

SEP 23 1917

SENATE

Enrile

COMMITTEE REPORT NO. 652

Submitted by the Committee on Ways and Means on _____

Re : SB No. 3220

Recommending its approval with amendments.

Sponsor : Senator Lacson

MR. PRESIDENT:

The Committee on Ways and Means to which was referred SB No. 3220, introduced by Senator Juan Ponce Enrile, entitled:

**“AN ACT
TO ALLOW THE EXCHANGE OF INFORMATION BY THE
BUREAU OF INTERNAL REVENUE ON TAX MATTERS
PURSUANT TO INTERNATIONALLY-AGREED TAX
STANDARDS, AMENDING SECTIONS 6(F), 71 AND 270 OF
THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS
AMENDED, AND FOR OTHER PURPOSES,**

has considered the same and has the honor to report it back to the Senate with the recommendation that the bill be approved with the following amendments:

1. On page 2, line 7, after the words “Republic Act No. 1405” insert a comma (,) and the phrase **“REPUBLIC ACT NO. 6426, OTHERWISE KNOWN AS THE FOREIGN CURRENCY DEPOSIT ACT OF THE PHILIPPINES”**;
2. On page 2, line 16, replace the article “A” with the article **“AN”**;
3. On page 2, line 17, change the word “INTERNATIONAL” with the word **“INTERNATIONAL”**;
4. On the same page, line 24, after the words “Republic Act No. 1405” insert a comma (,) and the phrase **“REPUBLIC ACT NO. 6426, OTHERWISE KNOWN AS THE FOREIGN CURRENCY DEPOSIT ACT OF THE PHILIPPINES”**;
5. On page 5, line 22, between the words “OF” and “SHALL” insert a comma(,);

6. On page 7, after line 3, add a new Section, to read as follows:

"SEC 7. AUTHORITY OF THE COMMISSIONER OF INTERNAL REVENUE TO USE THE INFORMATION. – THE COMMISSIONER OF INTERNAL REVENUE SHALL BE ALLOWED TO USE THE INFORMATION OBTAINED FROM THE BANKS AND OTHER FINANCIAL INSTITUTIONS FOR TAX ASSESSMENT, VERIFICATION, AUDIT AND ENFORCEMENT PURPOSES OF THE BUREAU OF INTERNAL REVENUE."

7. On the same page, after line 11, add a new Section to read as follows:

"SEC. 9. NOTICE TO TAXPAYERS. – A TAXPAYER SHALL BE DULY NOTIFIED IN WRITING BY THE COMMISSIONER THAT A FOREIGN TAX AUTHORITY IS REQUESTING FOR EXCHANGE OF INFORMATION HELD BY FINANCIAL INSTITUTIONS PURSUANT TO A TAX CONVENTION OR AGREEMENT TO WHICH THE PHILIPPINES IS A SIGNATORY, UNDER SUCH RULES AND REGULATIONS AS MAY BE PRESCRIBED BY THE SECRETARY OF FINANCE, UPON RECOMMENDATION OF THE COMMISSIONER."

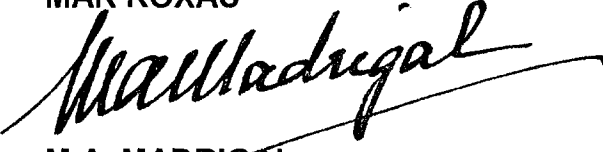
8. On the same page, line 4, "SEC. 7" shall be renumbered as "SEC. 8"; and



9. Renumber the Sections accordingly.

Respectfully submitted:


PANFILO M. LACSON
Chairman

Members:

MAR ROXAS

M.A. MADRIGAL


LOREN B. LEGARDA

RICHARD J. GORDON


FRANCIS "CHIZ" G. ESCUDERO

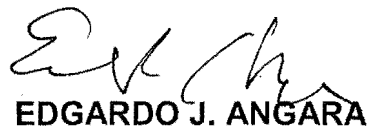
BENIGNO S. AQUINO III


GREGORIO B. HONASAN II


RODOLFO G. BIAZON



MANUEL "LITO" M. LAPID



EDGARDO J. ANGARA



FRANCIS N. BANGILINAN


ALAN "COMPAÑERO" S. CAYETANO



JOKER P. ARROYO

MANNY VILLAR

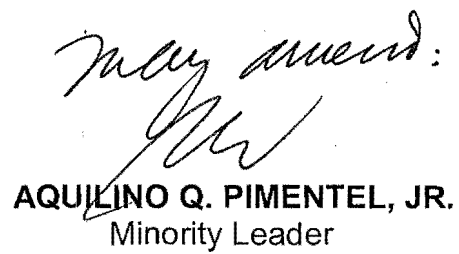
Ex-Officio Members:



