



REPUBLIC OF THE PHILIPPINES

S e n a t e

Pasay City

Journal

SESSION NO. 47

Wednesday and Thursday
December 15 and 16, 2004

**THIRTEENTH CONGRESS
FIRST REGULAR SESSION**

SESSION NO. 47
Wednesday and Thursday,
December 15 and 16, 2004

CALL TO ORDER

At 3:44 p.m., Wednesday, December 15, the Senate President, Hon. Franklin M. Drilon, called the session to order.

PRAYER

Sen. Juan M. Flavier read the following prayer prepared by Sen. Manuel B. Villar Jr.:

Gracious and Holy God, whose almighty power created this world, we seek Your grace.

You gave us the free will and the power to choose between good and evil. Hence, in the performance of our tasks, always give us an open mind, that we may see the good and the evil a given situation brings, and guide us to always choose what would redound to the good of many. Help us, so that we may not be deceived by appearances, but be able to see into the heart of things, to see what lies beneath the surface.

Do not allow flattery to distract our judgment. Do not allow taunts or threats to pressure us into making a decision we would later regret. Help us discern and decide according to Your will.

We need to make a lot of decisions in the remaining session days, Lord. Enlighten us as we decide on the significant measures before us, so that we may help ease, or better yet, resolve the fiscal problem in our country and look forward to a brighter economy this 2005.

All these we ask in Jesus' Name.

Amen.

ROLL CALL

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

Biazon, R. G.	Gordon, R. J.
Cayetano, C. P. S.	Lacson, P. M.
Defensor Santiago, M.	Madrigal, M. A.
Drilon, F. M.	Pangilinan, F. N.
Ejercito Estrada, J.	Pimentel Jr., A. Q.
Ejercito Estrada, L. L. P.	Roxas, M.
Flavier, J. M.	

With 13 senators present, the Chair declared the presence of a quorum.

Senators Lim, Magsaysay and Osmeña arrived after the roll call.

Senators Angara, Arroyo, Enrile, Lapid, Recto, Revilla and Villar, who were on official mission, also arrived after the roll call.

**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. 46 to a later hour.

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 14, 2004, the House of Representatives passed House Bill No. 2933, entitled

AN ACT GRANTING A ONE-TIME
TAX AMNESTY ON ALL UNPAID
NATIONAL INTERNAL REVENUE
TAXES IMPOSED BY THE
NATIONAL GOVERNMENT FOR

**TAXABLE YEAR 2003 AND PRIOR
YEARS AND FOR OTHER
PURPOSES,**

in which it requested the concurrence of the Senate.

To the Committee on Ways and Means

BILL ON FIRST READING

Senate Bill No. 1874, entitled

**AN ACT GRANTING EDUCATIONAL
BENEFITS TO LEGITIMATE
CHILDREN OF JUDGES OF THE
FIRST AND SECOND LEVEL
COURTS IN STATE COLLEGES
AND UNIVERSITIES**

Introduced by Senator Pangilinan

**To the Committees on Justice and Human
Rights; and Education, Arts and Culture**

RESOLUTION

Proposed Senate Resolution No. 147, entitled

**RESOLUTION CALLING ON THE
COMMITTEE ON JUSTICE AND
HUMAN RIGHTS TO INVESTIGATE
THE STATUS OF THE
IMPLEMENTATION OF REPUBLIC
ACT NO. 9285 ENTITLED, AN ACT
TO INSTITUTIONALIZE THE USE
OF AN ALTERNATIVE DISPUTE
RESOLUTION SYSTEM IN THE
PHILIPPINES AND TO ESTABLISH
THE OFFICE FOR ALTERNATIVE
DISPUTE RESOLUTION AND FOR
OTHER PURPOSES**

Introduced by Senator Pangilinan

**To the Committee on Justice and Human
Rights**

SUSPENSION OF SESSION

Upon motion of Senator Pangilinan, the session was suspended.

It was 3:49 p.m.

RESUMPTION OF SESSION

At 4:10 p.m., the session was resumed.

