

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




Senate
Office of the Secretary

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SENATE

S. No. 839

RECEIVED BY: 

Introduced by Senator Ralph G. Recto

AN ACT
EXEMPTING TOLLWAY OPERATIONS FROM THE VALUE ADDED TAX,
AMENDING FOR THIS PURPOSE SECTIONS 108 AND 109 OF THE NATIONAL
INTERNAL REVENUE CODE OF 1997, AS AMENDED

Explanatory Note

This proposed measure seeks to exempt the services of tollway operators from the Value-Added Tax (VAT). Lawmakers, renowned tax experts and economists consistently maintained that the legislative intent in enacting Republic Act No. 7716, or the Expanded Value-Added Tax Law in 1994 is to exclude toll fees from the coverage of VAT.

However, the Bureau of Internal Revenue (BIR) issued Revenue Memorandum Circular No. 63-2010 dated July 10, 2010 clarifying that toll fees are subject to VAT, since the services of tollway operators are not listed among exempt transactions. In *Diaz and Timbol vs. Secretary of Finance and Commissioner of Internal Revenue*, the Supreme Court ruled that toll fees are subject to VAT. It is a well-settled rule in taxation that tax exemptions must be justified by clear statutory grant and based on language in the law too plain to be mistaken.

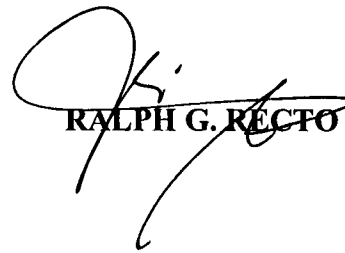
VAT is an indirect tax that is passed on to the consumers of goods and services. Therefore, its imposition on toll fees will likely increase the cost of transportation and consequently result in the increase of prices of basic goods and services. Similarly, various manufacturing, business process outsourcing (BPO), passenger and cargo transport hub operators and others will incur additional transport expenditures and experience disruptions in their business expectations considering that the tollways link up freeports, special economic zones, regional food production areas and financial centers with the population centers, in rural, urban and highly-urbanized areas. Among these are the Tarlac Pangasinan La Union Expressway (TPLEX), Subic Clark Tarlac Expressway (SCTEX), North Luzon Expressway (NLEX), Star Tollway, and South Luzon Expressway (SLEX), among others.

Furthermore, VAT on services of tollway operators had never formed part of the contracts or agreements between the Government and investors under the various Public-Private Partnership (PPP)-Build-Operate-Transfer (BOT) programs, the core of the government's economic resiliency plan.

Tollway operation is an inherent component of PPP in order to build the necessary road infrastructures that government cannot fund by itself. Privately-built toll facilities through the various modes of PPP consequently become publicly-owned at the conclusion / termination / expiration of the contract or agreement. As such, they should not be subject to VAT considering that tollway operators are merely stepping into the shoes of government

in constructing these roads for public convenience for a reasonable rate of return on their investments.

Hence, the passage of this bill is earnestly sought.



RALPH G. RECTO



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Be it enacted by the Senate and 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 Properties. –**

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

11 **“(i) Value-added tax collection as a percentage of Gross Domestic Product**
12 **(GDP) of the previous year exceeds two and four-fifth percent (2 4/5%); or**

13 **“(ii) National government deficit as a percentage of GDP of the previous**
14 **year exceeds one and one-half percent (1 ½%).**

15 **“The phrase 'sale or exchange of services' means the performance of all**
16 **kinds of services in the Philippines for others for a fee, remuneration or**
17 **consideration, including those performed or rendered by construction and**
18 **service contractors; stock, real estate, commercial, customs and immigration**
19 **brokers; lessors of property, whether personal or real; warehousing services;**
20 **lessors or distributors of cinematographic films; persons engaged in milling,**
21 **processing, manufacturing or repacking goods for others; proprietors,**
22 **operators or keepers of hotels, motels, rest-houses, pension houses, inns,**
23 **resorts; proprietors or operators of restaurants, refreshment parlors, cafes**

1 and other eating places, including clubs and caterers; dealers in securities;
2 lending investors; transportation contractors on their transport of goods or
3 cargoes, including persons who transport goods or cargoes for hire and other
4 domestic common carriers by land relative to their transport of goods or
5 cargoes; common carriers by air and sea relative to their transport of
6 passengers, goods or cargoes from one place in the Philippines to another
7 place in the Philippines; sales of electricity by generation companies,
8 transmission, and distribution companies; services of franchise grantees of
9 electric utilities, telephone and telegraph, radio and television broadcasting
10 and all other franchise grantees except **SERVICES OF TOLLWAY**
11 **OPERATORS WITH TOLLWAY OPERATION CERTIFICATE**
12 **ISSUED BY THE TOLL REGULATORY BOARD AND** those under
13 Section 119 of this Code and non-life insurance companies (except their
14 crop insurances), including surety, fidelity, indemnity and bonding
15 companies; and similar services regardless of whether or not the
16 performance thereof calls for the exercise or use of the physical or mental
17 faculties. The phrase 'sale or exchange of services' shall likewise include:

18 "xxx."

19 **SEC. 2.** Section 109 of the National Internal Revenue Code of 1997, as amended, is
20 hereby further amended to read as follows:

21 **"SEC. 109. Exempt Transactions. –**

22 "(1) Subject to the provisions of Subsection (2) hereof, the following transactions
23 shall be exempt from the value-added tax:

24 "(A) xxx;

25 "xxx;

26 (V) Services of banks, non-bank financial intermediaries performing quasi-
27 banking functions, other non-bank financial intermediaries; [and]

28 "(W) **SERVICES OF TOLLWAY OPERATORS WITH TOLLWAY**
29 **OPERATION CERTIFICATE ISSUED BY THE TOLL REGULATORY**
30 **BOARD; AND**

31 "(X) [W] Sale or lease of goods or properties or the performance of services
32 other than the transactions mentioned in the preceding paragraphs, the gross annual
33 sales and/or receipts do not exceed the amount of One million five hundred thousand
34 pesos (P1,500,000): Provided, That not later than January 31, 2009 and every three (3)
35 years thereafter, the amount herein stated shall be adjusted to its present value using the
36 Consumer Price Index, as published by the National Statistics Office (NSO).

37 "(2) xxx."

1 **SEC. 3. *Implementing Rules and Regulations (IRR)*.** – Within sixty (60) days upon
2 approval of this Act, the Secretary of Finance shall issue the IRR for the effective
3 implementation of this Act.

4 **SEC. 4. *Repealing Clause*.** - All laws, acts, decrees, executive orders, issuances,
5 and rules and regulations or parts thereof which are contrary to and inconsistent with this
6 Act are hereby repealed, amended or modified accordingly.

7 **SEC. 5. *Effectivity*.** - This Act shall take effect fifteen (15) days after its complete
8 publication in the Official Gazette or in at least two (2) newspapers of general circulation.

Approved,