JINGGOY EJERCITO ESTRADA
President Pro-Tempore



JUAN MIGUEL F. ZUBIRI
Majority Leader



AQUILINO Q. PIMENTEL, JR.
Minority Leader

HON. JUAN PONCE ENRILE
Senate President
Pasay City

Introduced by Sen. Juan Ponce Enrile

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EXPLANATORY NOTE

The attached bill seeks to comply with the Internationally Agreed Tax Standard (IATS) for Exchange of Information to more effectively carry out the country's commitments under bilateral tax treaties designed to combat tax abuses. This international standard, developed by the Organisation for Economic Co-Operation and Development (OECD), and endorsed by the G20 and the United Nations, significantly strengthens the authority of our tax administration to directly respond to request for tax information from treaty partners.

In a recent OECD report, the Philippines, rightly or wrongly, was one of the four countries which were included in the list of tax jurisdictions that have not committed to the internationally agreed tax standards. In response to the said OECD report, the Philippines, through the Secretary of Finance, manifested to the OECD Secretary General the country's commitment to comply with the international standards on information exchange and its full cooperation to help fight international tax evasion. Consequently, the country was removed from the list, thus, avoiding possible sanctions which include, among others, the reduction of aid and use of political pressure on global companies to withhold investment in countries that fail to observe said standard.

The Philippines has always been ready to comply with the international standards required for the exchange of tax information. In fact, we have more than thirty (30) tax treaties which provide for exchange of information on request. However, it has been difficult for our tax administration to comply with the provisions on the exchange of information set by international organizations due to some "domestic legal restrictions," particularly the country's stringent bank secrecy laws. In this context, there is therefore an urgent need to amend some pertinent provisions of Republic Act No. 8424, as amended, otherwise known as the National Internal Revenue Code of 1997 (NIRC).

The proposed amendatory bill allows foreign tax authorities, our treaty partners, to obtain information held by banks and financial institutions of taxpayers through the Commissioner of Internal Revenue, for the proper determination and collection of taxes on the foreign-sourced income of taxpayers of the foreign tax authority. This will also benefit the Philippines as we can also obtain similar information from our tax treaty partners to effectively reach the foreign income of our taxpayers and determine their correct tax liabilities under our tax laws.

In particular, this bill intends to amend Sections 6(F), 71 and 270 of the NIRC in order to:

1. Authorize the Commissioner to inquire into bank deposits and other related information held by financial institutions to supply information to a requesting foreign tax authority pursuant to a convention or agreement to which the Philippines is a signatory, subject to specific requirements as to the relevance of the tax information requested;
2. Allow requesting foreign tax authority to examine the income tax returns of taxpayers upon order of the President subject to rules and regulations on the necessity and relevance that may be promulgated upon enactment of the law; and

3. Penalize officers/employees of the Bureau of Internal Revenue for unlawful divulgence of information obtained from banks and financial institutions pursuant to Section 6(F) of the NIRC to persons other than the requesting foreign tax authority.

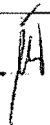
Finally, to assure effective implementation of the information exchange, the bill seeks to provide for: (1) sanctions for officers of banks and financial institutions for willful refusal to supply information; and (2) strict obligation of the requesting foreign tax authority to maintain confidentiality of the information received.

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



JUAN PONCE ENRILE
Senator

Senate Bill No. **3220**

Introduced by Sen. Juan Ponce Enrile RECEIVED BY 

AN ACT
TO ALLOW THE EXCHANGE OF INFORMATION BY THE BUREAU OF INTERNAL REVENUE ON TAX MATTERS PURSUANT TO INTERNATIONALLY-AGREED TAX STANDARDS, AMENDING SECTIONS 6(F), 71 AND 270 OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES.

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

1 **SECTION 1. Title.** – This Act shall be known as the “*Exchange of Information on Tax*
2 *Matters Act of 2009.*”

3 **SEC. 2. Declaration of Policy.** – It is the declared policy of the State to promote and
4 pursue a tax environment that contributes in sustaining a favorable international investment
5 climate and instills confidence in the adequacy and capacity of the country’s tax administration
6 to comply with its commitments under existing international conventions or agreements on tax
7 matters.