**ACKNOWLEDGMENT OF
THE PRESENCE OF GUESTS**

At this juncture, Senator Pangilinan acknowledged the presence of the delegation of the American Council of Young Political Leaders (ACYPL) composed of the following:

1. The Hon. Greg Brophy, State Representative of the 63rd District of Colorado;
2. Ms. Gina Dorio, Acting District Director, Office of U.S. Congressman Scott Garret;
3. Mr. David McMaster, Deputy Regional Political Director, Bush-Cheney Reelection Campaign;
4. Ms. Becca Pryse, Director for Legislative Services, Republican Caucus, Minnesota House of Representatives;
5. Ms. Carrie Carpenter, Director of Communication, Children's Rights;
6. Mr. Adam Smith, Chief Procurement Officer, Atlanta City;
7. Mr. Nu Wexler, Executive Director, South Carolina Democratic Party; and
8. Ms. Julia Hamilton, Principal, Civic Consulting Limited.

Senator Pangilinan informed the Body that ACYPL is a non-profit educational exchange

organization dedicated to fostering relations between the upcoming generation of political leaders in the United States and their counterparts around the world. He said that emerging leaders from over 90 countries have participated in ACYPL programs since the organization was founded in 1966. He added that ACYPL counts among its alumni members of the U.S. Congress, cabinet officials, diplomats, government ministers and parliamentarians all over the world, including the Philippines.

INQUIRY OF SENATOR PIMENTEL

Senator Pimentel recalled that in the previous session, he raised the issue of the impending expiration at the end of the month of the Rent Control Law, a social piece of legislation that was designed to benefit the poor of the country. He then asked why the committee report has not been brought up for deliberations on the floor.

Senator Biazon informed the Body that the Committee on Urban Planning, Housing and Resettlement had drafted the committee report but a similar measure has not been presented to the floor in the House of Representatives. He disclosed that the original Rent Control Law was enacted in 1947, and has been extended fourteen times. He said that the upcoming extension would be the 15th. He recalled that the last extension in 2001 covered base rental of P7,500 but because of the operation of the law which allows an annual increase of 10% for three years, the base that would be used this year would be P10,500.

Senator Biazon pointed out that for one to be able to afford a rental of P10,500 a month, he or she should have graduated above the poverty threshold of P11,000 monthly income which is even higher than the average monthly salary of P6,000.00 of a clerk in the Senate; thus, a clerk who is renting a P10,500 housing unit would no longer be protected. It is for this reason, he said, that the law should be restructured, not merely extended.

Senator Biazon commented that everytime the Rent Control Law was extended, it was assumed that the government would be able to provide socialized housing units for the poor, but since 1947, the national government has failed to solve the problem of inadequate low-cost housing. He

recalled that when President Marcos was ousted in 1986, the backlog was about 3 million units but it increased to 3.7 million units despite the sizeable number of housing units delivered by the Aquino Administration. The backlog under the Arroyo Administration is currently 4.7 million units, he added.

Senator Biazon lamented that because the government failed to provide a solution to the housing needs of the marginalized sector, the law had to be extended 14 times. He underscored the need to examine the structure of the law which, to him, "would take time.

Senator Pimentel said that precisely, the example of a lowly clerk who could not even afford a low-cost or subsidized housing is exactly the argument for extending the law during which time, it should also be reexamined because if there is no cap on rent, the landowners would increase it considerably. He mentioned that based on the hearings conducted by the Committee, the landowners were amenable to a reasonable extension. He agreed that the law should be reexamined.

On another matter, Senator Biazon informed the Body that in a committee hearing, the National Statistics Office, assisted by the Philippine Institute for Development Studies, presented a graph showing that market forces already operate in the segment of the market that the legislators wanted to protect -- the low-income earners. He cautioned that if the landlords raised their rent 3% to 4% or worse, 10% as allowed by law, these low-income earners would be forced to squat. He explained that by putting in place the Rent Control Law, the development of low-cost housing would be suppressed because no developer would want to invest in this market.

