators Association (IMBOA)
6. Atty. Manuel Jesus Suntay - National Land Transport Council (NLTC)/Philippine National Taxi Operators Association (PNTOA)
7. Mr. Vulfre Estepa - National Confederation of Jeepney Operators and Drivers Association (NACJODAP)
8. Mr. Rogelio Chavez, Jr. - Jeepney Transport Council (JTC)
9. Mr. Ramon Sobrepeña - National Federation of AUV Operators and Drivers Association of the Philippines (NAFAODAP)

¹¹ October 02, 2007, 10:00 a.m., Sen. Recto Room, 2nd Floor, Senate of the Philippines, GSIS Bldg., Pasay City.

10. Mr. Efren De Luna - Alliance of Concerned Transport Organization (ACTO)
11. Mr. Orlando Marquez - Jeepney Foundation of the Philippines
12. Mr. Ben Rubio - Katipunan ng mga Kooperatibang Pansasakyan ng Pilipinas, Inc. (KKPPI)

The government agencies represented are the Bureau of Internal Revenue, Department of Finance, Land Transportation Office, Land Transportation and Franchise Regulatory Board and the Department of Transportation and Communication.

It was established during the public hearing that (a) no proper consultation with the concerned transport sector was undertaken by the BIR prior to the issuance the questioned revenue regulation; (b) the transport sector vehemently object to the proposed 2,600% increase in the rate considering their present economic plight; (c) the revenue regulation was suspended nationwide; and (d) negotiation on the appropriate increase pertaining to the MQGR is on-going.

CONCLUSIONS:

1. There were no consultations conducted by the BIR with the concerned transportation sector, including the riding public regarding the proposed MQGR increase. Consultations were made only upon the initiation of Retired General Thompson Lantion of the Land Transportation and Franchising Board (LTFRB) when the transport sector vehemently objected to the increase and likewise threatened to hold nationwide strikes and pickets.
2. Reference by the BIR to Section 128(A)(4) of the NIRC of 1997, as amended, is erroneous based on the following grounds:
 - 2.1. What Section 128 contemplates is a situation wherein there was no established minimum gross receipts to begin with that necessitates a determination by the Commissioner after taking into account the different circumstances mentioned under the said Section;
 - 2.2. The sales, receipts or other taxable base of other persons engaged in similar businesses under similar situations or circumstances were apparently not taken into account because the revenue regulation was made to apply immediately to all entities within the purview of Section 117; and
 - 2.3. Although the proposed increase was based on the Consumer Price Index of 2000 and 2006, economic factors like cost of fuel and spare parts, including the high cost of operation and maintenance of vehicles were not taken into account.
3. Careful scrutiny of the (a) amendatory laws pertaining to the tax on common carriers and keepers of garages, and (b) the existence of the provisions on the power of the BIR Commissioner to make assessments as well as the power of the Secretary of Finance to promulgate rules and regulations since the NIRC of 1939 up to the present, reveals that the power of the BIR Commissioner to prescribe the "minimum amount of gross receipts, sales and other taxable base" has not been resorted to in the past.

Throughout the history of the percentage tax on common carriers and keepers of garages, the rate or base of the tax as well as the levels of the minimum monthly/quarterly gross receipts have been set solely by acts of Congress or by legislative fiat during the Martial Law regime and were never left to the discretion of the Collector/Commissioner of the Bureau of Internal Revenue.

2. Inclusion of the provision in PD No. 1457 with regard to the levels of MQGR as basis in determining the percentage tax for common carriers in the NIRC of 1997 denotes that such stipulation, being part and parcel of the Code, can only be legally amended, modified or repealed through the acts of Congress.

RECOMMENDATIONS:

Based on the foregoing, the Committee on Ways and Means and the Committee on Public Services recommend that:

1. Public consultation with all the sectors purportedly affected by the proposed increase in the minimum quarterly gross receipts must first be undertaken before the imposition of the same be recommended. It is necessary that, although taxes have always been defined as the "lifeblood of

a government",¹² fundamental guidelines limiting the exercise of the taxing and revenue-raising powers of the government such as the principles of "taxation must always be based on the ability of the taxpayers to pay", and "no taxation without representation" be essentially adhered to.

2. The power to amend, modify or repeal any provision of the National Internal Revenue Code is lodged exclusively in the legislative department, therefore the BIR and/or the DOF should not depart from the ambit of the authority merely delegated upon them by Congress.

