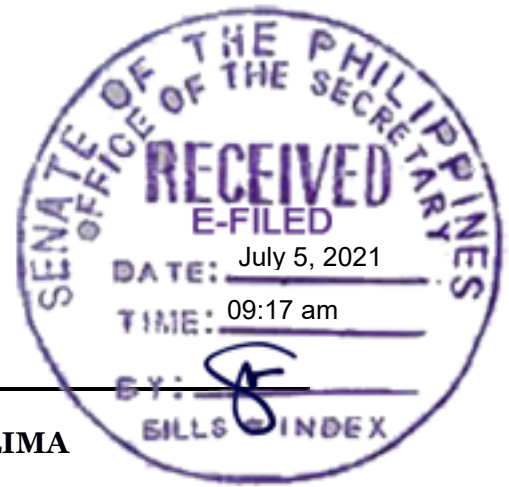


EIGHTEENTH CONGRESS OF THE)
REPUBLIC OF THE PHILIPPINES)
Third Regular Session)

SENATE

P.S. Res. No. 766



Introduced by **SENATOR LEILA M. DE LIMA**

RESOLUTION

URGING THE PRESIDENT TO SUSPEND THE IMPLEMENTATION OF THE BUREAU OF REVENUE'S (BIR) REVENUE REGULATION (RR) NO. 5-2021 WHICH, THROUGH A MISINTERPRETATION OF THE LAW AND CONTRARY TO THE SPIRIT OF THE LAW, WILL IMPOSE A 25% CORPORATE INCOME TAX ON PRIVATE SCHOOLS THEREBY CANCELLING THE 1% RATE OFFERED BY THE PANDEMIC RESCUE PACKAGE UNDER REPUBLIC ACT NO. 11534, OTHERWISE KNOWN AS THE "CORPORATE RECOVERY AND TAX INCENTIVE FOR ENTERPRISES (CREATE) ACT"

1 WHEREAS, Article II, Section 17, the Constitution mandates that the State shall
2 give priority to education;

3 WHEREAS, Article XIV, Section 1 of the same makes it the duty of the State to
4 "protect and promote the right of all citizens to quality education at all levels and shall
5 take appropriate steps to make such education accessible to all";

6 WHEREAS, Republic Act No. 11534, otherwise known as the "Corporate
7 Recovery and Tax Incentives for Enterprises Act" (CREATE), was among the tools that
8 government was given to use in order to cushion the blow of the COVID-19 pandemic.
9 It aims to "[p]rovide support to businesses in their recovery from unseen events such
10 as an outbreak of communicable disease or a global pandemic, and strengthen the
11 nation's capability for similar circumstances in the future";¹

12 WHEREAS, Section 6 of the CREATE Act amended Section 27 of the National
13 Internal Revenue Code of 1997 (NIRC). It granted a tax rate of 1% beginning July 1,
14 2020 until June 30, 2023 to Proprietary Educational Institutions which are non-profit;

¹ Section 2 (a), Republic Act No. 11534, otherwise known as the "Corporate Recovery and Tax Incentives for Enterprises Act."

1 WHEREAS, on 08 April 2021, the Bureau of Internal Revenue (BIR) issued
2 Revenue Regulation (RR) No. 5-2021. It implements the new Income Tax rates on the
3 regular income of corporations, on certain passive incomes pursuant to the CREATE
4 Act;²

5 WHEREAS, RR No. 5-2021 imposed a 25% corporate income tax on private
6 schools rather than the 1% rate under the pandemic rescue package of the CREATE
7 Act;

8 WHEREAS, still reeling from the aftermath of the implementation of the K-12
9 program, private schools who lost billions in revenue due to decreased enrollment
10 when the senior high school program was fully implemented, were once again besieged
11 with the additional burden of staying afloat despite closures and strict health protocols.
12 After having absorbed the losses brought about by the K-12 program which private
13 colleges and universities respected and supported, they once again found themselves
14 in troubled waters when the global pandemic swept through and forced them to shift
15 their programs, and once again endure the financial impacts of the dwindling of
16 enrollees;

17 WHEREAS, data from the Department of Education (DepEd) showed that “at
18 least 865 private schools have suspended their operations for this school year due to
19 low enrollment and inability to meet the requirements of learning management
20 systems for the conduct of distance learning”.³ The same led to the displacement of
21 around 4,400 teachers and forced students to transfer to public schools;⁴

22 WHEREAS, not long after the issuance of RR No. 5-2021, the Coordinating
23 Council of Private Educational Associations (COCOPEA) called for the “immediate
24 rectification” thereof, stressing that unless remedied, its imposition “may force
25 financially distressed schools to close down”;⁵

² Bureau of Internal Revenue (08 April 2021) *Revenue Regulation No. 5-2021*. Retrieved 30 June 2021, from: https://www.bir.gov.ph/images/bir_files/internal_communications_1/Full%20Text%20RR%202021/RR%20NO.%205%20-%202021.pdf

³ Magsambol, B. (02 June 2021) *Private Private schools protest new BIR regulation imposing 25% tax on them*. Retrieved 30 June 2021, from: <https://www.rappler.com/nation/group-hits-tax-policy-private-schools-philippines>

⁴ De Vera Ben O & Adonis, Meg. (04 June 2021), *Private schools groan under new tax rule*. Retrieved 30 June 2021, from: <https://business.inquirer.net/324104/private-schools-groan-under-new-tax-rule>