8 Pursuant to this declared policy, the government shall comply with or commit to the
9 internationally-agreed tax standard required for the exchange of tax information with its tax
10 treaty partners to help combat international tax evasion and avoidance and to help address tax
11 concerns that affect international trade and investment. The government shall likewise adopt
12 measures and procedures to enhance cooperation with other countries in the efficient collection
13 of taxes, consistent with the international understanding to ensure the payment of taxes due the
14 respective taxing jurisdictions of the treaty partners.

15 **SEC. 3. Authority of the Commissioner of Internal Revenue to Inquire into Bank**
16 ***Deposit Accounts and Related Information Held by Financial Institutions.*** – Section 6 (F) of
17 Republic Act No. 8424, otherwise known as the National Internal Revenue Code of 1997, as
18 amended, is hereby amended to read as follows:



1 “SEC. 6. Power of the Commissioner to Make Assessments and Prescribe
2 Additional Requirements for Tax Administration and Enforcement. –

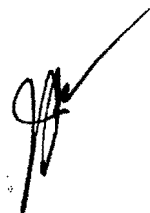
3 xxx xxx xxx

4 (F) Authority of the Commissioner to Inquire into Bank Deposit Accounts
5 AND OTHER RELATED INFORMATION HELD BY FINANCIAL
6 INSTITUTIONS. – Notwithstanding any contrary provision of Republic
7 Act No. 1405 and other general or special laws, the Commissioner is hereby
8 authorized to inquire into the bank deposits AND OTHER RELATED
9 INFORMATION HELD BY FINANCIAL INSTITUTIONS of:

- 10 (1) a decedent to determine his gross estate; [and]
11 (2) any taxpayer who has filed an application for compromise of his
12 tax liability under Sec. 204 (A)(2) of this Code by reason of financial
13 incapacity to pay his tax liability; AND
14 (3) A SPECIFIC TAXPAYER OR TAXPAYERS SUBJECT OF A
15 REQUEST FOR THE SUPPLY OF TAX INFORMATION FROM A
16 FOREIGN TAX AUTHORITY PURSUANT TO A
17 INTERNATIONAL CONVENTION OR AGREEMENT ON TAX
18 MATTERS TO WHICH THE PHILIPPINES IS A SIGNATORY
19 AND A PARTY OF.


20 In case a taxpayer files an application to compromise the payment of his
21 tax liabilities on his claim that his financial position demonstrates a clear
22 inability to pay the tax assessed, his application shall not be considered
23 unless and until he waives in writing his privilege under Republic Act No.
24 1405 or under other general or special laws, and such waiver shall constitute
25 the authority of the Commissioner to inquire into the bank deposits of the
26 taxpayer.

27 IN CASE OF A REQUEST FROM A FOREIGN TAX AUTHORITY
28 FOR TAX INFORMATION HELD BY BANKS AND FINANCIAL
29 INSTITUTIONS, THE EXCHANGE OF INFORMATION SHALL BE



1 DONE IN A SECURE MANNER TO ENSURE CONFIDENTIALITY
2 THEREOF UNDER SUCH RULES AND REGULATIONS AS MAY BE
3 PROMULGATED BY THE SECRETARY OF FINANCE, UPON
4 RECOMMENDATION OF THE COMMISSIONER.


5 THE COMMISSIONER SHALL PROVIDE THE TAX
6 INFORMATION OBTAINED FROM BANKS AND FINANCIAL
7 INSTITUTIONS PURSUANT TO A CONVENTION OR AGREEMENT
8 UPON REQUEST OF THE FOREIGN TAX AUTHORITY WHEN SUCH
9 REQUESTING FOREIGN TAX AUTHORITY HAS PROVIDED THE
10 FOLLOWING INFORMATION TO DEMONSTRATE THE
11 FORESEEABLE RELEVANCE OF THE INFORMATION TO THE
12 REQUEST:

- 13 1) THE IDENTITY OF THE PERSON UNDER EXAMINATION OR
14 INVESTIGATION;
 - 15 2) A STATEMENT OF THE INFORMATION BEING SOUGHT
16 INCLUDING ITS NATURE AND THE FORM IN WHICH THE SAID
17 FOREIGN TAX AUTHORITY PREFERS TO RECEIVE THE
18 INFORMATION FROM THE COMMISSIONER;
 - 19 3) THE TAX PURPOSE FOR WHICH THE INFORMATION IS BEING
20 SOUGHT;
 - 21 4) GROUNDS FOR BELIEVING THAT THE INFORMATION
22 REQUESTED IS HELD IN THE PHILIPPINES OR IS IN THE
23 POSSESSION OR CONTROL OF A PERSON WITHIN THE
24 JURISDICTION OF THE PHILIPPINES;
 - 25 5) TO THE EXTENT KNOWN, THE NAME AND ADDRESS OF ANY
26 PERSON BELIEVED TO BE IN POSSESSION OF THE
27 REQUESTED INFORMATION;
 - 28 6) A STATEMENT THAT THE REQUEST IS IN CONFORMITY WITH
29 THE LAW AND ADMINISTRATIVE PRACTICES OF THE SAID
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1 FOREIGN TAX AUTHORITY, SUCH THAT IF THE REQUESTED
2 INFORMATION WAS WITHIN THE JURISDICTION OF THE SAID
3 FOREIGN TAX AUTHORITY THEN IT WOULD BE ABLE TO
4 OBTAIN THE INFORMATION UNDER ITS LAWS OR IN THE
5 NORMAL COURSE OF ADMINISTRATIVE PRACTICE AND
6 THAT IT IS IN CONFORMITY WITH A CONVENTION OR
7 INTERNATIONAL AGREEMENT; AND,

8 7) A STATEMENT THAT THE REQUESTING FOREIGN TAX
9 AUTHORITY HAS EXHAUSTED ALL MEANS AVAILABLE IN
10 ITS OWN TERRITORY TO OBTAIN THE INFORMATION,
11 EXCEPT THOSE THAT WOULD GIVE RISE TO
12 DISPROPORTIONATE DIFFICULTIES.

13 THE COMMISSIONER SHALL FORWARD THE INFORMATION AS
14 PROMPTLY AS POSSIBLE TO THE REQUESTING FOREIGN TAX
15 AUTHORITY. TO ENSURE A PROMPT RESPONSE, THE
16 COMMISSIONER SHALL: (1) CONFIRM RECEIPT OF A REQUEST IN
17 WRITING TO THE REQUESTING TAX AUTHORITY AND SHALL
18 NOTIFY THE LATTER OF DEFICIENCIES IN THE REQUEST, IF ANY,
19 WITHIN SIXTY (60) DAYS OF THE RECEIPT OF THE REQUEST; AND
20 (2) IF THE COMMISSIONER IS UNABLE TO OBTAIN AND PROVIDE
21 THE INFORMATION WITHIN NINETY (90) DAYS OF RECEIPT OF
22 THE REQUEST, DUE TO OBSTACLES IN FURNISHING THE
23 INFORMATION OR THE BANK OR FINANCIAL INSTITUTION
24 REFUSES TO FURNISH THE INFORMATION, HE SHALL
25 IMMEDIATELY INFORM THE REQUESTING TAX AUTHORITY OF
26 THE SAME, EXPLAINING THE NATURE OF THE OBSTACLES OR
27 THE REASONS FOR REFUSAL.



28 THE TERM "FOREIGN TAX AUTHORITY," AS USED HEREIN,
29 SHALL REFER TO THE TAX AUTHORITY OR TAX


1 ADMINISTRATION OF THE REQUESTING STATE UNDER THE TAX
2 TREATY OR CONVENTION TO WHICH THE PHILIPPINES IS A
3 SIGNATORY OR A PARTY OF.”

4 **SEC. 4. *Allowing a Foreign Tax Authority to Examine Income Tax Returns of***
5 ***Taxpayers in the Philippines.*** – Section 71 of Republic Act No. 8424, as amended, otherwise
6 known as the National Internal Revenue Code of 1997, is hereby amended to read as follows:

7 **“SEC. 71. Disposition of Income Tax Returns, Publication of Lists of**
8 **Taxpayers and Filers.** — After the assessment shall have been made, as
9 provided in this Title, the returns, together with any corrections thereof
10 which may have been made by the Commissioner, shall be filed in the
11 Office of the Commissioner and shall constitute public records and be open
12 to inspection as such upon the order of the President of the Philippines,
13 under rules and regulations to be prescribed by the Secretary of Finance,
14 upon recommendation of the Commissioner.

15 The Commissioner may, in each year, cause to be prepared and
16 published in any newspaper the lists containing the names and addresses of
17 persons who have filed income tax returns.