Senator Pimentel emphasized that the Rent Control Law is a social piece of legislation, hence, the argument of Senator Biazon needs to be seriously studied and validated. On the other hand, he pointed out that the law has to be extended to enable Congress to structure it, otherwise, those who could not afford a P10,000 rent might end up on the streets, which is not a very remote prospect. He asked the Majority to submit the report for the Body's consideration within the

ms

remaining session day. He stressed that the Minority have been asking that the Rent Control Law be extended to protect the interest of the people, especially the poor.

Senator Biazon read into the record a portion of a study conducted by the Socio-Economic Research Portal for the Philippines together with the Philippine Institute for Development Studies and the National Economic and Development Authority, to wit:

This study examines benefits of Rent Control Law in Metro Manila. The results show that rent control benefits are conditional to occupying a rent-controlled unit and on tenure. The benefits of rent control are found positive.

Many poor low-income households are benefited, but the distributional effects are minimal since non-poor families have equal access to rent-controlled units. Evidence of losses or income transfers from landlords to tenants is not substantiated. The most probable income transfers are those from short stayers to long stayers. Rent Control Law is a poor mechanism for income transfer.

However, the rental housing market tends to be monopolistic and rent control may be necessary to prevent economic eviction and abuses on payment of key monies.

In this case, government has to provide better monitoring mechanism and ensure enforcement of lease contracts.

Senator Biazon stressed that the law does not really affect the movement of the range of rent on the level that needs to be protected. He said that he intended to look at the mechanisms that are being recommended. On the assumption that at the end of a three-year period, government would be able to deliver, he said that rent control conditions should be examined to be able to put together a viable program to meet the needs of the marginalized sector.

Senator Biazon argued that the problem of housing should be considered in relation to the five

competing needs for land, among which are production of food – the country must achieve self-sufficiency in food; and shelter – at present there is no more land to be converted where shelter is needed; 59% of Filipinos live in urban areas and 30% in rural areas. He asserted that there must be a flaw in the implementation of the law since it has been extended 14 times.

REMARKS OF SENATOR OSMEÑA

Stating his basic premise that the market works more efficiently than most people want to believe, Senator Osmeña opined that putting artificial control on certain types of economic activity has the opposite effect. For instance, he cited that in the land reform law, severe restrictions on the transfer, use and ownership of farmland militated against the development of the agricultural sector. Further, he noted that when land ownership was limited to only five hectares, entrepreneurs were prohibited from building agro-industrial areas that required a minimum of 50 to 150 hectares in order to make the economies of scale work.

On the matter of residential rentals, Senator Osmeña cited the following facts:

- * Rent control serves as a disincentive for developers to build low-cost housing. A developer does not expect the market to give him a 30% or 50% vacancy rate. If the developer has a loan on a particular property, then he is paying for the loan himself because his rental income is insufficient;
- * Returns are very low on real estate because there is a big demand for this type of property. As such, an individual leasing property in Malate, Makati, Novaliches or Laguna will discover that he is earning about 2% to 3% of the fair market value of his house; comparatively, in the U.S., a landlord could be earning as much as 15% of the market value of his house. Therefore, a landlord would likely get P360,000 annual rental on a house with a market value of P10 million. Certain condominiums in Makati City are being leased for as low as P30,000 a month. As the local market has not been kind to

16

the real estate sector in the last seven years, the fair market value of one particular condominium has dropped to P10 million, with the owner making a 3.6% return on the gross value of the property and takes home about 1.2% to 2% of actual value.

- * There is no rent control in areas occupied by informal settlers or squatters, who make up 30% to 60% of Metro Manila residents since there are no legal units thereon in the first place. There are many available housing units in the squatter areas because an informal settler could sell to the next occupant the rights to his shanty, making the next owner a landlord who can do the same.
- * The Philippines has no statistics on the number of housing units even in the Metro Manila area unlike in the United States where such figures are reported monthly in the newspapers. In the United States, housing units have risen on an annual rate of between 1.8 million to 2 million. Local contractors report that less than 2% of residential units in Metro Manila for the past several years rent out for P5,000 or less because of rent control.