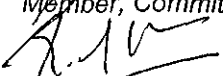
Respectfully submitted:


JUAN PONCE ENRILE
Chairman
Committee on Public Services
Vice-Chairman, Committee on Ways & Means


FRANCIS G. ESCUDERO
Chairman
Committee on Ways and Means

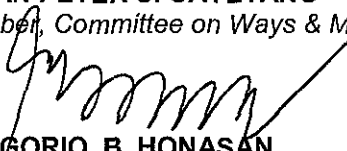

JOKER P. ARROYO
Vice-Chairman, Committee on Public Services
Member, Committee on Ways & Means


EDGARDO J. ANGARA
Member, Committee on Ways & Means



RICHARD J. GORDON
Member, Committee on Ways & Means
Member, Committee on Public Services

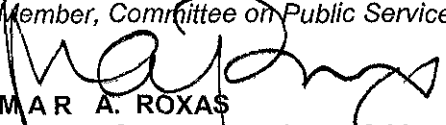

ALLAN PETER S. CAYETANO
Member, Committee on Ways & Means



RAMON B. REVILLA, JR.
Member, Committee on Ways & Means

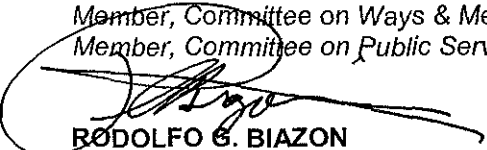

GREGORIO B. HONASAN
Member, Committee on Ways & Means
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JUAN MIGUEL F. ZUBIRI
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PANFILO M. LACSON
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RODOLFO G. BIAZON
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LOREN B. LEGARDA
Member, Committee on Ways & Means

Ex-Officio Members:


JINGGOY EJERCITO ESTRADA
President Pro-Tempore


FRANCIS N. PANGILINAN
Majority Floor Leader

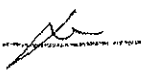

AQUILINO Q. PIMENTEL, JR.
Minority Floor Leader

HON. MANNY VILLAR
Senate President
Pasay City

¹² Philippine Bank of Communications v. Commissioner of Internal Revenue, et al., GR No. 119024 [1999]

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

7 AUG -6 P4:2

RECEIVED BY: 

SENATE
 P.S. Resolution No. 58

Introduced by Senator Lacson

RESOLUTION

DIRECTING THE APPROPRIATE SENATE COMMITTEE TO REVIEW THE PROPOSED REVENUE REGULATION INCREASING THE MINIMUM MONTHLY/QUARTERTLY GROSS RECEIPTS IN COMPUTING THE PERCENTAGE TAX OF DOMESTIC CARRIERS AND KEEPERS OF GARAGES

Whereas, reports had it that the budget deficit at the end of the first semester of this year had already reached P41 Billion pesos, making it difficult for the government to maintain its budget deficit target of P63 Billion by the end of the year;

Whereas, during said period, the government's non-tax revenues stood at P78.3 Billion, which was P3.4 Billion higher than the P74.9 Billion target of the Department of Finance (DOF); while the revenue collection for the same period stood at P510.3 Billion, which was P47.7 Billion lower than the P558 Billion target;

Whereas, in an attempt to make up for its tax collection shortfall, the Bureau of Internal Revenue, with the approval of Secretary Margarito Teves of the Department of Finance, issued last August 1, 2007 BIR Revenue Regulation 9-2007;

Whereas, Revenue Regulation 9-2007, updated the minimum monthly/quarterly gross receipts of domestic carriers and keepers of garage subject to the three percent (3%) percentage tax as provided for in Section 117 of the National Internal Revenue Code of 1997;

Whereas, said Revenue Regulation will effectively increase the present tax being imposed on common carriers like jeepneys, taxi cabs and buses to a maximum of 2,600% as follows:

Jeepney for hire –

	From	To
1. Manila and other Cities	P288	P7, 884
2. Provincial	P144	P3, 948

Public Utility Bus –

	From	To
Not exceeding 30 passengers	P432	P11, 832
Exceeding 30 but not more than 50	P720	P19, 704
Exceeding 50 passengers	P864	P23, 652

Taxis –

1. Manila and other cities	P432	P11, 832
2. Provincial	P288	P7, 884

Whereas, while it is true that the minimum gross receipts per unit of carrier set under Section 117 of the NIRC, which was based on the 1978 Consumer Price Index, are no longer reflective of the true value of the minimum gross receipts today, to impose said increase at this point will result in undue burden to the owners/operators and drivers of common carriers who will have to cope not only with the rising costs of fuel and spare parts but also with the other exigencies in their daily routine like the exactions being required of them by some unscrupulous uniformed personnel of the PNP and the MMDA;

