



SENATE  
S.B. NO **2397**

'14 SEP -8 P6:14

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Introduced by Senator Maria Lourdes Nancy S. Binay

AN ACT AMENDING SECTION 97 OF THE NATIONAL INTERNAL REVENUE CODE

EXPLANATORY NOTE

In the case of *Romarico Vitug v. Court of Appeals, G.R. No. 82027 March 29, 1990* ("*Vitug Case*"), the Supreme Court upheld the validity and enforceability of survivorship agreements among co-depositors in the case of joint accounts. Upon the death of a co-depositor, the funds in the joint account would become property of the living co-depositors. As a consequence, the living co-depositors may make use of it for any purpose they may deem necessary.

However, Section 97 of the National Internal Revenue Code appeared to have qualified the rights of the living co-depositors discussed in the *Vitug Case*, as follows:

"Section 97. *Payment of Tax Antecedent to the Transfer of Shares, Bonds or Rights.* - There shall not be transferred to any new owner in the books of any corporation, sociedad anonima, partnership, business, or industry organized or established in the Philippines any share, obligation, bond or right by way of gift inter vivos or mortis causa, legacy or inheritance, unless a certification from the Commissioner that the taxes fixed in this Title and due thereon have been paid is shown.

If a bank has knowledge of the death of a person, who maintained a bank deposit account alone, or jointly with another, it shall not allow any withdrawal from the said deposit account, unless the Commissioner has certified that the taxes imposed thereon by this Title have been paid: Provided, however, That the administrator of the estate or any one (1) of the heirs of the decedent may, upon authorization by the Commissioner, withdraw an amount not exceeding Twenty thousand pesos (P20,000) without the said certification. For this purpose, all withdrawal slips shall contain a statement to the effect that all of the joint depositors are still living at the time of withdrawal by any one of the joint depositors and such statement shall be under oath by the said depositors" (*Emphasis supplied.*)

In a Bureau of Internal Revenue ("BIR") ruling dated 9 September 2003 addressed to Ishiwata Gatmaytan and Associates ("*Ishiwata BIR Ruling*"), the BIR addressed a query on whether a bank may release funds from a joint account subject to a Survivorship Agreement.

The BIR therein explicitly held that the surviving depositor cannot withdraw the funds in the joint account.<sup>1</sup>

The above-quoted Section 97 including the *Ishiwata BIR Ruling* in effect imposed an onerous provision upon living co-depositors by completely denying to the living co-depositors access to the funds in the joint account with survivorship agreement. Aside from being a clear contravention of the intent of the parties, the requirement of certification for joint accounts with survivorship agreement does not appear to be supported by any valid tax objective. If the intent of the law were to make sure that taxes have been paid, that intent is already served by including the presumed share of the deceased person's joint account in the computation of the deceased person's gross estate.

Considering the circumstances, there are possibilities that legal controversies may arise, such as, the legitime of the heirs are impaired or if the estate is rendered unable to pay the taxes due to the government, the BIR will be left without legal remedies. On the other hand, to deprive the living co-depositors access to even their own presumed share to the funds in the joint account is manifestly unjust.

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

  
MARIA LOURDES NANCY S. BINAY  
Senator

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<sup>1</sup> A copy of the BIR Ruling is attached as Annex "A".

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1 AN ACT AMENDING SECTION 97 OF THE NATIONAL INTERNAL REVENUE CODE

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

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7 **SECTION 1.** Section 97 of the National Internal Revenue Code is hereby amended to read  
8 as follows:

9  
10 "Section 97. *Payment of Tax Antecedent to the Transfer of Shares, Bonds or*  
11 *Rights.* - There shall not be transferred to any new owner in the books of any  
12 corporation, sociedad anonima, partnership, business, or industry organized or  
13 established in the Philippines any share, obligation, bond or right by way of gift  
14 inter vivos or mortis causa, legacy or inheritance, unless a certification from the  
15 Commissioner that the taxes fixed in this Title and due thereon have been paid is  
16 shown.

17  
18 If a bank has knowledge of the death of a person, who maintained a bank deposit  
19 account alone, or jointly with another, it shall not allow any withdrawal from the  
20 said deposit account, unless the Commissioner has certified that the taxes  
21 imposed thereon by this Title have been paid: Provided, however, That the  
22 administrator of the estate or any one (1) of the heirs of the decedent may, upon  
23 authorization by the Commissioner, withdraw an amount not exceeding Twenty  
24 thousand pesos (P20,000) without the said certification. For this purpose, all  
25 withdrawal slips shall contain a statement to the effect that all of the joint  
26 depositors are still living at the time of withdrawal by any one of the joint  
27 depositors and such statement shall be under oath by the said depositors.

28  
29 THE REQUIREMENT OF A CERTIFICATION FROM THE  
30 COMMISSIONER UNDER THIS SECTION CAN BE DISPENSED WITH, IF  
31 THE CO-DEPOSITORS IN A JOINT ACCOUNT HAVE EXECUTED AN  
32 AGREEMENT THAT IN CASE ONE OF THEM DIES, THE FUNDS IN THE  
33 ACCOUNT SHALL PERTAIN TO THE LIVING CO-DEPOSITOR/S  
34 EXCLUSIVELY. IT SHALL BE UNDERSTOOD THAT THIS PROVISION  
35 IS WITHOUT PREJUDICE TO THE RIGHTS OF ACTION THE HEIRS OF  
36 THE DECEDENT OR THE ESTATE MAY HAVE AGAINST THE LIVING  
37 CO-DEPOSITOR/S IN THE EVENT THAT THE LEGITIMES OF THE  
38 HEIRS ARE IN DANGER OF BEING IMPAIRED OR WHEN THE ESTATE  
39 WILL BE RENDERED INCAPABLE OF PAYING TAXES UPON THE

1           TRANSFER OF FUNDS IN THE JOINT DEPOSIT ACCOUNT TO THE  
2           LIVING CO-DEPOSITORS.”

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4  
5   **SECTION 2.** *Effectivity.* This Act shall take effect fifteen (15) days after its complete  
6   publication in at least two (2) newspapers of general circulation.

7  
8   Approved,