


SENATE

'19 JUL 17 P6:15

S. No. 603

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 the 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.

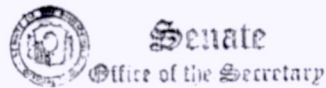
Tollway operation is an inherent component of PPP in order to build the necessary road infrastructures that government cannot fund by itself. Privately-built toll facilities through the various modes of PPP consequently become publicly-owned at the expiration of the contract or agreement. As such, they 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*
4 *Properties.* –

5 "(A) *Rate and Base of Tax.* – There shall be levied, assessed and
6 collected, a value-added tax equivalent to twelve percent (12%) of gross
7 receipts derived from the sale or exchange of services, including the use
8 or lease of properties.

9 "The phrase 'sale or exchange of services' means the performance
10 of all kinds of services in the Philippines for others for a fee, remuneration
11 or consideration, including those performed or rendered by construction
12 and service contractors; stock, real estate, commercial, customs and
13 immigration brokers; lessors of property, whether personal or real;
14 warehousing services; lessors or distributors of cinematographic films;
15 persons engaged in milling, processing, manufacturing or repacking goods
16 for others; proprietors, operators or keepers of hotels, motels, resthouses,
17 pension houses, inns, resorts; proprietors or operators of restaurants,

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

19 "xxx."

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

22 "Sec. 109. *Exempt Transactions.* –

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

25 "(A) xxx;

26 "xxx;

27 (AA) Sale of drugs and medicines prescribed for diabetes, high
28 cholesterol, and hypertension beginning January 1, 2019; ~~[and]~~

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

1 " ~~{BB}~~ (CC) Sale or lease of goods or properties or the performance of
2 services other than the transactions mentioned in the preceding paragraphs,
3 the gross annual sales and/or receipts do not exceed the amount of Three
4 million pesos (P3,000,000).

5 "(2) xxx."

6 Sec. 3. *Implementing Rules and Regulations (IRR)*. – Within thirty (30) days
7 from the effectivity of this Act, the Secretary of Finance, upon the recommendation
8 of the Commissioner of Internal Revenue, shall promulgate the necessary rules and
9 regulations for its effective implementation.

10 Sec. 4. *Repealing Clause*. – All laws, acts, decrees, executive orders,
11 issuances, and rules and regulations or parts thereof which are contrary to and
12 inconsistent with this Act are hereby repealed, amended or modified accordingly.

13 Sec. 5. *Effectivity*. – This Act shall take effect fifteen (15) days after its
14 complete publication in the *Official Gazette* or in at least two (2) newspapers of
15 general circulation.

 Approved,