

REPUBLIC OF THE PHILIPPINES

**S e n a t e**

**Pasay City**

# **Journal**

**SESSION NO. 45**

Monday, December 13, 2004

**THIRTEENTH CONGRESS  
FIRST REGULAR SESSION**

**SESSION NO. 45**  
Monday, December 13, 2004

**CALL TO ORDER**

At 2:58 p.m., the Senate President, Hon. Franklin M. Drilon, called the session to order.

**PRAYER**

Sen. Ramon B. Revilla Jr. led the prayer, to wit:

Beloved Father, we humbly submit ourselves to You today.

We implore You to guide us in our efforts to render only the best service to our people and to our nation.

We ask You to touch the hearts of everyone in this august Chamber, and to enlighten our minds in the deliberations that will come before us.

We also pray for strength and faith, especially for those who are now struggling to rise from the recent tragedies in their lives brought about by the calamities that struck our nation.

In the true spirit of the season, we ask You to touch our lives, and foster in every Filipino the genuine essence of unity, reconciliation and understanding.

In this particular time, we also ask for Your compassion and goodness in the speedy recovery of a respected national institution, in the person of Fernando Poe Jr., who is now facing the greatest challenge of his life.

Enlighten all of us to accept Your divine will and trust that only good will come out of Your intentions for the Philippines and its people.

May You, Father, finally, despite what is happening, show us Your love for a

meaningful Christmas and a blessed New Year.

Amen.

**NATIONAL ANTHEM**

The Senate Choir led the singing of the national anthem and, thereafter, rendered the song entitled *Joy to the World*.

**SUSPENSION OF SESSION**

Upon motion of Senator Pangilinan, there being no objection, the session was suspended.

*It was 3:04 p.m.*

**RESUMPTION OF SESSION**

At 3:04 p.m., the session was resumed.

**DEFERMENT OF THE ROLL CALL**

Upon motion of Senator Pangilinan, there being no objection, the Body deferred the roll call to a later hour.

**DEFERMENT OF THE APPROVAL OF THE JOURNAL**

Upon motion of Senator Pangilinan, there being no objection, the Body deferred the consideration and approval of the Journal of Session No. 44 to a later hour.

**QUESTION OF PRIVILEGE OF SENATOR ARROYO**

Rising to a question of personal privilege, Senator Arroyo made the following remarks:

**ENOUGH ALREADY**

I met Speaker De Venecia over the weekend at a wedding and he asked me how

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many tax measures the Senate will pass before the Christmas recess because the House, according to him, will pass at least three measures, namely, the sin tax, lateral attrition, and amnesty bills. The same question is being asked by well-meaning people inside and outside of the government.

In light of our fiscal plight, all eyes are unfairly fixed on Congress to pass these revenue measures. In a word, the solution to our budgetary problem rests with Congress, so the thinking goes. Such a postulate is misleading, and that the onus should fall on Congress is totally wrong.

The President had asked for eight tax measures that are estimated to yield P80 billion in additional revenues. Very little progress has been made on that score and with good reason.

Sometime back, a very simple proposition was conveyed to the President through backdoor channels. Congress can enact measures that would yield half of that, P40 billion, on condition that the BIR and Customs would collect the other half of P40 billion which amounts to only a 7% more collection. There was no response.

Instead, we are being badgered to pass the Lateral Attrition Law to coerce revenue agencies to collect more taxes. Why we need such a law to compel tax collectors to do their duty of increasing their collections is symptomatic of the breakdown of discipline in the bureaucracy. The irony of ironies is that this bill had been enacted already during President Estrada's time in the Eleventh Congress but was vetoed by President Arroyo when she assumed office.

Congress had been allergic to taxing text messages because the lower classes would be burdened by it. As an alternative, the President agreed to impose a franchise tax on telecommunication companies but before the indispensable public hearings by both Houses could be conducted to hear out everyone's views on the subject, she met

precipitately telecommunications executives for them to agree on the plan. They rejected it outright.

The President having beat a hasty retreat and the industry, having a huge existing organized text brigade on call, and with the biggest advertising budget ever in tri-media on standby, an alternative tax in place of franchise tax on the telecom industry appears remote.

The proposed tax amnesty bill will yield doubtful revenues from empirical experience that would offset the moral dimensions to be sacrificed.

Among the biggest net income earners according to *Business World's* list of 1,000 biggest corporations are the two oil companies, Petron and Shell, and even Caltex, the third, as well as the big but notorious independent power producers (IPPs). The Secretary of Energy has not taken the initiative that they be taxed more for their incomes.

Big Business complain that we are a slow-poke Congress because we do not tackle the revenue measures on deck. Left unsaid by them is that the proposed tax measures would not prejudice them one bit so they are pressing for its enactment. Yet, the moment a proposal that would hit anyone of them is floated, they object.

We tax up to 35% individuals who have a net income of P500,000 or more but we limit the tax on corporations to 32% even if they rake in billions in profits. But the Executive does not propose that we revise upwards the tax on the net income of corporations.

There is a lot of talk about calling a special session so that Congress can pass the tax measures. What for? The Senate has been deliberating on the tax bills for three months. But tax measures cannot be rushed and the Executive knows that and has not helped any. They want the legislature to work overtime on the tax

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bills but the Executive does not want to work overtime to collect more taxes.

In the past, we were sensitive to the comments of the multilateral institutions -- IMF, WB, and ADB -- which lend us money. Now we are touchy to the slightest hint of downgrade by Moody's, Standard and Poor, and Fitch when we do not even owe them any money.

Before, the IMF and WB would enter only our living rooms, probably our bedrooms. But now, Moody and company enter at will our bathrooms and see us nude and bare our essentials for all to see. How dehumanized more can we get?

The Senate has nothing to apologize for its performance. As Christmas approaches, enough already of the much ballyhooed rating agencies and the impending downgrade they are foisting because we have had already a *de facto* downgrade and its effects have been and are already being felt.

Let us count our blessings because this nation won't sink, we are a sturdy people, and we will survive all these.

#### INTERPELLATION OF SENATOR ANGARA

Asked if the original plan of the government was to raise P80 billion out of the eight tax measures, Senator Arroyo replied in the affirmative.

As to how much had already been raised by raising tariff and electricity rates, Senator Arroyo surmised that a substantial amount could be raised.

Senator Angara pointed out that the Energy Regulatory Commission had already approved the increase in electricity rates by P0.98 per kilowatt hour effective January next year, which would raise approximately P30 billion in revenue while the P2 increase in the tariff on crude oil would raise another P30 billion. In other words, he stressed, out of the P80 billion target for one year, almost P70 billion had been raised through executive action. He contended that the P80 billion projected to be raised was not intended to be

raised solely by Congress. He pointed out that revenue measures are not limited to tax revenues, which is why it was important to put in context how much revenues are expected from the tax measures.

Senator Arroyo decried that sometimes when government badgers the legislative body to do something, the Executive makes use of foreign agencies as a weapon to pressure Congress in order to achieve what private interests would like to achieve but could not do.

Senator Angara agreed that Congress should not be blamed for not raising enough revenue as passing the excise tax bill alone would already complete the P80 billion target for the first year. He noted that it is very convenient to blame Congress because people easily believe that Congress has failed on its job, but he stressed that the Executive branch has no right to put the blame on Congress. He warned that should the Body fall into such trap, it would be just as guilty.

Moreover, Senator Angara opined that among Members of Congress, there might be the insinuation that it is the Senate that is the slowpoke. He pointed out that tax measures originate from the House of Representatives and to date, only the sin tax bill has reached the Senate. Besides, he asked how the Executive could expect the Senate to pass three tax bills with only three session days remaining before the Christmas break. He believed that the Body should fight off the tendency of other sectors to blame the Senate for any delay. He stressed that the Senate need not apologize for its performance but the Members should be patient in explaining to the people the real score behind these issues.

