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SENATE

S. No. 1163

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Introduced by Senator Ralph G. Recto

**AN ACT
ORDAINING A BILL OF RIGHTS FOR TAXPAYERS**

EXPLANATORY NOTE

It is a legal truism that taxes are the lifeblood of the Government. Thus, to generate income, the Bureau of Internal Revenue (BIR) and the Bureau of Customs (BOC), are mandated to collect national taxes, tariffs and duties, under the National Internal Revenue Code (NIRC) of 1997, as amended, and the Customs Modernization and Tariff Act (CMTA), respectively, to finance Government projects, programs and its personnel.

In the arena of tax collection, there are always two sides, the Government and the taxpayer. Reading the provisions of the NIRC and CMTA on remedies, the Government is amply protected.

Under the NIRC and CMTA, there are legal rights and remedies available to the taxpayers. However, in spite of the available remedies and rights, reports persist that certain individuals have been subjected to harassment by some officials and employees of the BIR and BOC including the filing of undue and baseless complaints resulting to embarrassment and humiliation on the part of the taxpayers.

Protecting taxpayers is a balancing task that challenges the Government vis-à-vis its mandate to collect the necessary revenues for the Government.

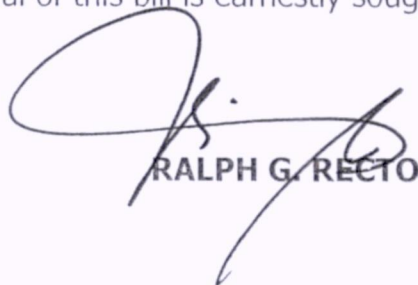
Thus, this bill seeks to ordain a bill of rights for the taxpayers which are divided into three main pillars: a) taxpayers' basic rights, b) taxpayers' right in civil cases, and c) taxpayers' rights in criminal cases. The enumerated rights are in addition to the legal rights and remedies provided under the NIRC and CMTA.

In order to protect the taxpayers' rights, this measure also seeks to establish the Office of the Taxpayers Advocate with, among others, the following functions:

- a. assist taxpayers in resolving problems with the BIR and BOC;
- b. identify areas in which taxpayers have problems in dealings with the BIR and BOC;
- c. to the extent possible, propose changes in the administrative practices of the BIR and BOC to mitigate problems identified under the preceding paragraph;
- d. identify potential legislative changes which may be appropriate to mitigate such problems; and
- e. issue taxpayer assistance orders.

Clearly, there is a need to enact this bill into a law in order to protect the rights of the taxpayers. Mandating due observance of standards and proper procedures on the part of BIR and BOC in dealing with various concerns from taxpayers would not only promote efficiency, but may likewise eliminate red tape and corruption.

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



RALPH G. RECTO

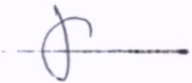
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Introduced by Senator Ralph G. Recto

AN ACT
ORDAINING A BILL OF RIGHTS FOR TAXPAYERS

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 Taxpayer Bill of Rights
2 Act”.

3 *Sec. 2. Declaration of Principles.* – It is hereby declared the policy of the State
4 to provide increased protection of taxpayers’ rights in complying with the National
5 Internal Revenue Code of 1997, as amended, the Customs Modernization and Tariff
6 Act, and all other rules and regulations, to the end that abuses committed against
7 taxpayers are mitigated, if not completely avoided, and taxes are collected
8 responsibly, with due regard for taxpayers’ rights.

9 *Sec. 3. Taxpayer’s Bill of Rights.* – In addition to the rights and remedies of
10 the taxpayers as provided for in the National Internal Revenue Code (NIRC) of 1997,
11 as amended; Customs Modernization and Tariff Act (CMTA), as amended; Republic
12 Act No. 1125, as amended, creating the Court of Tax Appeals (CTA); and all other
13 laws, rules and regulations, issuances and circulars in support thereof, the taxpayers

1 are hereto granted the following: a) taxpayers' basic rights; b) taxpayers' rights in
2 civil cases; and c) taxpayers' rights in criminal cases, whether at the administrative
3 level or at the judicial level, concerning tax assessments, collection and refund, and
4 prosecution for criminal cases.