Senator Osmeña noted that Senate Bill No. 1324 seeks also to increase the cap from P7,500 to P10,000 which protects only the middle class. Unfortunately, he opined that the bill would even lessen the number of housing units for the middle class because nobody wants to be subjected to rent control. He recalled that in the 14 years that he lived in the United States, no new apartments were developed in cities that implemented rent control. Moreover, he affirmed Senator Biazon's observation that the 10% cap is very high, considering that rent has only gone up by 2% to 3% as it is all that the market could afford at this time. In view thereof, he suggested that the effectivity of the bill be extended to six years instead of three. He, however, cautioned against raising the cap to P10,000 because this might have the opposite effect of what the bill seeks to accomplish. He expressed concern that the bill might send a wrong signal

to developers. He opined that the law only protects existing tenants. He believed that a young person on his first job would not be able to find a unit due to the shortage of available units on the market.

Senator Osmeña reiterated his suggestion that the Body study whether the law protects the very people it intended to protect because they might even be the ones who shall suffer as a result of rent control. Further, he believed that the government should build rental units instead of low-cost housing units. It would be useless, he argued, to build housing units when people could not afford to pay for them. He noted that the reason the National Home Mortgage Financing Corporation has a P40 billion debt is that most renters default on payments. He suggested that the Senate consider having government finance medium-rise, low-cost rental units to help families eventually own their own homes as is being done in other countries. This, he said, would meet the need of the low-income segment of the market by helping them save for a future house and lot.

For this part, Senator Biazon informed the Body that the House has not yet considered its counterpart bill. He suggested that the measure be tested for about six months to a year so that the implications of an extension or restructuring of the law and the feasibility of its implementation by government could be studied.

REMARKS OF SENATOR PANGILINAN

In light of the fact that the Senate is still awaiting the Conference Committee Report on the sin tax bill, Senator Pangilinan informed the Body that it has been agreed that the session would be suspended until the report is ready for ratification by the Body.

REMARKS OF THE CHAIR

The Chair acknowledged receipt by his office of the written explanation of the negative vote of Senator Madrigal on Senate Bill No. 1854. It directed the Senate Secretary to reflect the same in the Journal and the Record of the Senate.

4

10

INQUIRY OF SENATOR ROXAS

Senator Roxas asked whether the Members would be given sufficient notice about the resumption of the session.

Given the debates in the Conference Committee, Senator Pangilinan assumed that the session would most likely be resumed at three o'clock in the afternoon the following day or earlier.

Senator Roxas requested that the Members be notified at least two hours before the resumption of session. The Chair agreed thereto.

REMARKS OF SENATOR OSMEÑA

Adverting to Section 13(7) of the Rules of the Senate, Senator Osmeña suggested that bills covering the GSIS, SSS, Landbank and the DBP be referred to the Committee on Banks, Financial Institutions and Currencies rather than the Committee on Government Corporations and Public Enterprises.

Recognizing that there are overlaps in the jurisdiction of committees, Senator Osmeña noted that in the past several months, some committees made several miscalculations in drafting the charters of some of the financial institutions that resulted in huge loopholes. He believed that it would be best to task a committee to cover a particular government financial institution. He requested that bills pertaining to the four GOCCs be referred to the Committee on Banks, Financial Institutions and Currencies so that they could be tackled properly.

INSTRUCTION OF THE CHAIR

Thereupon, the Chair directed the Committee on Rules to review the referrals of said bills and submit the necessary recommendation in the next day's session.

SUSPENSION OF SESSION

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

It was 5:06 p.m.

RESUMPTION OF SESSION

At 3:58 p.m., Thursday, December 16, the session was resumed with Senate President Drilon presiding.

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. 46 and considered it approved.