Relative thereto, Senator Angara pointed out that of greater concern is the quality of the tax bills that would be passed by the Senate. He cited the *Lateral Attrition* bill which was vetoed in the last Congress. He doubted whether the proposal would generate additional income, noting that it might even cause mass demoralization among government workers. Anent the tax amnesty bill, he expressed the view that the public might get the wrong idea that it is all right to cheat on one's taxes because eventually a tax amnesty would be granted. Moreover, he noted that two

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days after the Members had agreed in a caucus to pass the bill taxing the telecommunications companies, President Macapagal Arroyo met with the telecommunication firms which, when asked, refused to be taxed. He said that the credit-rating agencies and other multilateral institutions might have the impression that the government is not seriously responding to the fiscal crisis.

For his part, Senator Arroyo admitted that he did not know whether it was the media that had influenced the perception that the country would be downgraded for failure to pass revenue measures. Nevertheless, he opined that the problem should be addressed both by the Executive branch and Congress. However, he observed that the Executive has not done much. For example, he noted that the P200 billion budget deficit incurred by the government when the Electric Power Industry Reform Act (EPIRA) law was passed in 2001 has now ballooned to P500 billion as a result of the debts accumulated by the Napocor. Further, he said, Napocor was able to sell only four small power plants after three years when the original plan was for government to dispose of the country's power generating plants within six months after the enactment of the EPIRA law.

Relative thereto, he wondered why the government sold the P30 billion (\$560 million) Masinloc power plant to the YNN Pacific Consortium Inc. which is undercapitalized and no track record.

Senator Angara also asked why the administration backpedaled on its proposal to tax telecommunications companies when they are among the top 10 earners in the country. He further asked whether this was due to the influence of an organized text brigade of which he had been a victim.

Senator Arroyo agreed that the tax measures are ill-conceived. He pointed out that the bill taxing the Telcos, for instance, had not even been discussed at a public hearing, yet the President went ahead, met with the firms, got rejected and retreated.

On Senator Angara's statement that as the taxing arm of the government, the Senate should

not be fazed by the hasty retreat of the Executive but should continue to study the proposal, Senator Arroyo noted that the telecommunications industry's annual advertising budget of between P5 billion to P10 billion is the biggest compared to all the others. But he pointed out that the telecommunications industry's query as to why it had been singled out for taxation is a fair proposition which was why both he and Senator Recto have been trying to interest Malacañang and the Department of Finance to restructure the 30% corporate tax on corporations such as the independent power producers (IPPs), oil companies, banks and telecommunications firms which are big money-earners.

Senator Angara opined that the 32% tax could even be lowered because the money that these companies save could be reinvested for expansion which would translate to more jobs. While clarifying that the Body is not trying to single out telecommunications companies for taxation, he noted that even if it were so, such an act would neither be unauthorized nor improper. He believed that a particular tax subject is singled out due to its profitability and because it would be less burdensome on the industry as a whole. For instance, he opined that it would be less burdensome to tax telecommunications companies than to raise the VAT because the latter option would burden everyone especially the fixed-income earners and the poor. On the other hand, he observed that a social purpose would be achieved if the Telcos were taxed because it could redirect the spending habits of young people.

Adverting to the *Top 1,000 Corporations of the Philippines* list compiled by *Business World*, Senator Arroyo noted that in terms of net income, telecommunications firm Smart Communications ranks number one with P16 billion, Philippine Long Distance Company is second with P11 billion, and Globe Telecommunications is ranked fourth with P10 billion. He noted that the three telecommunications firms even beat San Miguel Corporation which was only ranked 7<sup>th</sup> in the list.

To show that Congress is not trying to kill the industry, Senator Arroyo proposed that the tax be time-bound, just to tide the government over its financial crisis. He wondered whether the threat for Congress to be called to a special

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session was real or was meant only to prod Congress to pass the tax measures. He said that what is demeaning is for the Senate to be treated like boys because big brother is watching.

Senator Angara reiterated that Congress should have a better presentation of its fiscal response to the fiscal problem, otherwise, people would believe that the legislature is slowpoke in passing these tax measures. He surmised that the reason Speaker De Venecia talked to Senator Arroyo was in order to urge the Senate to move faster in passing the tax measures. However, he wondered how the Senate could do it when three out of the four tax measures were still being debated in the House of Representatives.

At this juncture, the Chair stated that the bills on the sin taxes and on lateral attrition were received by the Senate. It explained that the first one, strictly speaking, is the only revenue measure because the latter bill is a tax administration measure.

#### ROLL CALL

Upon direction of the Chair, the Secretary of the Senate, Oscar G. Yabes, called the roll, to which the following senators responded:

Angara, E. J.	Lacson, P. M.
Arroyo, J. P.	Lapid, M. L. M.
Biazon, R. G.	Lim, A. S.
Cayetano, C. P. S.	Madrigal, M. A.
Defensor Santiago, M.	Magsaysay Jr., R. B.
Drilon, F. M.	Pangilinan, F. N.
Ejercito Estrada, J.	Pimentel Jr., A. Q.
Ejercito Estrada, L. L. P.	Recto, R. G.
Enrile, J. P.	Revilla Jr., R. B.
Flavier, J. M.	Roxas, M.
Gordon, R. J.	

With 21 senators present, the Chair declared the presence of a quorum.

Senator Osmeña arrived after the roll call.

Senator Villar was on official mission.

#### APPROVAL OF THE JOURNAL

Upon motion of Senator Pangilinan, there being no objection, the Body dispensed with the reading of the Journal of Session No. 44 and considered it approved.

#### REFERENCE OF BUSINESS

The Secretary of the Senate read the following matters and the Chair made the corresponding referrals:

#### MESSAGE FROM THE HOUSE OF REPRESENTATIVES

Letter from the Secretary General of the House of Representatives, informing the Senate that on December 8, 2004, the House of Representatives passed House Bill No. 3154, entitled

AN ACT APPROPRIATING FUNDS FOR THE OPERATION OF THE GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES FROM JANUARY ONE TO DECEMBER THIRTY-ONE, TWO THOUSAND FIVE, AND FOR OTHER PURPOSES,

in which it requested the concurrence of the Senate.

To the Committee on Finance

#### RESOLUTIONS

Proposed Senate Resolution No. 140, entitled

RESOLUTION DIRECTING THE COMMITTEE ON NATIONAL DEFENSE AND SECURITY AND OTHER APPROPRIATE COMMITTEE/S TO CONDUCT AN INQUIRY, IN AID OF LEGISLATION, INTO THE RATIONALIZATION AND UTILIZATION OF ALL REAL ESTATED OWNED BY THE

ARMED FORCES OF THE  
PHILIPPINES (AFP)

Introduced by Senator Biazon

**To the Committee on National Defense and  
Security**

Proposed Senate Resolution No. 141, entitled

RESOLUTION DIRECTING THE  
COMMITTEE ON NATIONAL  
DEFENSE AND SECURITY TO  
CONDUCT AN INQUIRY, IN AID  
OF LEGISLATION, ON THE  
EVER-INCREASING ARREARS  
OF THE GOVERNMENT ON THE  
PENSION REQUIREMENTS FOR  
THE VETERANS AND RETIREES

Introduced by Senator Biazon

**To the Committees on National Defense and  
Security; and Finance**

Proposed Senate Resolution No. 142, entitled

RESOLUTION DIRECTING THE  
COMMITTEE ON NATIONAL  
DEFENSE AND SECURITY TO  
CONDUCT AN INQUIRY, IN AID  
OF LEGISLATION, INTO THE  
IMPLEMENTATION OF THE  
ARMED FORCES OF THE  
PHILIPPINES MODERNIZATION  
PROGRAM, WITH FOCUS ON ITS  
OBJECTIVES, PRIORITIZATION IN  
EQUIPMENT ACQUISITION AND  
FUNDING REQUIREMENTS AND  
SOURCES IN RELATION TO THE  
COUNTRY'S PRESENT NEEDS