⁵ *Ibid.*

1 WHEREAS, COCOPEA, together with other concerned groups, have lobbied
2 various institutions of government to re-evaluate this regulation which amounts to “a
3 very heavy burden on the private education sector at a time when schools are already
4 struggling to survive as a result of first, the K-to-12 Act, and now the pandemic” as it
5 will “penalize, marginalize and discriminate against proprietary educational
6 institutions with unfeasibly higher taxes” which could eventually lead those already
7 financially distressed schools to shut down;⁶

8 WHEREAS, COCOPEA pointed out that RR No 5-2021 is “grossly inconsistent”
9 with the CREATE Act which it only seeks to implement. They protested the BIR’s
10 insertion of a condition that proprietary educational institutions must be “non-profit”
11 to enjoy the reduced rate. According to them, this action effectively disadvantages
12 private schools which would see their tax rates increased as a result of the BIR’s
13 interpretation of the CREATE Act;⁷

14 WHEREAS, COCOPEA warned that the “immediate impact will be seen in a
15 sharp reduction of investments in classroom capacity and scholarships. The longer-
16 term impact of RR 5-2021 would be that faculty and personnel are at greater risk of
17 losing their jobs, and even the communities and small businesses built around schools
18 will be significantly affected”;⁸

19 WHEREAS, as the spring cannot rise higher than its source, agencies tasked to
20 implement this law must not go beyond what is clearly and plainly written; even worse,
21 they cannot usurp legislative prerogative and mandate by adding details which are not
22 found in the law;

23 WHEREAS, legislative intent “is the vital part, the essence of the law. The intent
24 of the legislature is the law, and the key to, and the controlling factor in, its
25 construction and interpretation. Intent is the spirit which gives life to legislative
26 enactment.”⁹ Any construction and interpretation that deviate therefrom must be
27 arrested at the earliest opportunity for “statutes should be so construed not to defeat
28 but to carry out such ends and purposes.” In issuing the implementing regulation to
29 enforce the provisions of the CREATE Act, the implementing agency must be guided
30 by the purpose for which the measure was legislated. However, when the BIR took it

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ Agpalo, Ruben. *Statutory Construction*. (Philippines: Rex Book Store, Inc. International, 2009) pp. 108-109.

1 upon itself to modify what was not intended to be modified, it turned what was meant
2 to be a form of assistance into an oppressive provision that could lead educational
3 institutions to the brink of extinction;

4 WHEREAS, *ratio legis est anima legis*; the reason of the law is the soul of the
5 law. Misinterpreting what was otherwise plain and clear thereby running contrary to
6 the intent of the law, cuts into the very soul of the law. When the BIR inserted the
7 modifier “non-profit schools” in RR No. 5-2021 which can be found nowhere in the
8 definition of the proprietary schools in Section 27 (B) of the NIRC as amended by the
9 CREATE Act, it erroneously stepped outside the limits of its power and usurped
10 legislative power which has been vested by no less than the Constitution upon
11 Congress;

12 WHEREAS, private schools are the State’s allies which assist it in carrying out
13 the duty to educate the youth in whose hands the future of this nation depends on. In
14 unduly withdrawing a legislative grant, the disastrous consequences will be so far-
15 reaching that it would essentially lead educational institutions to their demise;

16 WHEREAS, while the power to tax has been said to be the power to destroy, the
17 said power must be used justly and treacherously in order to maintain the public’s
18 trust and confidence in the Government. It must still be exercised with caution to
19 minimize the injury to the proprietary rights of taxpayers;

20 WHEREAS, on 30 June 2021, the Senate Committee on Ways and Means
21 tackled Senate Bill (SB) No. 2272 which seeks to further amend Section 26 B of the
22 NIRC in order to serve as the legislative cure for the distress caused by RR No. 5-202.
23 It was revealed that majority of the Senators have already expressed support for the
24 passage of the measure. Even the Department of Finance (DOF), and the BIR itself,
25 when asked for their respective positions on the matter, have expressed their support
26 for the bill;

27 WHEREAS, the Senate from which this measure emanated from, and whose
28 intent runs through the veins of the said measure, must assert the spirit of the law. It
29 should not stand idly by while executive agencies substitute the Senate’s will and
30 purpose much to the detriment of the people;

31 WHEREAS, it behooves upon us to appeal to the President of the Philippines to
32 suspend the implementation of Revenue Regulation No. 5-2021 while SB No. 2272 is

1 being discussed. We must not await the further deleterious effects of the regulation to
2 continue to inject its venom which would inevitably cause closures, loss of employment
3 and ultimately injuring the right to education of our youth;

4 NOW, THEREFORE, BE IT RESOLVED BY THE SENATE, to urge the
5 President to suspend the implementation of the Bureau of Internal Revenue's (BIR)
6 Revenue Regulation (RR) No. 5-2021 which, through a misinterpretation of the law
7 and contrary to the spirit of the law, will impose a 25% corporate income tax on private
8 schools thereby cancelling the 1% rate offered by the pandemic rescue package under
9 Republic Act No. 11534, otherwise known as the "Corporate Recovery and Tax
10 Incentive for Enterprises (CREATE) Act".

Adopted,


LEILA M. DE LIMA