ADDITIONAL REFERENCE OF BUSINESS

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

MESSAGES FROM THE HOUSE OF REPRESENTATIVES

Letter from the Secretary General of the House of Representatives informing the Senate that on December 14, 2004, the House of Representatives requested for a conference and designated Representatives Jesli A. Lapus, Exequiel B. Javier, Antonino P. Roman, Eric D. Singson, Teodoro L. Locsin Jr., Junie E. Cua, Catalino V. Figueroa, Alipio "Tikbong" V. Badelles, Eduardo C. Zialcita, Salacnib F. Baterina, Jesus Crispin C. Remulla, Edcel C. Lagman, Luis R. Villafuerte, Joey Sarte Salceda, Arnulfo P. Fuentebella, Monico O. Puentevella, Danilo E. Suarez, Ace S. Barbers, Arthur D. Defensor, Florencio "Bern" G. Noel, Alan Peter S. Cayetano, Ronaldo B. Zamora, Jacinto V. Paras, Joseph A. Santiago, Rolex T. Suplico, (alternate) Vincent "Bingbong" P. Crisologo, (alternate) and Justin "Timmy" SB Chipeco (alternate) as its conferees on the disagreeing provisions of House Bill No. 3174, entitled

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

and Senate Bill No. 1854, entitled

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

To the Committee on Rules

Letter from the Secretary General of the House of Representatives informing the Senate that on December 15, 2004, the House of Representatives elected Representatives Herminio G. Teves and Hermilando I. Mandanas as additional conferees on the part of the House of Representatives to the Bicameral Conference Committee on the disagreeing provisions of House Bill No. 3174, entitled

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

and Senate Bill No. 1854, entitled

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

To the Committee on Rules

Resolution

Proposed Senate Resolution No. 148, entitled

RESOLUTION RECOMMENDING THE RECOGNITION OF FERNANDO POE JR., AS A NATIONAL ARTIST OF THE REPUBLIC OF THE PHILIPPINES

Introduced by Senator Revilla

To the Committee on Rules

REMARKS OF SENATOR PIMENTEL

At this juncture, Senator Pimentel informed the Body that Senator Biazon, chairman of the Committee on Urban Planning, Housing and Resettlement, had told him that that House of Representatives had approved a bill on the extension of the Rent Control Law.

Considering the impact of the legislation on the poorer sector of the country, he pointed out that it was incumbent upon the Body to do something about the issue because it would put the Senate in a bad light if nothing is done about it.

REMARKS OF SENATOR BIAZON

Senator Biazon noted that it was the third time the issue had been brought to the floor. He added that he is for the extension of the Rent Control Law. However, he argued that an extension of the law would be useless as he underscored the need to craft a new law. He pointed out the findings of the National Statistics Office indicating that in the protected segment of the market, the average rent increase is from 3% to 4% annually, although the present law allows a 10% increase. He averred that the law only dampens the use by developers of resources on the housing needs of the segment that it seeks to protect.

Observing that the House had approved the bill in haste, Senator Biazon underscored that he did not want to fall into the same trap as he reiterated the need to study the law further.

Senator Pimentel explained that extending the present law would give the Senate ample time to restructure it. He stated that the Housing and Urban Development Coordinating Council that is mandated by the present law to provide a program to ensure the creation of safety measures to cushion the impact of a free rental market has also recommended the extension of said law. He said that he could not understand why Senator Biazon opposed an extension.

In reaction, Senator Biazon pointed out that he authored a bill extending the Rent Control Law in 1992 as it was useful at that time. However, he stated that the operation of that law was prolonged by a series of extensions. Further, he pointed out that he had been asking the HUDCC chairman to be present during the committee hearings so his position on the matter could be heard. He reiterated that there is a need to restructure the present law

16

because the conditions at present compared to 1992 are so different. However, he manifested that he would continue committee hearings on the Recto bill.

ANNOUNCEMENT OF SENATOR PANGILINAN

At this point, Senator Pangilinan announced that Senator Recto was ready to present the Conference Committee Report on the disagreeing provisions of Senate Bill No. 1854 and House Bill No. 3174 to the Body.