Introduced by Senator Biazon

**To the Committees on National Defense and  
Security; and Finance**

Proposed Senate Resolution No. 143, entitled

RESOLUTION DIRECTING THE  
SENATE COMMITTEE ON YOUTH,  
WOMEN AND FAMILY RELATIONS

TO CONDUCT AN INQUIRY, IN  
AID OF LEGISLATION, ON THE  
GENERAL WELL-BEING OF THE  
WOMEN, CHILDREN AND  
FAMILIES INHABITING LUNGSOD  
SILANGAN, A TOWNSITE  
RESERVATION ESTABLISHED  
BY VIRTUE OF PRESIDENTIAL  
PROCLAMATION NO. 1283 ISSUED  
ON 18 APRIL 1977, AMENDING  
PRESIDENTIAL PROCLAMATION  
NO. 1637, IN LIGHT OF THE  
QUARRYING OPERATIONS  
BEING UNDERTAKEN BY  
HARDROCK AGGREGATES IN  
THE AFOREMENTIONED  
LOCALITY

Introduced by Senator M. A. Madrigal

**To the Committees on Youth, Women and  
Family Relations; and Environment and Natural  
Resources**

Proposed Senate Resolution No. 144, entitled

RESOLUTION DIRECTING THE  
COMMITTEE ON ENVIRONMENT  
AND NATURAL RESOURCES TO  
INVESTIGATE, IN AID OF  
LEGISLATION, THE LOGGING  
OPERATIONS IN THE PROVINCES  
OF AURORA AND QUEZON,  
RESPECTIVELY

Introduced by Senator Angara

**To the Committee on Environment and  
Natural Resources**

**COMMITTEE REPORT NO. 5  
ON SENATE BILL NO. 1854  
(Continuation)**

Upon motion of Senator Pangilinan, there being  
no objection, the Body resumed consideration, on  
Second Reading, of Senate Bill No. 1854  
(Committee Report No. 5), entitled

AN ACT INCREASING THE EXCISE TAX  
RATES IMPOSED ON ALCOHOL  
AND TOBACCO PRODUCTS,

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AMENDING FOR THE PURPOSE  
SECTIONS 141, 142, 143, 144, 145  
AND 288 OF THE NATIONAL  
INTERNAL REVENUE CODE OF  
1997, AS AMENDED.

Senator Pangilinan stated that the parliamentary status was still the period of interpellations.

The Chair recognized Senator Recto, sponsor of the measure, and Senator Lim for his interpellation.

**INTERPELLATION OF SENATOR LIM**

Upon inquiry by Senator Lim on the stand of the incumbent finance secretary on the position of former Finance Secretary Camacho that the Enrile bill would raise more revenue than the Recto bill, Senator Recto replied that the position of the Administration and that of Secretary Amatong was with the version proposed by the Committee on Ways and Means. He assured the Body that the Committee would propose amendments at the appropriate time taking into consideration the issues raised during the period of interpellations.

Relative thereto, Senator Lim read into the record the open letter which appeared in the December 6, 2004 issue of the *Philippine Daily Inquirer*, to wit:

We are concerned that in the desire to demonstrate quick action on the fiscal crisis, the government is pushing for the legislation of revenue measures in the shortest time possible while giving less importance to the quality of their content. We applaud its quest for speed. But we are dismayed that the government has exhibited almost too willing an acceptance to compromise and give in to the demands of powerful groups.

Indeed, the fiscal crisis is serious, and we fully concur with the government's sense of urgency of the need for quick and decisive action. However, government must not miss this opportunity to correct serious weaknesses of the tax system made endemic through inefficiencies in legislation, administration, and compliance.

To achieve both objectives, what is needed, therefore, is not a blind compromise, but strong political will and decisive leadership to push and correct measures in the record speed required.

The first test of government's resolve to act not only quickly but also intelligently and judiciously in addressing the fiscal crisis is the proposed legislation for the *indexation of sin taxes*. After the House had passed a weak and compromise-ridden version of the bill, the current challenge of the Senate is to craft a bill that would free the excise tax system from the distortions and administrative complications that have made the tax system not only unproductive but also unjust. Fortunately, the relevant issues and the specific measures that can adequately address these inefficiencies are provided in Senate Bill No. 1815 authored by Sen. Juan Ponce Enrile.

We therefore call on the distinguished and enlightened members of the Senate to support the Enrile version of the sin tax bill and demonstrate once again that the Senate is a bastion of wisdom and good sense that can be relied on to produce the right laws and good policies for the nation.

We would like to make the following observations:

1. The Philippines has a 5-tier tax rate system for cigarettes, which is perhaps the most complicated in the world. The large difference between the tax rate of medium-priced and low-priced cigarettes (P4.48 per pack) effectively tempts evasion and corruption. There is a large incentive for a manufacturer to misdeclare cigarettes as low-priced, and this defrauds government of billions of revenues.

The Enrile bill simplifies the cigarette excise tax system through variable increases in the tax rates for different cigarette classes, leading to a



convergence into a single tax rate of P13.50 within a six-year period.

2. The Philippines has one of the lowest excise tax rates on cigarettes in the region, if not in the world. The average tax rate is P4.48 per pack. Compare this with Malaysia – P15.68; Taiwan – P19.60; Korea – P24.64; Japan – P81.20; and Singapore – P193.20.

The U.S. excise tax system consists of Federal and a state tax. Counties and cities may impose additional taxes. The state tax per pack reaches a high of \$2.05 equivalent to P114.80 in New Jersey. Most states allocate a portion of the excise tax to support public health relating to cancer.

It has been proven that cigarettes cause cancer. WHO estimates that lung cancer and other tobacco-related diseases kill 20,000 Filipinos yearly and leave the government and citizens poorer by about P46 billion in economic and medical costs annually.

The Enrile bill increases the tax rates on cigarettes in an effort to deter the consumption of a vice. Revenues from increased tax rates can help government provide for the treatment of tobacco-induced diseases. Passive smokers especially deserve to be protected from the negative externalities of smoking. The bill allocates part of the incremental revenues to help modernize hospital facilities and care throughout the country.

3. The excise tax bill in 1996 was legislated without the indexation of tax rates relative to inflation. As a result, increases in prices of beer, liquor, and cigarettes have only benefited their manufacturers. The revenue collection from these products fell from 2.6 percent of GDP in 1997 to 1.31 percent in 2003 with government and taxpayers ending up as losers.

The Enrile bill provides for the indexation or the adjustment of tax rates relative to inflation in 2013. It allows the tax rates to keep pace with average changes in prices.

4. Government was deprived of significant revenues in 1997 and 2000 through the practice of production loading. Manufacturers increase cigarette production and inventory prior to a tax increase to avoid payment of a higher tax rate.

The Enrile bill introduces a provision that prevents production loading. Moreover, it mandates the implementation of monthly inventory information and a system for tamper-proof stamps on cigarette packs as proof of payment by a company.

5. The provision that requires the government to keep the 1996 classification of cigarettes until Congress revises it has deprived government of additional revenues. Low-priced cigarettes remain subject to low tax rate regardless of whether their prices have increased.

The Enrile bill avoids the confrontation that may result from the reclassification of cigarettes since this issue will become irrelevant when tax rates converge into a single rate. Thus, the additional revenues resulting from his bill is P11.32 billion compared to P18.2 billion if it allows for reclassification. This amount is still significantly higher than the additional revenues from the House bill and that which has been adopted by the Senate ways and means committee, which is roughly P4.0 billion only.

The main criticism against the Enrile bill is that it will increase the tax burden on low-priced cigarettes by

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436 percent, from P1.12 to P6.00 per pack in 2005.

But put in better perspective, this tax increase translates to only 25 centavos per stick. This increase is certainly low on a socially undesirable product. And if the poor smoker reduces his cigarette consumption because of this, aren't he and his family being better off?

Indeed, the same cigarette, whether low-or-high-priced, causes cancer, as indisputably proven by various studies. Thus, while the government may vow to protect the poor by imposing a lower tax on low-priced cigarettes, the perverse effect is that it encourages and propagates cancer among the poor. It is indeed an insidious practice to induce sickness among those who can least afford the cost of health care.