5 Sec. 4. *Taxpayers' Basic Rights.* – The following are the taxpayers' basic
6 rights:

7 a. The right to be informed of any pending assessment, investigation for
8 criminal tax cases, collection or any other cases filed against the taxpayer or that the
9 taxpayer is a subject of any request for third-party information or any lifestyle check
10 for purposes of tax compliance. The right to available information and prompt,
11 accurate responses to questions and requests for tax assistance shall always be
12 ensured. In this regard, all revenue officers and agents shall undergo regular
13 training and evaluation on a variety of job standards including customer relations.
14 This standard requires agents to ensure that they fully explain to taxpayers their
15 rights under the law;

16 b. The right to obtain simple, nontechnical statements, which explain the
17 reason for audit selection and the procedures, remedies, and rights available during
18 audit, appeals and collection proceedings. These rights include, but are not limited
19 to, the rights pursuant to this Taxpayers' Bill of Rights and the right to be provided
20 with a narrative description which explains the basis of audit changes, proposed
21 assessments, assessments and denials of refunds; identifies any amount of tax,
22 interest, or penalty due; and states the consequences of the taxpayer's failure to
23 comply with the notice;

1 c. The right to have a speedy and impartial disposition of cases, the right to
2 due process and the observance of rules regarding assessments, refunds or any
3 other proceedings including requests for advisory rulings, clearances, termination
4 letters and lifting of seizure, garnishment and forfeiture orders, whether it be against
5 the taxpayer or against the officials and staff of the Bureau of Internal Revenue
6 (BIR), the Bureau of Customs (BOC) and other government agencies including
7 government-owned and -controlled corporations (GOCCs), government financial
8 institutions (GFIs), and local government units (LGUs) tasked with the enforcement
9 of revenue or banking and financial laws, whether of local or national application;

10 d. The right to privacy as guaranteed by the Constitution, and the right to
11 have any case or proceeding, including those involving third-party information
12 requests against or involving the taxpayer, to be devoid of publicity, whether
13 through radio, television, newspaper or any alternative media, while said case or
14 proceeding is pending;

15 e. The right to seek assistance from the National Taxpayer Advocate who
16 shall be responsible for facilitating the resolution of taxpayer complaints and
17 problems not resolved through the normal administrative channels within the BIR or
18 BOC, including any taxpayer complaints regarding unsatisfactory treatment by BIR or
19 BOC employees. The taxpayers' rights advocate may issue a stay order if a taxpayer
20 has suffered or is about to suffer irreparable loss as a result of an unjust action by
21 the said Bureaus;

22 f. The right to have the taxpayer's tax information kept confidential unless
23 otherwise authorized by law;

1 g. The right to participate in free education activities that help the taxpayer
2 successfully comply with the revenue laws of the State;

3 h. The right to fair and consistent application of the tax laws of the State by
4 the BIR and BOC;

5 i. The right to have the BIR begin and complete its audits in a timely and
6 expeditious manner after notification of intent to audit through a letter of authority.
7 Such audit shall be conducted only once per year unless otherwise provided by law;

8 j. The right to request for installment payment of tax liabilities under any
9 compromise settlement or any assessed tax liabilities pursuant to Taxpayer
10 Assistance Order;

11 k. The right to recover attorney's fees and litigation costs for tax
12 assessments made without substantial justification, and for claims for tax refunds
13 which are not acted upon for an unreasonable length of time at the administrative
14 level, or denied at the administrative level but subsequently allowed by the CTA if it
15 appears that such denial was unjustified. The award of attorney's fees and costs of
16 litigation shall be included in the order upholding the taxpayer's claim;

17 l. The right to have interests and penalties abated in case of any
18 unjustifiable error or delay caused by the tax authorities or their agents, including
19 ministerial acts such as loss of records, personnel transfers, extended illness or
20 leaves of absence, and personnel training; and,

21 m. The right to have the assistance of counsel in criminal proceedings, should
22 the taxpayer request for it.