CONFERENCE COMMITTEE REPORT ON SENATE BILL NO. 1854 AND HOUSE BILL NO. 3174

Upon motion of Senator Pangilinan, there being no objection, the Body considered the Conference Committee Report on the disagreeing provisions of Senate Bill No. 1854, entitled

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

and House Bill No. 3174, entitled

AN ACT INCREASING THE SPECIFIC
TAX RATES IMPOSED ON
ALCOHOL AND TOBACCO
PRODUCTS AMENDING FOR THE
PURPOSE SECTIONS 141, 142, 143,
144 AND 154 OF THE NATIONAL
INTERNAL REVENUE CODE OF
1997, AS AMENDED.

The Chair recognized Senator Recto for the sponsorship of the report.

SPONSORSHIP REMARKS OF SENATOR RECTO

Thereupon, Senator Recto presented to the Body the Conference Committee Report as follows:

The Conference Committee on the disagreeing provisions of House Bill No. 3174 and Senate Bill No. 1854, after having met and fully discussed the subject

matter, hereby report to their respective Houses the following, that:

1. The House version was adopted as the working draft;
2. Section 1 (Amending Section 141 of the National Internal Revenue Code (NIRC) of 1997 on Distilled Spirits) of the Senate version was adopted as Section 1 of the reconciled version with the following amendments:
 - a) the close bracket before the word "provided" and the end bracket after the word "are", including the word "AND," were deleted in paragraph (a);
 - b) the deleted paragraph (c) was restored;
 - c) in the paragraph defining "Net retail price", the phrase "OR BY A REPUTABLE RESEARCH OR POLLING ORGANIZATION" after the acronym "NSO" was deleted and replaced with the word "WHEN". This is an omnibus amendment to be applied in Sections 2, 3, and 5;
 - d) an omnibus amendment to reword the following paragraph was also carried:

"The classification of each brand of distilled spirits based on the average net retail price as of October 1, 1996, as set forth in Annex 'A', INCLUDING THE CLASSIFICATION OF BRANDS FOR THE SAME PRODUCTS WHICH, ALTHOUGH NOT SET FORTH IN SAID ANNEX 'A', WERE REGISTERED AND WERE BEING COMMERCIALY PRODUCED AND MARKETED ON OR AFTER OCTOBER 1, 1996, AND WHICH CONTINUE TO BE COMMERCIALY PRODUCED AND MARKETED AFTER THE EFFECTIVITY OF THIS ACT, shall remain in force until revised by Congress."

44 / 15

- e) The following paragraph was also amended, to read as follows:

“ANY MANUFACTURER OR IMPORTER WHO, IN VIOLATION OF THIS SECTION, KNOWINGLY MISDECLARES OR MISREPRESENTS IN HIS OR ITS SWORN STATEMENT HEREIN REQUIRED ANY PERTINENT DATA OR INFORMATION SHALL, UPON FINAL FINDINGS BY THE COMMISSIONER THAT THE VIOLATION WAS COMMITTED [KNOWINGLY AND WILLFULLY], BE PENALIZED BY A SUMMARY CANCELLATION OR WITHDRAWAL OF HIS OR ITS PERMIT TO ENGAGE IN BUSINESS AS MANUFACTURER OR IMPORTER OF DISTILLED SPIRITS. [HOWEVER, THE COMMISSIONER OR HIS AUTHORIZED REPRESENTATIVE IS HEREBY EMPOWERED TO SUSPEND THE BUSINESS OPERATIONS AND TEMPORARILY CLOSE THE BUSINESS ESTABLISHMENT UPON DISCOVERY OF THE VIOLATION.]”

- f) in the paragraph defining “SUGGESTED NET RETAIL PRICE”, after the date ‘DECEMBER 31, 2003’, the phrase “NO LONGER BE SUBJECT TO THE INITIAL VALIDATION AND REVALIDATION HEREIN REQUIRED, BUT SHALL CONTINUE TO” was deleted. This is an omnibus amendment which should also apply to Sections 2, 3 and 5.