The Enrile bill provides for provisions that will simplify the excise tax structure and promote its efficient administration and compliance. Moreover, it aims to correct the negative externalities from smoking.

We are hopeful that the honorable Members of the Senate and the House will adopt its provisions and legislate an excise tax bill that will demonstrate the leadership and responsibility that the fiscal crisis requires.

Viewed against the backdrop of present circumstances, the final form of the sin taxes bill will define either what we have become or what we should be—a people that has lost its sense of direction or one that has decided where it should go.

(Sgd.) VICENTE P. JAYME  
Former Finance Secretary

(Sgd.) JESUS P. ESTANISLAO  
Former Finance Secretary

(Sgd.) ROBERTO F. DE OCAMPO  
Former Finance Secretary

(Sgd.) ERNEST C. LEUNG  
Former Acting Finance Secretary

(Sgd.) SOLITA COLLAS-MONSOD  
Former NEDA Secretary

and the

Alliance for Enlightened Policies  
Federation of Philippines Industries  
Synergeia Foundation

Meneleo Carlos Jr., Jesus Arranza, Romeo Bernardo, Milwida Guevarra, Ramon Katigbak, Enrico Alfiler, Francis Varela, Joseph Francia, Adolfo Suzara, Nina Lim-Yuson, Joselito De Leon, Joyce Gracia.

Senator Lim likewise read the letter of former Secretary Camacho addressed to Congressman Julio Ledesma, Chairman of the House Committee on Ways and Means, dated October 14, 2003, to wit:

October 14, 2003

Hon. JULIO LEDESMA IV  
Congressman and Chairman  
Committee on Ways and Means  
House of Representatives  
Batasan Complex, Quezon City

Dear Congressman Ledesma,

Please find attached a copy of the estimates that we made on the revenue foregone due to the non-reclassification of old brands of tobacco as enumerated in the various annexes to the National Internal Revenue Code.

We hope that this information will be given due attention in the consideration of the reform measure now pending in your committee seeking to reform the excise tax on tobacco and alcohol products.

Respectfully yours,

(Sgd.) JOSE ISIDRO N. CAMACHO  
Secretary

Senator Lim informed the Body that the recommendation was not given due course even when, according to Secretary Camacho, the government lost more than P40 billion in potential revenues. He commended the study put in by Senator Recto but he expressed concern that the name and dignity of each member of the Body might be jeopardized should they be charged in the future for violating the Anti-Graft and Corrupt Practices Act by passing the bill which would cause undue injury to the government and the country.

Senator Recto disagreed, stating that the bill was intended to increase the tax rates. He reiterated that the arguments in the letter had been taken into consideration during the committee and floor deliberations. He recalled that during the tenure of Secretary Camacho, he (Senator Recto) cautioned the former against borrowing for the government. He informed the Body that Secretary Camacho borrowed more than the administrations of Presidents Ramos, Aquino and Estrada which resulted in a total debt stock of P6 trillion to date. He stated that Secretary Camacho's arguments were misleading because he assumed that volume would continuously increase and people would pay the same amount of taxes.

Senator Recto explained that after the last increase in 1991, Congress increased the rates by 30% in 1997 and shifted from the *ad valorem* to the specific tax system as the former was more prone to abuse. Moreover, he pointed out that Congress only enacted one-rate increase in the year 2000 at 12% but gave a lot of discretion to BIR to continuously reclassify new brands and variants, resulting in unfairness. Thus, he said that he was working within the same concept and framework of Senator Enrile in 1997 by taking away the discretion from the BIR and to work on volumes as the primary basis in determining taxes to be collected from manufacturers or importers. He informed the Body that he was willing to accept 99.9% of the proposed amendments of Senator Enrile to ensure fairness, a level-playing field among the players by taking away the discretion of the BIR to reclassify and that Congress would determine rate increases until 2011 at the least. He said that he would expect the next administration to look at the rates again if it

would need to raise or reduce the taxes or even to remove the sin taxes altogether. He reiterated his surprise that all the arguments propounded by the other side focused on tobacco when alcohol is a bigger industry.

Senator Recto replied to the five issues raised in the open letter, to wit:

Issue No. 1. -- The Philippines has a five-tier tax rate system for cigarettes.

Senator Recto explained that even vehicles have four tiers, for instance, a Kia Pride and a Mercedes Benz do not have the same tax;

Issue No. 2. -- The Philippines has one of the lowest excise tax rates on cigarettes in the region.

He said that the statement was misleading because the per capita income of the Filipino is much lower compared to that in the U.S. which is 35 times higher. He said that Malaysia has a tax rate of 15.68 but, with a per capita income four or five times higher than the Philippines, its tax rate is still low. He said that 49% of the gross sales of tobacco companies go to taxes and a Filipino smoker pays an average of P5 in taxes which is comparable to many other countries;

Issue No. 3. -- The excise tax billing in 1996 was legislated without indexation of tax rates.

Senator Recto stated that it would not be fair to tax based on inflation rate because the industry would have a different inflation figure from that of the CPI. He opined that Congress should determine the tax rates. A consequent argument, he said, would be should wages be indexed as well.

Issue No. 4. -- Government was deprived of significant revenues in 1997 and 2000.

Senator Recto argued that there was a rate increase of 12% in 1991 which Congress raised to 30% in 1997 while shifting from *ad valorem* to specific tax; it imposed a one-rate increase

in 2000 and another tax increase should take effect this year.

Issue No. 5. -- The provision that requires the government to keep the 1996 classification of cigarette until Congress revises it has deprived the government additional revenues.

Senator Recto explained that the signatories were not part of the discussions in 1997, much less during the committee hearings of the present Congress. He explained that if Congress decided to index the rates by inflation, it would have to index the brackets as well which would spiral continuously. When Congress decided not to use indexation but only a one increase, he said that only Congress can reclassify as a necessary consequence.

Senator Recto stated that the five issues have been discussed repeatedly and records would show that there has been a meeting of minds on the conceptual framework of the bill such that he was prepared to accept almost 100% of Senator Enrile's amendments. He reiterated that when the committee deliberated on the matter, the primary objectives were to raise revenue; make sure that the BIR can implement it easily; make it fair for all manufacturers; and to ensure that there is market-share neutrality. He said that he also looked into the interests of the local farmers and factory workers because many of them had been laid off because of the indiscriminate reclassifying of the BIR.

Senator Recto said that it is the responsibility of the Committee on Ways and Means to insure the interest of all stakeholders in the industry and he noted that the only ones crying foul are those who have vested interests.

Senator Recto stressed that many industries, especially the profitable ones, need to be taxed but these taxes should have a life span, for example, only six years.

Senator Lim believed that the manufacturers naturally would not complain because they are benefited by the continued existence of Section 145 of the National Internal Revenue Code which requires the government to keep

the 1996 classification of cigarettes until Congress revises it and which has deprived the government of revenues. He contended that the failure of Congress to reclassify has benefited the manufacturers. In fact, he said, Congressman Lorenzo Teves opined that lobby money might have worked sometime back in 1998 and 2000.

Asked whether there was no soft spot in his heart to remove Section 145, Senator Recto said that the matter had nothing to do with the heart but with the brain. He explained that the conceptual framework was based not on prices or value but on volume or removals which would make it easier for BIR to collect the taxes. He believed that giving the BIR the authority to annually reclassify products based on price and to tax them based on volume would be reverting to the same problems prior to 1997.

To the claim that former Finance Secretary Camacho miscalculated in estimating the loss of revenues to government, Senator Lim asked whether former Finance secretaries Vicente R. Jayme, Jesus Estanislao, Roberto de Ocampo, Ernest Leung, and former NEDA Secretary Solita Collas-Monsod also made wrong estimates of the situation. Senator Recto replied that it was possible that they had been misled. He maintained that these personalities should have been present in the session hall listening to the arguments, especially since some of them were familiar with the debates in 1997. He expressed surprise that they were arguing only about tobacco when the bill includes alcohol which is a much bigger industry. He pointed out that neither the company nor the people but only the smokers like him would pay the taxes. He noted that Senator Enrile concurred with him that higher taxes should be imposed on premium cigarettes.