Whereas, the one who will ultimately bear the brunt of this tax hike are the riding public as this will undoubtedly result in fare increases and consequent rise in the price of basic commodities;

Whereas, this planned increase was evidently arrived at hastily by the Department of Finance just to meet the deficit target by the end of the year and their shortcoming in the tax collection effort as they failed to take into account the above-mentioned factors in arriving at the proposal;

Whereas, as a result, the proposed increase appears to be short-sighted and unconscionable; **NOW, THEREFORE, BE IT**

RESOLVED as it is hereby resolved to direct as it hereby directs the appropriate Senate Committee to exercise its oversight function for purposes of reviewing the reported tax hike on the transport sector to assist Congress in coming up with legislation that will properly strike a balance between the concerns of government and the transport sector.

Adopted,


PANFILO M. LACSON
Senator

REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

Quezon City

July 4, 2007

REVENUE REGULATIONS NO. 9-2007

SUBJECT : Prescribing the Updated Minimum Monthly/Quarterly Gross Receipts in Computing the Percentage Tax of Domestic Carriers and Keepers of Garages.

TO : All Internal Revenue Officers and Others Concerned.

SECTION 1. SCOPE. - Pursuant to Section 244 of the National Internal Revenue Code of 1997 (Code), in relation to Section 128 of the same Code which provides the Commissioner the power to prescribe the minimum amount of gross receipts, sales, and taxable base of persons subject to other percentage taxes under Title V of the Code, after taking into account the sales, receipts or other taxable base of other persons engaged in similar businesses under similar situations or circumstances, or after considering other relevant information, these Regulations are hereby promulgated to update the minimum monthly/quarterly gross receipts of domestic carriers and keepers of garages subject to the three percent (3%) percentage tax imposed under Section 117 of the Code, as amended by RA 9337, and further amended by RA 9361.

SEC. 2. MINIMUM GROSS RECEIPTS OF DOMESTIC LAND CARRIERS AND KEEPERS OF GARAGES. - Cars for rent or hire driven by the lessee; transportation contractors, including persons who transport passengers for hire, and other domestic carriers by land for the transport of passengers (except owners of animal-drawn two-wheeled vehicle), and keepers of garages shall pay a tax equivalent to three percent (3%) of their quarterly gross receipts.

Using the average consumer price index (CPI) for the transportation and communication sector in Year 2006, it is apparent that the minimum gross receipts per unit of carrier set under Section 117 of the Code, which figures were originally fixed in Year 1978, are no longer reflective of the true value of the minimum gross receipts that are being derived by domestic land carriers, as shown in the sample computation illustrated below:

(a) Average Consumer Price Indices where Year 2000 is considered as the international base year:

(1)	Year 1978	-	P 6.38
(2)	Year 2000	-	P100.00
(3)	Year 2006	-	P174.60

- (b) Using the average consumer price index (CPI) provided in item (a) above, the formula to arrive at the present value is as follows:

$$2006 \text{ Gross Receipts} = \frac{1978 \text{ Gross Receipts} \times \text{CPI 2006}}{\text{CPI 1978}}$$

- (c) Sample Computation :

Jeepneys in Manila and Other Cities -

$$2006 \text{ Gross Receipts} = \frac{P2,400 \times P174.60}{P6.38}$$

$$= \underline{\underline{P 65,680.25}} \sim \underline{\underline{P 65,700.00}}$$

Thus, after considering the foregoing relevant information, the updated minimum gross receipts per unit of carrier for purposes of computing the percentage tax provided in Section 117 of the Code as of year 2006 price index shall be as follows:

DOMESTIC CARRIERS	<u>Year 1978</u> Old Minimum Gross Quarterly Receipts	<u>Year 2006</u> Updated Minimum Gross Quarterly Receipts	<u>Year 2006</u> Updated Minimum Gross Monthly Receipts
Jeepney for hire -			
1. Manila and other cities	P2,400.00	P65,700.00	P21,900.00
2. Provincial	1,200.00	32,900.00	10,967.00
Public Utility Bus -			
Not exceeding 30 passengers	P3,600.00	P98,600.00	P32,867.00
Exceeding 30 passengers but not exceeding 50 passengers	6,000.00	164,200.00	54,733.00
Exceeding 50 passengers	7,200.00	197,100.00	65,700.00
Taxis -			
1. Manila and other cities	P3,600.00	P98,600.00	P32,867.00
2. Provincial	2,400.00	65,700.00	21,900.00
Car for hire (with chauffeur)	P3,000.00	P82,100.00	P27,367.00
Car for hire (without chauffeur)	P1,800.00	P49,300.00	P 16,434.00

For clarification, common carriers which ply the routes from/to Metro Manila and/or other cities in the country shall be covered by the prescribed minimum gross receipts for Manila and other cities.