3. Section 2 (Amending Section 142 of the NIRC of 1997 on Wines) and Section 3 (Amending Section 143 of the NIRC of 1997 on Fermented Liquors) of the Senate version were adopted as Sections 2 and 3 of the reconciled version;

4. Section 4 (Amending Section 144 of the NIRC of 1997 on Tobacco) of the Senate version was adopted as Section 4 of the reconciled version, with the following amendment:

- a) the paragraph after subparagraph (c) was rehashed and amended to read as follows:

“STEMMED LEAF TOBACCO, TOBACCO PREPARED OR PARTIALLY PREPARED WITH OR WITHOUT THE USE OF ANY MACHINE OR INSTRUMENT OR WITHOUT BEING PRESSED OR SWEETENED, [F]fine-cut shorts and refuse, scraps, clippings, cuttings, stems, MIDRIBS, and sweepings of tobacco resulting from the handling or stripping of whole leaf tobacco SHALL [may] be transferred, disposed of, or otherwise sold, without any prepayment of the excise tax herein provided for, 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, under such conditions as may be prescribed in the rules and regulations promulgated by the Secretary of Finance, upon recommendation of the Commissioner [, 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].”

5. Section 5 (Amending Section 145 of the NIRC of 1997 on Cigars and Cigarettes) of the Senate version was adopted as Section 5 of the reconciled version with the following amendments on the rates:

- (1) Under paragraph (B), Cigarettes Packed by Hand, the following rates shall apply:

2005	-	P2.00 per pack
2007	-	P2.23 per pack
2009	-	P2.47 per pack
2011	-	P2.72 per pack

- (2) Under paragraph (C), Cigarettes Packed by Machine, the following rates shall apply:

LOW BRANDS

2005	-	P2.00 per pack
2007	-	P2.23 per pack
2009	-	P2.47 per pack
2011	-	P2.72 per pack

MEDIUM BRANDS

2005	-	P6.35 per pack
2007	-	P6.74 per pack
2009	-	P7.14 per pack
2011	-	P7.56 per pack

HIGH BRANDS

2005	-	P10.35 per pack
2007	-	P10.88 per pack
2009	-	P11.43 per pack
2011	-	P12.00 per pack

PREMIUM BRANDS

2005	-	P25.00 per pack
2007	-	P26.06 per pack
2009	-	P27.16 per pack
2011	-	P28.30 per pack

6. Section 7 (Amending Section 131 of the NIRC of 1997 on Payment of Excise Taxes on Imported Articles) of the Senate version was adopted as Section 6 of the reconciled version;
7. Section 8 (Amending Section 288 of the NIRC of 1997 on Incremental Revenues) of the Senate version was adopted as Section 7 of the reconciled

version with the amendment to replace the words and figures "FIVE PERCENT (5%)" in paragraphs 1 & 2 with "TWO AND A HALF PERCENT (2.5%)";

8. Section 9 (Implementing Rules and Regulations), Section 10 (Separability Clause), Section 11 (Repealing Clause), and Section 12 (Effectivity Clause) of the Senate version were adopted as Sections 8, 9, 10 and 11 respectively, of the reconciled version; and

9. The title of the reconciled version shall read:

"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."

In case of conflict between the statements/amendments stated in this Explanation and that of the provisions of the reconciled version in the accompanying Conference Committee Report, the provisions of the latter shall prevail.

REQUEST OF SENATOR OSMEÑA

Senator Osmeña asked for a copy of the actual conference committee report so he could see the difference between the provisions in the two versions that were harmonized.

Upon instruction of the Chair, the requested copy of the report was given to Senator Osmeña.

APPROVAL OF THE CONFERENCE COMMITTEE REPORT

Upon motion of Senator Pangilinan, there being no objection, the Conference Committee Report on the disagreeing provisions of Senate Bill No. 1854 and House Bill No. 3174 was approved by the Body.

EXPLANATIONS OF VOTES*By Senator Pimentel*

In explaining his affirmative vote, Senator Pimentel opined that the legislators should have increased the tax take that they could possibly get through the bill. He added that he had also wanted to increase the share for health services by more than 5%, and eliminate the distinction on the pricing of low-priced, medium-priced and high-priced cigarettes to induce lesser addiction to smoking among the people. However, he stated that in view of the substantial amendments by Senator Enrile that were accepted by the Sponsor, the Body should be able to live with what it has approved and that next time, it could adopt some of the suggestions he had made.