23 Sec. 5. *Taxpayers' Rights in Civil Cases.* – The following are the
24 taxpayers' rights in civil cases:

1 a. The right to have the opportunity to have the case against the taxpayer
2 amicably settled, as the case may warrant: *Provided*, That in every stage of the
3 proceeding, whether in the administrative or judicial level, the parties shall always
4 be given the chance to exhaust all and every remedy available for the speedy
5 settlement of the case: *Provided*, however, That nothing in this Act shall deprive the
6 court of competent jurisdiction of its judicial prerogatives;

7 b. The right to be informed of impending collection action which requires sale
8 or seizure of property or freezing of assets, except jeopardy assessments, and the
9 right to have at least thirty (30) days within which to pay the liability or seek further
10 review;

11 c. The right to have all other collection actions attempted before a jeopardy
12 assessment suspended, unless delay will endanger collection and, after a jeopardy
13 assessment, the right to have an immediate review of the jeopardy assessment. As
14 used herein, jeopardy assessment is a tax assessment made by an authorized
15 revenue officer (RO) without the benefit of a complete or partial audit, considering
16 the RO's judgment that the assessment and collection of a deficiency tax will be
17 jeopardized by delay caused by the taxpayer's failure to: (1) comply with audit and
18 investigation requirements to present his books of accounts and/or pertinent
19 records; or (2) substantiate all or any of the deductions, exemptions or credits
20 claimed in his return;

21 d. The right to seek review, through formal or informal proceedings, of any
22 adverse decisions relating to determinations in the audit or collection processes and
23 the right to seek a reasonable administrative stay enforcement action while the
24 taxpayer pursues other administrative remedies available under the law;

1 e. The right to be informed of the procedures for conditional termination of
2 tax obligations through installment payment agreements which recognize both the
3 taxpayer's financial condition and the best interests of the State: *Provided*, That the
4 taxpayer gives accurate and current information and meets all other tax obligations
5 on schedule;

6 f. The right to be informed of the procedures for requesting cancellation,
7 release, or modification of liens filed by the BIR and the BOC and for requesting that
8 any lien which is filed in error be so noted on the lien cancellation filed by the BIR
9 and the BOC, with public notice to any credit agency at the taxpayer's request;

10 g. The right of the taxpayer in a judicial or administrative action brought or
11 maintained without the support of justiciable issues of fact or law, to recover all
12 costs of the administrative or judicial action, including reasonable attorney's fees;
13 and

14 h. The right to waiver of interest that accrues as the result of errors or
15 delays caused by a BIR/BOC employee: *Provided*, That the provisions of Rule 63 of
16 the Rules of Civil Procedures (Declaratory Relief and Similar Remedies) shall likewise
17 be applicable to the aggrieved taxpayer.

18 Sec. 6. *Taxpayers' Rights In Criminal Tax Cases.* – The following are the
19 taxpayers' rights in criminal tax cases:

20 a. The right to be knowledgeably and intelligently informed of the charges as
21 contained in any properly and timely prepared audit report, assessment notice,
22 correspondence, document, letter and the like, as implemented by rules and
23 regulations, as the case may be, coming from the BIR or BOC or any government

1 agency tasked to enforce the revenue laws and banking and financial laws, in
2 appropriate cases;

3 b. The right to be given ample and adequate opportunity, as the situation
4 may warrant, to present evidence at the taxpayer's or anybody else's possession
5 that would assist the taxpayer in the pursuit of the case;

6 c. The right to seek the assistance of competent and willing counsel of the
7 taxpayer's own choice, to help and assist the taxpayer in the preparation or defense
8 of the case;

9 d. The right to be served with all the necessary documents and papers
10 appurtenant thereto, relative to the charges against the taxpayer, in a manner that
11 would assist and expeditiously present the taxpayer's side pursuant to the charges
12 against the taxpayer;

13 e. The right to present the taxpayer's own witnesses: and

14 f. The right to be represented or advised by counsel or other qualified
15 representatives at any time in administrative interactions with the BIR and the BOC;
16 the right to procedural safeguards with respect to recording of interviews during tax
17 determination or collection processes conducted by the BIR and the BOC; the right
18 to be treated in a professional manner by the BIR and the BOC personnel; and the
19 right to have audits, inspections of records, and interviews conducted at a
20 reasonable time and place except in criminal and internal investigations.