SEC. 3. EFFECTIVITY CLAUSE. - These Regulations shall take effect beginning August 1, 2007, or after fifteen (15) days following complete publication in a newspaper of general circulation, whichever comes later.

(Original Signed)
MARGARITO B. TEVES
Secretary of Finance


Recommending Approval:

(Original Signed)
LILIAN B. HEFTI
OIC-Commissioner of Internal Revenue

SECRETARY

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

7 AUG 14 2007

RECEIVED BY: 

SENATE

P. S. Resolution No. 74

Introduced by Senator FRANCIS G. ESCUDERO

RESOLUTION

DIRECTING THE SENATE COMMITTEE ON WAYS AND MEANS TO INQUIRE IN AID OF LEGISLATION INTO THE LEGALITY OF REVENUE REGULATION NO. 9-2007 ISSUED BY THE DEPARTMENT OF FINANCE UPON RECOMMENDATION OF THE BUREAU OF INTERNAL REVENUE ON 04 JULY 2007 WITH THE END IN VIEW OF ENACTING LEGISLATIVE MEASURES TO ADDRESS THE SAME

WHEREAS, on 04 July 2007, the Department of Finance (DOF) through Secretary Margarito B. Teves upon the recommendation of the Bureau of Internal Revenue (BIR) through OIC-Commissioner Lilian B. Hefti issued Revenue Regulation No. 9-2007 updating the minimum monthly/quarterly gross receipts of domestic carriers and keepers of garages subject to the three percent (3%) percentage tax imposed under Section 117 of the National Internal Revenue Code of 1997, hereinafter referred to as the Code, as amended;

WHEREAS, Revenue Regulation No. 9-2007 was issued on the basis of Section 244 in relation to Section 128 of the Code;

WHEREAS, the two (2) provisions of the Code used as legal basis in the issuance of Revenue Regulation No. 9-2007 do not give the DOF upon the recommendation of the BIR the power and prerogative to update or increase the minimum quarterly/monthly taxable gross receipts of domestic carriers and keepers of garage;

WHEREAS, Section 244 speaks of the power and authority of the Secretary of Finance to promulgate rules and regulations upon the recommendation of the BIR Commissioner for the effective enforcement of the provisions of the Code, while Section 128, specifically paragraph (4) thereof, provides for the determination of correct sales or receipts by the BIR Commissioner alone when certain conditions are found to be present such as failure to issue receipts or invoices, non-filing of return or unreliable returns;

WHEREAS, a simple reading of the 2 provisions cited would mean that no correlation exists between them since Section 244 is about issuance of regulations of general application in the exercise of the DOF's quasi-legislative function in accordance with the authority delegated to it by Congress and Section 128, on the

other hand, refers to a mere administrative function of the BIR Commissioner that is meant to specifically apply only to particular cases such as those circumstances mentioned therein;

WHEREAS, the additional tax burden to be imposed by Revenue Regulations No. 9-2007 will eventually hit the commuting public in the form of higher fares because transport operators will surely clamor for an increase in minimum fare;

WHEREAS, it is also incorrect to say that Revenue Regulation No. 9-2007 is not a new tax since the adjusted tax base translates to a 2,600 percent increase in tax from the current rate;

WHEREAS, Revenue Regulation No. 9-2007 is likewise procedurally flawed since there is no indication that proper and sufficient consultations were had with the sectors to be affected in view of the nature and purpose of taxation which is synonymous to taking of property;

WHEREAS, the *DOF* and the *BIR* in issuing Revenue Regulation No. 9-2007 is in effect encroaching upon the prerogative of Congress and going beyond its delegated authority pursuant to the Code;

WHEREAS, recent news reports saying that Malacañang has put on hold the implementation of Revenue Regulation No. 9-2007 may be regarded as sufficient proof to show that it is irregularly, if not illegally, issued;

NOW, THEREFORE, BE IT RESOLVED AS IT IS HEREBY RESOLVED THAT the Committee on Ways and Means inquire in aid of legislation into the legality of Revenue Regulation No. 9-2007 issued by the Department of Finance upon recommendation of the Bureau of Internal Revenue with the end in view of enacting legislative measures to address the same.

Adopted,



FRANCIS G. ESCUDERO