Asked whether the deletion of Section 145 would not increase the revenues of government, Senator Recto replied that it would not necessarily do so. He said that the deletion of the section could result in three options, namely: 1) to go back to *ad valorem* taxation; 2) to have a mixed system of *ad valorem* and specific taxes; or 3) to reclassify the brands and come up with new brackets. He informed the Body that the Committee has looked into the options of raising taxes based on inflation but it would make

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it difficult for the BIR to collect the taxes which was the experience prior to the shift from *ad valorem* to specific tax system. He said that among the flaws of the existing law was that Congress did not increase the rates and it forgot to trim the power of the BIR to reclassify over and over new brands and variants. He said that these flaws were being corrected by the bill by working on the same concept of a specific tax system until 2011 and by leveling the playing field for new manufacturers and old players who will come out with new brands and variants, as these will be finally classified by the BIR within three months from product launch.

In reply to another query, Senator Recto affirmed that Section 145 removed the power of the BIR to reclassify old brands, allowing it to reclassify only new brands and variants, no matter how frequent. He said that this unfairness caused La Suerte cigar to file a case against the BIR which is now pending before the Supreme Court. In the current bill, he said that the BIR would reclassify only once and this rule would apply to all.

Senator Lim argued that the prices in 1996 were much lower than today's prices so that even if tax rates would be increased, revenues would still be lower which is contrary to government's aim to increase revenues. He said that those at BIR who are responsible for the mistake should be dismissed. He disclosed that there had been talks about alleged "gifts" for some people to retain Section 145. He urged that the gift be given instead to the public by removing Section 145 which has been the root of doubts, suspicions, conjectures and surmises and would taint the prestige of the Chamber.

Senator Recto pointed out that the measure would bring in P10 billion in revenues to the government—P5 billion from alcohol and P5 billion from tobacco. He said that in the period of committee amendments, he would propose the removal of the excise tax-free privilege of "duty free" cigarettes which would bring another P5 billion in revenues.

He surmised that "gifts" might be given by industries which would not be exempt from tax.

Senator Lim said that the government would earn P22 billion if Section 145 would be deleted as against P10 billion if Section 145 would be retained.

#### **MANIFESTATION OF SENATOR PANGILINAN**

Senator Pangilinan informed the Body that only Senator Osmeña has the remaining reservation to interpellate but he has not yet received the documents he had requested. The Chair said that it was informed that these documents had already been turned over to Senator Osmeña.

#### **SUSPENSION OF SESSION**

Upon motion of Senator Pangilinan, the session was suspended.

*It was 4:36 p.m.*

#### **RESUMPTION OF SESSION**

At 5:52 p.m., the session was resumed.

#### **TERMINATION OF THE PERIOD OF INTERPELLATIONS**

Upon motion of Senator Pangilinan, there being no objection, the Body closed the period of interpellations, subject to its reopening by Senator Osmeña.

#### **COMMITTEE AMENDMENTS**

As proposed by Senator Recto, there being no objection, the following committee amendments were approved by the Body, one after the other:

1. On page 1, line 7, place an end bracket (]) after the word "are" and insert AND before the word "processed";
2. On the same page, line 8, place an open bracket ([) before the word "Eight";
3. On page 2, delete lines 9-11;
4. On the same page, line 28, place a comma (,) after the words "Net retail

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- price” and insert the phrase AS DETERMINED BY THE BUREAU OF INTERNAL REVENUE (BIR) THROUGH A PRICE SURVEY TO BE CONDUCTED BY THE BIR ITSELF, OR BY THE NATIONAL STATISTICS OFFICE (NSO), OR BY A REPUTABLE RESEARCH OR POLLING ORGANIZATION DEPUTIZED FOR THE PURPOSE BY THE BIR,;
5. On the same page, line 29, between the words “in” and “ten,” insert the words AT LEAST;
  6. On page 3, line 5, between the words “IN” and “FIVE,” insert the words AT LEAST;
  7. On the same page, line 16, place a comma (,) after the words “NEW BRANDS,” insert thereafter the phrase AS DEFINED IN THE IMMEDIATELY FOLLOWING PARAGRAPH, and between the words “SHALL” and “BE” insert the word INITIALLY;
  8. On the same page, line 17, delete the word “CURRENT”;
  9. On the same page, lines 19 to 21, replace the phrase “THIS ACT, AND SHALL INCLUDE PREVIOUSLY REGISTERED BUT INACTIVE BRANDS OF DISTILLED SPIRITS” with R.A. NO. 8240;
  10. On the same page, line 23, place a comma (,) after the words “NEW BRANDS” and thereafter insert the words AS DEFINED ABOVE,;
  11. On page 4, line 1, insert the words OF THE NEW BRAND between the words “PRICE” and “AGAINST”;
  12. On the same page, line 2, delete the word “FINALLY”;
  13. On the same page, line 3, insert the word NEW between the words “PARTICULAR” and “BRAND”;
  14. On the same page, line 4, place a comma (,) after the words “SPIRITS,” and insert the phrase AS DEFINED ABOVE,;
  15. On the same page and line, following the period after the word “CLASSIFIED,” add the sentence “SUCH CLASSIFICATION SHALL NOT BE REVISED EXCEPT BY AN ACT OF CONGRESS.;
  16. On the same page, line 14, after the comma following the words “Annex ‘A’”, insert the phrase INCLUDING THE CLASSIFICATION OF BRANDS FOR THE SAME PRODUCTS WHICH, ALTHOUGH NOT SET FORTH IN SAID ANNEX ‘A’, WERE REGISTERED AND COMMERCIALY PRODUCED ON OR BEFORE JANUARY 1, 1997, AND WHICH CONTINUE TO BE COMMERCIALY PRODUCED AFTER THE EFFECTIVITY OF THIS ACT,;
  17. On page 6, line 10, after the words “Net retail price,” place a comma (,) then insert the phrase AS DETERMINED BY THE BUREAU OF INTERNAL REVENUE (BIR) THROUGH A PRICE SURVEY TO BE CONDUCTED BY THE BIR ITSELF, OR BY THE NATIONAL STATISTICS OFFICE (NSO), OR BY A REPUTABLE RESEARCH OR POLLING ORGANIZATION DEPUTIZED FOR THE PURPOSE BY THE BIR,;
  18. On the same page, line 11, between the words “in” and “ten”, insert the words AT LEAST;
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19. On the same page, line 15, between the words "IN" and "FIVE," insert the words AT LEAST;
20. On the same page, line 26, place a comma (,) after the word "BRANDS," add the phrase AS DEFINED IN THE IMMEDIATELY FOLLOWING PARAGRAPH, and between the words "SHALL" and "BE," insert the word INITIALLY;
21. On the same page, line 27, delete the word "CURRENT";
22. On page 7, lines 2 to 3, replace the phrase "THIS ACT, AND SHALL INCLUDE PREVIOUSLY REGISTERED BUT INACTIVE BRANDS OF WINE" with R. A. NO. 8240;
23. On the same page, line 5, place a comma (,) after the word "BRANDS," and insert the words AS DEFINED ABOVE,;
24. On the same page, line 12, between the words "PRICE" and "AGAINST," insert the words OF THE NEW BRAND;
25. On the same page, line 13, delete the word "FINALLY";
26. On the same page, line 14, between the words "PARTICULAR" and "BRAND," insert the word NEW;
27. On the same page and line, place a comma (,) after the word "WINE" and insert the words AS DEFINED ABOVE,;
28. On the same page, line 15, following the period (.) after the word "CLASSIFIED", add a new sentence, to read: SUCH CLASSIFICATION SHALL NOT BE REVISED EXCEPT BY AN ACT OF CONGRESS.;
29. On the same page, line 25, after the comma (,) following the words "Annex 'B'", insert the phrase INCLUDING THE CLASSIFICATION OF BRANDS FOR THE SAME PRODUCTS WHICH, ALTHOUGH NOT SET FORTH IN SAID ANNEX 'B', WERE REGISTERED AND COMMERCIALY PRODUCED ON OR BEFORE JANUARY 1, 1997, AND WHICH CONTINUE TO BE COMMERCIALY PRODUCED AFTER THE EFFECTIVITY OF THIS ACT,;
30. On page 10, line 3, place a comma (,) after the word "BRANDS," and add the phrase "AS DEFINED IN THE IMMEDIATELY FOLLOWING PARAGRAPH,;
31. On the same page and line, between the words "shall" and "be," insert the word INITIALLY, and delete the word "current";
32. On the same page, lines 6 to 8, replace the phrase "THIS ACT, AND SHALL INCLUDE PREVIOUSLY REGISTERED BUT INACTIVE BRANDS OF FERMENTED LIQUOR" with R. A. NO. 8240;
33. On the same page, line 10, place a comma (,) after the word "BRANDS," insert the words AS DEFINED ABOVE,;
34. On the same page, line 18, delete the word "FINALLY";
35. On the same page, line 19, between the words "PARTICULAR" and "BRAND," insert the word NEW;
36. On the same page, line 20, place a comma (,) after the word "LIQUOR," and insert the words AS DEFINED ABOVE, and following the period