21 *Sec. 7. Creation of the Office of the National Taxpayer Advocate.* – In order
22 to protect the rights of taxpayers and in recognition of the complexity of tax laws,
23 both substantive and procedural, there is hereby created the Office of the National
24 Taxpayer Advocate to promote tax compliance and assist taxpayers, individual or

1 juridical. The Office of the National Taxpayer Advocate shall be under the
2 administration and supervision of an official to be known as the National Taxpayer
3 Advocate and shall be attached to the Office of the President for administrative
4 purposes only. The National Taxpayer Advocate shall have the rank of
5 Undersecretary and shall be appointed by the President of the Philippines.

6 The National Taxpayer Advocate shall be a Filipino citizen, at least forty (40)
7 years of age, a member of the Philippine Bar in good standing, with at least ten (10)
8 years of practice in the field of taxation, with proven integrity and competence, and
9 must not have been convicted of any crime involving moral turpitude.

10 An individual cannot be appointed as the National Taxpayer Advocate if such
11 individual has been an employee or officer of, or has rendered service as consultant
12 or in any other capacity to, the BIR or the BOC or any of its agencies or has been a
13 local treasurer for two (2) years prior to such appointment. A National Taxpayer
14 Advocate cannot serve as officer or employee or consultant of, or be appointed to or
15 act in whatever capacity in, the BIR or the BOC or as local treasurer, within five (5)
16 years following his/her tenure as a National Taxpayer Advocate. For purposes of
17 this Act, a local treasurer includes a municipal, city or provincial treasurer.

18 *Sec. 8. Functions of Office of the Taxpayers Advocate.* – It shall be the
19 function of the Office of the Taxpayers Advocate to:

- 20 a. Assist taxpayers in resolving their problems with the BIR and BOC;
- 21 b. Identify areas in which taxpayers have problems in dealings with the BIR
22 and BOC;

1 c. Propose changes, to the extent possible, in the administrative practices of
2 the BIR and BOC with the end in view of mitigating problems identified under the
3 preceding paragraph;

4 d. Identify potential legislative changes which may be appropriate to mitigate
5 such problems;

6 e. Issue taxpayer assistance orders upon application filed by a taxpayer with
7 the Office of the National Taxpayer Advocate. The latter may issue a Taxpayer
8 Assistance Order when: (i) it is determined that the taxpayer is suffering or about to
9 suffer a significant hardship as a result of the manner in which the internal revenue
10 laws are being administered by the BIR, BOC or the local treasurer; or (ii) the
11 taxpayer meets such other requirements as are set forth in the implementing rules
12 and regulations of this Act. For purposes of this paragraph, a significant hardship
13 shall include: (i) an immediate threat of adverse action; (ii) any action that will
14 violate the right to privacy of a taxpayer; (iii) a delay of more than thirty (30) days
15 in resolving taxpayer account problems; (iv) the taxpayer will incur significant and
16 unnecessary costs, including fees for professional representation, if relief is not
17 granted; or (v) irreparable injury to, or a long-term adverse impact on, the
18 taxpayer if relief is not granted. Nothing herein shall prevent the National Taxpayer
19 Advocate from taking any action in the absence of an application mentioned herein;

20 f. In cases where any tax authority employee is not following the laws, rules
21 and regulations or any applicable published administrative guidance, the National
22 Taxpayer Advocate shall construe the factors taken into account in determining
23 whether to issue a Taxpayer Assistance Order in the manner most favorable to the
24 taxpayer;

1 g. Any Taxpayer Assistance Order issued by the National Taxpayer Advocate
2 under this section may be modified or rescinded by the National Taxpayer Advocate,
3 only if a valid written explanation was submitted by the Commissioner of Internal
4 Revenue or the Commissioner of Customs, as the case may be, and that the reasons
5 for the modification or rescission are specifically stated by the National Taxpayer
6 Advocate in the rescission or modification order; and

7 h. The duration of any period of limitation with respect to any action for
8 which a Taxpayer Assistance Order has been issued shall be suspended for the
9 period beginning on the date of the taxpayer's application under subsection (e) and
10 ending on the date of the National Taxpayer Advocate's decision with respect to
11 such application and any period specified by the National Taxpayer Advocate in a
12 Taxpayer Assistance Order issued pursuant to such application.