18 INCOME TAX RETURNS OF SPECIFIC TAXPAYERS SUBJECT
19 OF A REQUEST FOR EXCHANGE OF INFORMATION BY A
20 FOREIGN TAX AUTHORITY PURSUANT TO AN INTERNATIONAL
21 CONVENTION OR AGREEMENT ON TAX MATTERS TO WHICH
22 THE PHILIPPINES IS A SIGNATORY OR A PARTY OF SHALL BE
23 OPEN TO INSPECTION UPON THE ORDER OF THE PRESIDENT OF
24 THE PHILIPPINES, UNDER RULES AND REGULATIONS AS MAY
25 BE PRESCRIBED BY THE SECRETARY OF FINANCE, UPON
26 RECOMMENDATION OF THE COMMISSIONER.




27 **SEC. 5. *Authority of the Commissioner of Internal Revenue to Supply Information to a***
28 ***Foreign Tax Authority which is at his Disposal.*** – Section 270 of Republic Act No. 8424, as

1 amended, otherwise known as the National Internal Revenue Code of 1997, is hereby amended
2 to read as follows:

3 ***"SEC. 270. Unlawful Divulgence of [Trade Secrets] INFORMATION: —***

4 Except as provided in Sections 6(F) AND 71 of this Code and Section 26 of
5 Republic Act No. 6388, any officer or employee of the Bureau of Internal
6 Revenue who divulges to any person or makes known in any other manner
7 than may be provided by law information regarding the business, income or
8 estate of any taxpayer, the secrets, operation, style or work, or apparatus of
9 any manufacturer or producer, or confidential information regarding the
10 business of any taxpayer, knowledge of which was acquired by him in the
11 discharge of his official duties, shall upon conviction for each act or
12 omission, be punished by a fine of not less than Fifty thousand pesos
13 (P50,000) but not more than One hundred thousand pesos (P100,000), or
14 suffer imprisonment of not less than two (2) years but not more than five (5)
15 years, or both.

16 *ANY OFFICER OR EMPLOYEE OF THE BUREAU OF INTERNAL*
17 *REVENUE WHO DIVULGES OR MAKES KNOWN IN ANY OTHER*
18 *MANNER TO ANY PERSON OTHER THAN THE REQUESTING*
19 *FOREIGN TAX AUTHORITY INFORMATION OBTAINED FROM BANKS*
20 *AND FINANCIAL INSTITUTIONS PURSUANT TO SECTION 6(F),*
21 *KNOWLEDGE OF WHICH WAS ACQUIRED BY HIM IN THE*
22 *DISCHARGE OF HIS OFFICIAL DUTIES, SHALL, UPON CONVICTION,*
23 *BE PUNISHED BY A FINE OF NOT LESS THAN FIFTY THOUSAND*
24 *PESOS (P50,000) BUT NOT MORE THAN ONE HUNDRED THOUSAND*
25 *PESOS (P100,000), OR SUFFER IMPRISONMENT OF NOT LESS THAN*
26 *TWO (2) YEARS BUT NOT MORE THAN FIVE (5) YEARS, OR BOTH. "*



27 **SEC. 6. Willful Refusal to Supply Information.** – Any officer, owner, agent, manager,
28 director or officer-in-charge of any bank or financial institution within the purview of this Act
29 who, being required in writing by the Commissioner, willfully refuses to supply the required

1 information shall be punished by a fine of not less than Fifty thousand pesos (P50,000.00) nor
2 more than One hundred thousand pesos (P100,000.00) or by imprisonment of not less than two
3 (2) years nor more than five (5) years, or both.

4 **SEC. 7. *Obligation to Maintain Confidentiality of Information Received.*** – Any
5 information received by a foreign tax authority from the Bureau of Internal Revenue pursuant to
6 an international convention or agreement on tax matters shall be treated by the authority as
7 absolutely confidential in nature in the same manner as information obtained by the latter under
8 its laws and shall be disclosed only to persons or authorities, including courts and administrative
9 bodies, involved in the assessment or collection of, the enforcement or prosecution in respect of,
10 or the determination of appeals in relation to, the taxes covered by such conventions or
11 agreements.

12 **SEC. 8. *Separability Clause.*** – If any provision of this Act is declared invalid or
13 unconstitutional, other provisions hereof which are not affected thereby shall continue to be in
14 full force and effect.

15 **SEC. 9. *Repealing Clause.*** – All laws, presidential decrees, executive order, rules and
16 regulations or parts thereof which are inconsistent with or contrary to this Act are hereby
17 repealed or modified accordingly.

18 **SEC. 10. *Effectivity Clause.*** This Act shall take effect fifteen (15) days after approval
19 and publication in two (2) newspapers of general circulation in the Philippines.

20 Approved.