after the word "CLASSIFIED," add the sentence SUCH CLASSIFICATION SHALL NOT BE REVISED EXCEPT BY AN ACT OF CONGRESS.;

37. On the same page, line 21, after the words "Net retail price," place a comma (,) then insert the phrase AS DETERMINED BY THE BUREAU OF INTERNAL REVENUE (BIR) THROUGH A PRICE SURVEY TO BE CONDUCTED BY THE BIR ITSELF, OR THE NATIONAL STATISTICS OFFICE (NSO), OR BY A REPUTABLE RESEARCH OR POLLING ORGANIZATION DEPUTIZED FOR THE PURPOSE BY THE BIR.;
38. On the same page, line 22, between the words "in" and "twenty," insert the words AT LEAST;
39. On the same page, line 26, between the words "in" and "five", insert the words AT LEAST;
40. On page 11, line 2, after the comma (,) following the words "Annex 'C'," insert the phrase INCLUDING THE CLASSIFICATION OF BRANDS FOR THE SAME PRODUCTS WHICH, ALTHOUGH NOT SET FORTH IN SAID ANNEX 'C,' WERE REGISTERED AND COMMERCIALY PRODUCED ON OR BEFORE JANUARY 1, 1997, AND WHICH CONTINUE TO BE COMMERCIALY PRODUCED AFTER THE EFFECTIVITY OF THIS ACT.;
41. On page 12, line 16, after the word "sweetened" and before the semi-colon (;), insert the phrase EXCEPT AS OTHERWISE PROVIDED HEREUNDER;
42. On the same page, line 18, between the word "tobacco" and the period (.), insert the phrase EXCEPT AS OTHERWISE PROVIDED HEREUNDER;
43. On the same page, line 19, add the phrase STEMMED LEAF TOBACCO PREPARED OR PARTIALLY PREPARED WITH OR WITHOUT THE USE OF ANY MACHINE OR INSTRUMENT OR WITHOUT BEING PRESSED OR SWEETENED before the word "Fine-cut," then change to lower case the capital letter "F" in the word "Fine";
44. On the same page and line, between the words "stems" and "and," insert a comma (,) and the word MIDRIBS.;
45. On the same page, line 21, replace the word "may" with SHALL;
46. On the same page, line 22, after the word "for," insert a comma (,) and the phrase IF THE SAME ARE TO BE EXPORTED OR TO BE USED IN THE MANUFACTURE OF CIGARS, CIGARETTES, OR OTHER TOBACCO PRODUCTS ON WHICH THE EXCISE TAX WILL EVENTUALLY BE PAID ON THE FINISHED PRODUCT.;
47. On the same page, lines 24 to 26, after the word "Commissioner," delete the comma (,) and the phrase "if the same are to be exported or to be used in the manufacture of other tobacco products on which the excise tax will eventually be paid on the finished product";
48. On page 14, line 12, replace the words and figures "TWENTY PERCENT (20%)" with TEN PERCENT (10%);
49. On the same page, line 15, replace the words and figures "ONE HUNDRED PESOS (P100.00)" with FIFTY PESOS (P50.00);

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50. On the same page, line 16, replace the words and figures "THIRTY PERCENT (30%)" with FIFTEEN PERCENT (15%);
51. On page 15, lines 20 and 21, replace "ONE PESO AND SIXTY-FIVE CENTAVOS (P1.65)" with TWO PESOS AND TWENTY-FOUR CENTAVOS (P2.24);
52. On the same page, lines 22 and 23, replace "ONE PESO AND EIGHTY-SEVEN CENTAVOS (P.1.87)" with TWO PESOS AND FORTY-EIGHT CENTAVOS (P2.48);
53. On the same page, line 24 and 25, replace "TWO PESOS AND TEN CENTAVOS (P2.10)" with TWO PESOS AND SEVENTY-THREE CENTAVOS (P2.73);
54. On the same page, lines 26 and 27, replace "TWO PESOS AND THIRTY-FOUR CENTAVOS "(P2.34)" with TWO PESOS AND NINETY-NINE CENTAVOS (P2.99);
55. On page 18, line 1, after the words "New brands," insert a comma (,) and the phrase AS DEFINED IN THE IMMEDIATELY FOLLOWING PARAGRAPH, and between the words "shall" and "be," insert the word INITIALLY;
56. On the same page and line, delete the word "current";
57. On the same page, lines 4 and 5, replace the phrase "THIS ACT, AND SHALL INCLUDE PREVIOUSLY REGISTERED BUT INACTIVE BRANDS OF CIGARETTES" with R.A. NO. 8240;
58. On the same page, line 7, after the words "NEW BRANDS," insert a comma (,) and the phrase AS DEFINED ABOVE;
59. On the same page, line 14, between the words "PRICE" and "AGAINST," insert the words OF THE NEW BRAND;
60. On the same page, line 15, between the words "AND" and "DETERMINE," delete the word "FINALLY;";
61. On the same page, line 16, between the words "PARTICULAR" and "BRAND," insert the word NEW;
62. On the same page, same line, after the word "CIGARETTE," insert a comma (,) and the phrase AS DEFINED ABOVE;
63. On the same page, line 17, following the period (.) after the word "CLASSIFIED," add the sentence SUCH CLASSIFICATION SHALL NOT BE REVISED EXCEPT BY AN ACT OF CONGRESS.;
64. On the same page, line 18, after the words "Net retail price," insert a comma (,) and the phrase AS DETERMINED BY THE BUREAU OF INTERNAL REVENUE (BIR) THROUGH A PRICE SURVEY TO BE CONDUCTED BY THE BIR ITSELF, OR THE NATIONAL STATISTICS OFFICE (NSO), OR BY A REPUTABLE RESEARCH OR POLLING ORGANIZATION DEPUTIZED FOR THE PURPOSE BY THE BIR.;
65. On the same page, line 19, between the words "in" and "twenty," insert the words AT LEAST;
66. On the same page, line 23, between the words "in" and "five," insert the words AT LEAST;
67. On the same page, line 26, after the comma (,) following the words "Annex 'D'," insert the phrase INCLUDING THE CLASSIFICATION OF

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BRANDS FOR THE SAME PRODUCTS WHICH, ALTHOUGH NOT SET FORTH IN SAID ANNEX 'D', WERE REGISTERED AND COMMERCIALY PRODUCED ON OR BEFORE JANUARY 1, 1997, AND WHICH CONTINUE TO BE COMMERCIALY PRODUCED AFTER THE EFFECTIVITY OF THIS ACT,";

68. On page 19, between lines 25 and 26, insert two (2) new sections as Sections 6 and 7 to read as follows:

SEC. 6. INTERNAL REVENUE STAMPS, WHETHER OF A BAR CODE OR FUSON DESIGN, TAMPER RESISTANT STAMP, OR ANY OTHER EFFECTIVE PROCESS, SHALL BE FIRMLY AND CONSPICUOUSLY AFFIXED AND/OR APPLIED ON EACH PACK OF CIGARS AND CIGARETTES, OR CONTAINER OF DISTILLED SPIRITS, WINES, FERMENTED LIQUOR SUBJECT TO EXCISE TAX IN THE MANNER AND FORM AS PRESCRIBED BY THE COMMISSIONER OF INTERNAL REVENUE, UPON APPROVAL OF THE SECRETARY OF FINANCE.