13 *Sec. 9. Submission of Annual Reports by the Office of the National Taxpayer*
14 *Advocate.* – Not later than December 31 of each calendar year, the Office of the
15 National Taxpayer Advocate shall submit a report to the Chairpersons of the
16 Committee on Ways and Means of the Senate of the Philippines and House of
17 Representatives on its activities during the fiscal year ending during such calendar
18 year. Any such report shall contain full and substantive analysis, in addition to
19 statistical information, and shall:

20 a. Identify the initiatives that the Office of the National Taxpayer Advocate
21 has undertaken aimed at improving taxpayer services and the tax authorities'
22 responsiveness;

23 b. Contain recommendations received from taxpayers by the Office of
24 National Taxpayer Advocate;

1 c. Contain a summary of the most serious problems encountered by
2 taxpayers, including a description of the nature of such problems;

3 d. Contain an inventory of the items described in subsections (a), (b), and
4 (c) of this Section for which action has been taken and the result of such action;

5 e. Contain an inventory of the items described in subsections (a), (b), and
6 (c) of this Section for which action remains to be completed and the period during
7 which each item has remained on such inventory;

8 f. Contain an inventory of the items described in subsections (a), (b), and
9 (c) of this Section for which no action has been taken, the period during which each
10 item has remained on such inventory, the reasons for the inaction, and identify any
11 BIR and BOC official or employee who is responsible for such inaction;

12 g. Identify any Taxpayer Assistance Office orders/recommendations which
13 was not honored by the BIR and the BOC in a timely manner;

14 h. Contain recommendations for such administrative and legislative action as
15 may be appropriate to resolve problems encountered by taxpayers;

16 i. Identify areas of the tax law that impose significant compliance burdens
17 on taxpayers, the BIR, the BOC, and local treasurers including specific
18 recommendations for remedying these problems;

19 j. Identify the most litigated issues for each category of taxpayers, including
20 recommendations for mitigating such disputes: and

21 k. Include such other information as the National Taxpayer Advocate may
22 deem relevant.

23 Each report required under this subparagraph shall be provided directly to the
24 Committee on Ways and Means of the Senate of the Philippines and the House of

1 Representatives without any prior review or comment from the respective
2 Commissioner of BIR or BOC or any other officer or employee of the said Bureaus.
3 The National Taxpayer Advocate shall furnish copies of said report to the Secretary
4 of Finance, and to the respective Commissioners of the BIR and BOC.

5 The Commissioners of the BIR and BOC shall establish procedures requiring a
6 formal response to all recommendations submitted to them by the National Taxpayer
7 Advocate within three (3) months from the date of submission.

8 *Sec. 10. Other Responsibilities of the National Taxpayer Advocate.* – The
9 National Taxpayer Advocate shall:

10 a. Monitor the coverage and geographic deployment of local offices of
11 taxpayer advocates;

12 b. Develop guidelines to be distributed to all BIR and BOC officers and
13 employees and the local treasurers outlining the criteria for referral of taxpayer
14 inquiries to local offices of taxpayer advocates;

15 c. Ensure that the local telephone number for each local office of the
16 taxpayer advocate is published and available to taxpayers served by the office; and

17 d. Develop career paths for local taxpayer advocates in the Office of the
18 National Taxpayer Advocate.

19 *Sec. 11. Personnel Actions of the National Taxpayer Advocate.* – The
20 National Taxpayer Advocate shall have the responsibility and authority to:

21 a. Appoint local taxpayer advocates and make available at least one (1)
22 such advocate for each province; and

1 b. Evaluate and take personnel actions including dismissal with respect to
2 any employee of any local office of the National Taxpayer Advocate described in
3 subsection (a) of this Section.

