

SENATE

'19 JUL -8 P2:36

S. No. 270

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Introduced by Senator Ralph G. Recto

AN ACT
EXEMPTING THE SALE OF REAL PROPERTY IN THE EXERCISE OF THE STATE'S
POWER OF EMINENT DOMAIN FROM THE PAYMENT OF CAPITAL GAINS AND
DOCUMENTARY STAMP TAXES, AMENDING FOR THE PURPOSE SECTIONS 24 (D)
AND 199 OF REPUBLIC ACT NO. 8424, AS AMENDED, OTHERWISE KNOWN AS THE
'NATIONAL INTERNAL REVENUE CODE OF 1997'

Explanatory Note

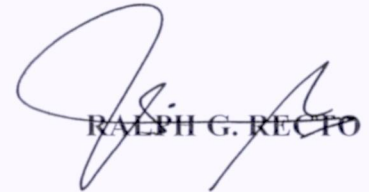
Section 9, Article III of the 1987 Constitution guarantees the right of every owner whose land is being taken for public use to be paid with just compensation. This exercise of the power of eminent domain by the State involves the transfer of real estate title in exchange for the payment of compensation. Section 24(D)(1) of Republic Act No. 8424, as amended, otherwise known as the National Internal Revenue Code (NIRC) of 1997 mandates that a final tax of six percent (6%) based on the gross selling price or current fair market value, whichever is higher, is imposed upon capital gains presumed to have been realized from the sale, exchange, or other disposition of real property located in the Philippines. This means that the Bureau of Internal Revenue considers the just compensation received by a property owner as a *gain* for which taxes should be paid. On the other hand, Section 199 of the NIRC mandates the collection of documentary stamp tax on the same transaction.

One way of looking at the expropriation of a real property is as a forced sale of property. Owners have a degree of primal, oftentimes emotional attachment to the land and forcibly taking the land from them is like severing the attachment. Accordingly, the State should exercise due sensibility and consideration by exempting the compulsory seller from paying these taxes, at least, to give justice for the material impairment of the seller's property.

In an effort of the Duterte administration to sustain economic growth through its "Build, Build, Build" program, the government may be constrained to acquire real properties. Private individuals and/or entities concerned should be spared the burden of paying the capital gains and documentary stamp taxes.

This bill acknowledges that time is of the essence in implementing a government infrastructure project, thus, allowing certain exceptions to taxation of property taken by eminent domain should hasten the acquisition process.

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



RALPH G. RECTO

/mabm

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AND 199 OF REPUBLIC ACT NO. 8424, AS AMENDED, OTHERWISE KNOWN AS THE
'NATIONAL INTERNAL REVENUE CODE OF 1997'

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

1 **SECTION 1.** Section 24(D) of Republic Act No. 8424, as amended, otherwise known as
2 the National Internal Revenue Code of 1997, is hereby further amended to read as follows:

3 "SEC. 24. x x x

4 "(A) x x x

5 "(B) x x x

6 "(C) x x x

7 "(D) Capital Gains from Sale of Real Property. –

8 (1) *In General.* - The provisions of Section 39(B) notwithstanding, a final tax of six
9 percent (6%) based on the gross selling price or current fair market value as
10 determined in accordance with Section 6(E) of this Code, whichever is higher, is
11 hereby imposed upon capital gains presumed to have been realized from the sale,
12 exchange, or other disposition of real property located in the Philippines, classified
13 as capital assets, including pacto de retro sales and other forms of conditional sales,
14 by individuals, including estates and trusts: *Provided*, That the tax liability, if any,
15 on gains from sales or other dispositions of real property to the government or any
16 of its political subdivisions or agencies or to government-owned or controlled
17 corporations shall be determined either under Section 24 (A) or under this
18 Subsection, at the option of the taxpayer: **PROVIDED, FURTHER, THAT IN**
19 **CASE WHERE THE GOVERNMENT EXERCISES ITS POWER OF**
20 **EMINENT DOMAIN, THE SAID TRANSACTION SHALL BE EXEMPT**
21 **FROM THE PAYMENT OF THE CAPITAL GAINS TAX IMPOSED**
22 **UNDER THIS SECTION.**

23 "(2) Exception. – x x x"

1 **SEC. 2.** Section 199 of Republic Act No. 8424, as amended, otherwise known as the
2 National Internal Revenue Code of 1997, is hereby further amended to read as follows:

3 "SEC. 199. *Documents and Papers Not Subject to Stamp Tax.* - The provisions of Section
4 173 to the contrary notwithstanding, the following instruments, documents and papers shall
5 be exempt from the documentary stamp tax:

6 “(a) x x x

7 “ x x x

8 “(n) x x x; **AND**

9 **“(O) TRANSACTIONS WHERE THE GOVERNMENT EXERCISES ITS**
10 **POWER OF EMINENT DOMAIN.”**

11 **SEC. 3. *Rules and Regulations.*** – The Secretary of Finance shall, upon the
12 recommendation of the Commissioner of Internal Revenue, within sixty (60) days from the
13 effectivity of this Act, promulgate the necessary rules and regulations to faithfully implement the
14 intent and the provisions of this Act: *Provided*, That the failure of the Secretary of Finance to
15 promulgate the said rules and regulations shall not prevent the implementation of this Act upon its
16 effectivity.

17 **SEC. 4. *Separability Clause.*** – If any provision of this Act is subsequently declared invalid
18 or unconstitutional, other provisions hereof which are not affected hereby shall remain in full force
19 and effect.

20 **SEC. 5. *Repealing Clause.*** – All laws, decrees and orders or parts thereof inconsistent with
21 the provisions of this Act are hereby repealed or modified accordingly.

22 **SEC. 6. *Effectivity Clause.*** – This Act shall take effect fifteen (15) days after its complete
23 publication either in the *Official Gazette* or in at least one (1) newspaper of general circulation.

 Approved,