"SEC. 7. SECTION 131 OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, IS HEREBY FURTHER AMENDED TO READ AS FOLLOWS:

"SEC. 131. *Payment of Excise Taxes on Imported Articles.* --

(A) *Persons Liable.* -

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The provision of any special or general law to the contrary notwithstanding, the importation of cigars and

cigarettes, distilled spirits, FERMENTED LIQUORS and wines into the Philippines, even if destined for tax and duty-free shops, shall be subject to all applicable taxes, duties, charges, including excise taxes due thereon[; *Provided, however, That*]. T[t]his shall [not] apply to cigars and cigarettes, distilled spirits, FERMENTED LIQUORS and wines brought directly into the duly chartered or legislated freeports of the Subic Special Economic and Freeport Zone, created under Republic Act No. 7227; the Cagayan Special Economic Zone and Freeport, created under Republic Act No. 7922; and the Zamboanga City Special Economic Zone, created under Republic Act No. 7903, and SUCH OTHER FREEPORTS AS MAY HEREAFTER BE ESTABLISHED OR CREATED BY LAW [are not transshipped to any other port in the Philippines]: *Provided, further, That* importations of cigars and cigarettes, distilled spirits, FERMENTED LIQUORS and wines MADE DIRECTLY by a government-owned and operated duty-free shop, like the Duty-Free Philippines (DFP), shall be exempted from all applicable [taxes,] duties[,] ONLY [charges, including excise tax due thereon]: *Provided, still further, That* such articles directly imported by a government-owned and operated duty-free shop, like the Duty-Free Philippines, shall be labeled '[tax and] duty-free' and 'not for resale': [*Provided, still further, That* if such articles brought into the duly chartered or legislated freeports under Republic Acts Nos. 7227, 7922, and 7903 are subsequently introduced into the Philippine customs territory, then such articles shall, upon such introduction, be deemed imported into the Philippines and shall be subject to all imposts and excise taxes provided herein and other statutes:] *Provided, finally, That* the removal and transfer of tax and duty-free goods, products, machinery, equipment and other similar articles

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OTHER THAN CIGARS AND CIGARETTES, DISTILLED SPIRITS, FERMENTED LIQUORS, AND WINES, from one freeport to another freeport, shall not be deemed an introduction into the Philippine customs territory.”;

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69. Renumber all the succeeding sections accordingly; and
70. Amend the title of the bill to read as follows:

AN ACT INCREASING THE EXCISE TAX RATES IMPOSED ON ALCOHOL AND TOBACCO PRODUCTS, AMENDING FOR THE PURPOSE SECTIONS 131, 141, 142, 143, 144, 145 AND 288 OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED.

#### REMARKS OF THE CHAIR

The Chair directed the Senate Secretary to prepare a clean draft of the measure with the committee amendments and make it available for the next day's session.

#### TERMINATION OF THE PERIOD OF COMMITTEE AMENDMENTS

Upon motion of Senator Pangilinan, there being no objection, the Body closed the period of committee amendments.

#### SUSPENSION OF CONSIDERATION OF SENATE BILL NO. 1854

Upon motion of Senator Pangilinan, there being no objection, the Body suspended consideration of the bill.

#### INQUIRY OF SENATOR PIMENTEL

Senator Pimentel stated that a law intended to benefit the poor would be expiring by the end

of the year. He asked about the status of the rental control bill.

Senator Biazon stated that the hearings on the particular measure had been completed and the committee report would be submitted the following day. He informed the Body that in the House of Representatives, the sponsorship speech on the measure has yet to be delivered. The present year's projection, he pointed out, would cover rentals up to P10,000 because the last extension made during the 9<sup>th</sup> Congress covered rents of P1,700 allowing a 10% increase every year. He said that since the extension would lapse this year, Congress should consider enacting another law but studying the coverage more carefully.

#### COMMITTEE REPORT NO. 9 ON SENATE BILL NO. 1871 (Continuation)

Upon motion of Senator Pangilinan, there being no objection, the Body resumed consideration, on Second Reading, of Senate Bill No. 1871 (Committee Report No. 9), entitled

AN ACT TO IMPROVE THE REVENUE COLLECTION PERFORMANCE OF THE BUREAU OF INTERNAL REVENUE (BIR) AND THE BUREAU OF CUSTOMS (BOC) THROUGH THE CREATION OF A REWARDS AND INCENTIVES FUND AND OF A PERFORMANCE EVALUATION BOARD AND FOR OTHER PURPOSES.

Senator Pangilinan stated that the parliamentary status was the period of interpellations.

Thereupon, the Chair recognized Senator Recto, sponsor of the measure.

#### INTERPELLATION OF SENATOR ARROYO

On Senator Arroyo's observation that the measure tackled only the reward aspect, Senator Recto said that it was not so, pointing out that the title focused on the positive side as against the previous bill that was vetoed by the President which had a negative idea because of the words

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which had a negative idea because of the words "lateral attrition." He said that the creation of a performance evaluation board would be the "stick."

Senator Arroyo believed that the fear aspect instead of the reward should be more pronounced in the bill precisely because the officials and employees of both the BIR and the BOC are making money on the side more than the reward that would be given under the proposed measure.

Senator Recto explained that precisely the Committee increased the proposed incentive from 10% to 20 % of the excess in collections since the government would be competing with the private sector which gives hefty bribes to the BIR and BOC. However, he clarified that the Executive requested two things, one, to create an incentive fund and two, to empower the Board to immediately fire, after due process, officials and employees who fail to meet revenue targets.

On the view that the fear of losing jobs would be the best incentives for BIR and BOC officials and employees to collect more taxes and revenues rather than the monetary incentives, Senator Recto explained that since man is motivated more by profit rather than fear, the Committee emphasized the reward but he would not object to a proposal to stress the fear aspect of the bill. He pointed out that in the original bill, transfers and assignments of officials and employees of the BIR and BOC would have to go to the Board; on the other hand, the Committee recommended the deletion of the said provision since it would tie the hands of the commissioners of the BIR and BOC. He informed the Body that at present the commissioners of the BIR and the BOC are already authorized to reassign or transfer officials who fail to meet their targets.

Asked about standards, Senator Recto replied that the bill provides for the creation of a rewards and incentives fund equivalent to 20% of the excess collection of the BIR and BOC as validated by the Development Budget and Coordinating Committee. In the case of firing of officials and personnel, he said that Civil Service laws, rules and regulations as well as laws on due process would still be observed.

Asked why the present commissioners of the BIR and the BOC hesitate to exercise their powers to relieve or transfer officials who fail to meet revenue targets, Senator Recto replied that the commissioners have already been doing that. He believed that it would be better to strengthen that power of the commissioners rather than to delegate it to the Board.

Moreover, he clarified that the bill provides for the creation of a Performance Evaluation Board which will prescribe the rules and guidelines for the distribution of the incentives and set the criteria and procedures for removing failing officials and employees of the BIR and BOC. However, he clarified that he would have no problem if the Board would only be given the duty to determine the rules and regulations in the distribution of the incentives.