4 The National Taxpayer Advocate may consult with the appropriate supervisory
5 personnel of the BIR and BOC in carrying out the National Taxpayer Advocate's
6 responsibilities and qualifications under this Section.

7 Sec. 12. *Remedies.* – Any violation of the provisions of this Act committed by
8 any official or employee of the BIR or the BOC, other than the Commissioner of
9 Internal Revenue and Commissioner of Customs, shall be filed with the office of the
10 Commissioner of Internal Revenue or the Commissioner of Customs, as the case
11 may warrant, with the assistance of the National Taxpayer Advocate. The
12 Commissioner of Internal Revenue or the Commissioner of Customs shall decide the
13 controversy expeditiously, which shall not in any case be more than sixty (60) days
14 from the time the complaint or case is filed with their respective offices. Decisions
15 of the Commissioner of Internal Revenue or the Commissioner of Customs
16 concerning any complaint or case for violation of the provisions of this Act, may be
17 brought for review by the aggrieved party or the latter's authorized representative,
18 to the Secretary of Finance. In case the Commissioner of Internal Revenue or
19 Commissioner of Customs fail to act on such complaint or case within the time
20 herein prescribed, the aggrieved party or the latter's authorized representative may
21 file the complaint or case directly with the Secretary of Finance.

22 Complaints against the Commissioner of Internal Revenue or the
23 Commissioner of Customs for violation of this Act shall be filed directly with the
24 Secretary of Finance who shall decide the case within sixty (60) days from the date

1 the complaint was filed. Decisions of the Secretary of Finance may be appealed
2 before the Office of the President.

3 Any complaint or case filed pursuant to this Section shall be without prejudice
4 to any other action that may be instituted against the employee or official of the BIR
5 or the BOC under existing laws, rules and regulations.

6 Evidence against the taxpayers obtained in relation to this Act shall be
7 inadmissible in any court or proceeding if found to have been obtained in violation of
8 any of the above-enumerated taxpayer's rights.

9 *Sec. 13. Penalties for the Violation of the Bill of Rights of Taxpayers.* – Any
10 person or public official who is found to have violated the Bill of Taxpayers Rights
11 shall be punished with imprisonment of not less than six (6) years nor more than
12 twelve (12) years and a fine of not less than one hundred thousand pesos
13 (Php100,000.00) but not more than five hundred thousand pesos (Php500,000.00).

14 *Sec. 14. Report of the Secretary of Department of Finance.* – On or before
15 June 1 of each calendar year, the Secretary of the Department of Finance (DOF)
16 shall submit and present to both the Chairpersons of the Senate and House of
17 Representatives Ways and Means Committee a report on: (a) All categories of
18 incidents involving the misconduct of the officers and employees of the BIR and BOC
19 during the preceding calendar year; and (b) Action on and disposition of any such
20 instances.

21 *Sec. 15. Implementing Rules and Regulations.* – Within thirty (30) days from
22 the effectivity of this Act, the following shall promulgate the necessary rules and
23 regulations for its effective implementation:

24 a. A representative from the DOF;

- 1 b. A representative from the BIR;
- 2 c. A representative from the BOC;
- 3 d. A representative from the Secretariat of the Congressional Oversight
- 4 Committee on Comprehensive Tax Reform Program;
- 5 e. Representatives from the Committee on Ways and Means of both Houses
- 6 of Congress; and
- 7 f. A representative each from a business association and the Philippine
- 8 Institute of Certified Public Accountants (PICPA).

9 Sec. 16. *Separability Clause.* – If any provision of this Act is declared invalid

10 or unconstitutional, other provisions hereof which are not affected thereby shall

11 remain in full force and effect.

12 Sec. 17. *Repealing Clause.* – All laws, orders, decrees, rules and regulations,

13 and other parts thereof inconsistent with the provisions of this Act are hereby

14 repealed, amended or modified accordingly.

15 Sec. 18. *Effectivity Clause.* – This Act shall take effect fifteen (15) days after

16 its publication in the *Official Gazette* or in at least two (2) national newspapers of

17 general circulation.

Approved,