On the argument that the distribution and release of the incentives would already be covered by the implementing rules and regulations, Senator Recto explained that since the rules and regulations could be changed from time to time, the Board should be given flexibility in allocating the reward. He further explained that the only reason the Committee recommended the creation of the Board was to ensure the participation of officers and employees in the process.

To the assertion that the BIR and BOC agents would still be free to make money on the side, Senator Recto admitted that the bill would not deter corruption in the BIR and BOC but he expressed hope that it could be minimized.

Senator Arroyo said that inasmuch as the national government needs the revenues, he would not mind if the agents made money on the side for as long as their targets are met. Senator Recto agreed. He disclosed that for 2005 the BIR is expected to generate an increase in revenue of 13% which is about P60 billion while BOC's collection is expected to increase by 17% or an addition of P18 billion to the present target of P105 billion.

Senator Arroyo expressed hope that his recommendations would be included in the proposed measure.

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Senator Recto gave the assurance that he was willing to work with Senator Arroyo in improving the language as well as the standards and emphasis of the bill.

#### **INTERPELLATION OF SENATOR ANGARA.**

At the onset, Senator Angara stated that he is favor of improving the performance of the BIR and BOC because the two agencies are the key to a sustainable source of income for the national government.

However, he said that he would like to raise questions on certain provisions of the bill that may be legally and constitutionally vulnerable. For instance, he said, the creation of a performance board that will define the criteria and procedure for removal and termination of an employee is tantamount to ousting the Civil Service Commission, which is the central personnel board, with that constitutional duty. Senator Recto explained that in the original committee report, revenue target was not a basis for terminating employees but in order to balance the suggestion that revenue should be a standard for firing an employee, he inserted the phrase "subject to Civil Service laws, rules and regulations." But as a management issue, he explained, he wanted the Board to have the flexibility in determining the rules and regulations as far as firing employees is concerned since the BIR and the BOC, as revenue-generating agencies, might be treated differently.

Senator Angara pointed out that if money is not the sole criterion, it would be an undue delegation of function which is worse. "For cause" in legal parlance, he explained, means the recognized acts of misfeasance or wrongdoing recognized by law but giving one the authority to invent other causes could be vulnerable to a legal challenge. He stressed that the delegation of power should be very clear since the purpose is to improve performance. He noted that Section 4(a) of the bill is too ambiguous.

Senator Recto expressed willingness to refine the provisions, for instance, setting minimum standards but providing for exemptions as the vetoed bill had done.

But Senator Angara reiterated that the concept itself is constitutionally invalid. He suggested that the flaw could be corrected by abolishing the revenue-collecting agencies and corporatizing them. He pointed out that present boards and committees in different agencies are plainly disciplinary and not a mini-Civil Service. He stressed that the Body could not simply waive Civil Service security and the right of any employee to due process.

Further, Senator Angara stressed that the problem is not just terminology but conceptual as creating a mini-Civil Service violates the constitutional provision and gives undue and ambiguous delegation of power to the Board.

On Senator Recto's assurance that he was open to the bill's refinement, Senator Angara reiterated that the question of illegality and unconstitutionality could be done away with if the BIR and BOC would be converted into corporations. Upon query, he affirmed that the employees could be exempted from the Salary Standardization Law (SSL) but the aim of overall improvement in performance and revenue collection would have been achieved in a legal and constitutional way. He argued that corporatizing may not necessarily improve performance but the existing Civil Service protection precisely might be producing corruption in these two agencies.

Senator Recto expressed the view that if the concept is to exempt employees from the SSL, the law that applies to the private sector, that is, the Labor Code, should apply. But he pointed out that many GOCCs are exempted from the SSL but still they are the cause of the country's gargantuan debt. He explained that the bill merely granted the Executive department's request that a percentage of excess collection be treated as an incentive and an administrative body be created to fire misfits. But he reiterated his willingness to scrap the bill should the Body think that it is unnecessary.

Senator Angara stressed that the question is simply improving a piece of legislation. He cited Peru which corporatize its tax collection and achieved terrific improvement. He pointed out that not all GOCCs should be included in the

proposal since many of them are not revenue-generating agencies. But the choice of the policy instrument, such as an administrative board, he argued, is constitutionally invalid. The suggestion of corporatizing is less vulnerable to legal challenge and less demoralizing to the employees, he stressed. He stated that the bill does not assure the government of a single peso, only a wish that the BIR and the BOC would collect more.

Senator Recto noted a clear difference of opinion but posed no objection to a better alternative. He reiterated that profit-motive is the best incentive for the BIR and BOC employees to meet their revenue targets as motivated people make an organization work. He agreed, however, that the root of the disagreement is the means to increase revenue collections

On the matter of revenue goal, Senator Angara asked how the 20% in excess of collection target could be measured since the original projection could be underestimated by as much as 50%. He noted that revenue estimate could be changed almost every quarter but the bill has no provision as to who would evaluate the original estimate.

Senator Recto explained that the DBCC currently sets the revenue target based on the projected growth of the economy. For example, he said that if the economy's real growth next year is 6%, inflation at 4%, the nominal growth would be 10%. In the BIR's case, he said, the agency is projecting a 13% growth equivalent to P60 billion to P70 billion in revenues without new tax measures.

Upon further queries, he disclosed that the BIR estimate was included in the budget submitted by the Office of the President. He said that to a certain degree, the BIR's targets could already be estimated up to 2010 because of the Medium-Term Philippine Development Plan. He agreed that the estimate included in the expenditure budget which the Office of the President submits to Congress annually is revised several times during the fiscal year but the government's medium-term fiscal plan would give an idea of the projected

revenues and expenses between 2004 and 2010. On the average, he said that revenues would have to grow by 13% and expenditures by 6.3% in order for the government to have a balanced budget by 2010. For example, he pointed out that figures for the BIR and the BOC under the proposed national budget has a six-year framework, to wit:

<i>Year</i>	<i>BIR growth rate</i>	<i>BOC growth rate</i>
2005	12.8%	17.4%
2006	15.2%	9.2%
2007	13.6%	10.6%
2008	13.8%	9.5%
2009	14.2%	16%
2010	14.3%	11.6%

Upon further query, Senator Recto adverted to Section 2 of the bill which identifies the DBCC as the agency responsible for evaluating the feasibility of original revenue targets. Moreover, he said that the bill defines a revenue goal as the original revenue target of the BIR and the BOC for a given fiscal year as stated in the Budget of Expenditures and Sources of Financing submitted by the President to Congress. He expressed willingness to accept a provision specifically identifying the DBCC as the validating authority.

Senator Angara, however, noted that while the DBCC collates the agency estimates and prepares the President's budget statement, it does not monitor these projections, but simply accepts the agency's estimate. He pointed out that any amendment would be cosmetic since it would not correct what is substantially wrong with the bill.

At this juncture, Senator Angara moved for a deferment of consideration of Senate Bill No. 1871. He said that he would submit an amendment by substitution as he believed that the Body should not pass a bill of this nature which has no immediate revenue impact even as he conceded that all proposals are only an expectation of better performance.

Senator Recto believed that the bill is a better version of the one vetoed in the previous Congress but he expressed willingness to work with any Member of the Chamber for an improved version.


**SUSPENSION OF CONSIDERATION  
OF SENATE BILL NO. 1871**

Thereafter, upon motion of Senator Pangilinan, there being no objection, the Body suspended consideration of the bill.

**CHANGE OF REFERRAL**

Upon motion of Senator Pangilinan, there being no objection, the Chair referred Proposed Senate Resolution No. 114 from the Committee on Rules to the Committee on Peace, Unification and Reconciliation.


**ADJOURNMENT OF SESSION**

Upon motion of Senator Pangilinan, there being no objection, the Chair declared the session

adjourned until three o'clock in the afternoon of the following day.

*It was 7:25 p.m.*

I hereby certify to the correctness of the foregoing.

  
OSCAR G. YABES  
Secretary of the Senate  
*(Handwritten initials)*

Approved on December 14, 2004