By Senator Villar

In explaining his affirmative vote, Senator Villar said that while he was happy that the Body has passed a measure that would raise approximately P15 billion in taxes, the senators should be reminded that this is hardly enough to cover the P200 billion deficit for the present year alone because while about 40% would go to the local governments and 5% to health services, some of the proceeds would also cover the concerns of Republic Act No. 7171. He stated that he would have wanted to pass a bill that would raise more revenues and yield about P40 billion to 50 billion from sin taxes, value-added tax, and telecom taxes to address the fiscal crisis. The Body, he said, should pass other tax measures or at least come up with innovative ideas on how it can reduce the deficit.

REMARKS OF SENATOR LIM

Senator Lim said that he thought that there would be a nominal voting so he could manifest his objection to the report.

The Chair stated that it asked whether there was any objection to the adoption of the Report before it banged the gavel. Under the Rules, the Chair pointed out that the ratification of a bicameral conference committee report is not done by nominal vote.

EXPLANATIONS OF VOTES*(Continuation)**By Senator Lim*

In explaining his negative vote, Senator Lim stated that in the course of his interpellation, he said that it was time that Congress repealed the seventh subparagraph of subsection (c) (4) of Section 145 of Republic Act No. 8424, otherwise known as the Tax Reform Act of 1997, which reads as "The classification of each brand of cigarettes based on its average net retail price as of October 1, 1996, as set forth in Annex "D" shall remain in force until revised by Congress." In 1996, he pointed out that while the average net retail prices of cigarettes had greatly increased and those not included in the list had been taxed under the prevailing retail prices, those listed in Annex "D" enjoyed utmost stability and protection because the law established fixed net retail prices for them and prohibited adjustments without congressional approval. Economic experts and financial geniuses, he said, have come up with disturbing findings that government should be able to collect substantially more than the dismal amount that it stands to collect under the present bill if the "poison pill provision" is deleted.

Further, Senator Lim stated that former Secretary Monsod believed that government could collect a minimum of P20 billion and former Secretary Camacho said that the government stands to lose P28 billion in potential tax take from Fortune, P10.18 billion from La Suerte, and P2.52 billion from Sterling. He said that he had no qualms about the urgent need for revenues in the form of sin taxes especially in the wake of a fiscal crisis but he finds it rather queer for the Senate to stand pat on its collective decision to retain the unjust provision that provided a safe haven and a good defense against just taxation and tax avoidance to the favored manufacturers when the basic postulates of taxation are uniformity and equity.

Stating that he learned much from the arguments between Senators Recto and Madrigal, Senator Lim, nonetheless, admitted that the discussion on the econometric model confused him because he is a simple man who only knows simple arithmetic.

Senator Lim believed that laws are enacted for the right causes and are not meant to betray the

national interest. The reverse would be achieved if the bill was enacted into law, he stressed.

Senator Lim recounted his dream last night wherein he visited the North Cemetery where the remains of Fernando Poe Jr. would be laid to rest. He said in the dream, while he was inspecting the cemetery, he thought that it was a good place for FPJ, as it is a cemetery for the masses and not the *Libingan ng mga Bayani* where a drug dealer is buried. He stated that as he passed by the tomb of the late Sen. Claro M. Recto, his car bogged down, but as he and his driver alighted from the car, he suddenly heard a voice coming from the tomb of the late senator telling him to come over, and as he approached it, the voice asked him what he was doing and why he was not objecting to the proposed measure. He said that his reply was in deference to Sen. Ralph Recto, he did not contest it anymore since the Majority in the Senate had the numbers. He stated that the voice insisted that even if the Majority have the numbers, he should make it of record that he was against a bill that would be inimical to the interest and welfare of the country, otherwise, he does not deserve to be a senator.

Senator Lim stated that he was standing firm on his stand that the proposed measure is wrong because it did not remove Section 145 of the NIRC which gives undue advantage to a few.

REQUEST OF THE CHAIR

Senate President Drilon appealed to the Members to shorten their explanations of votes without prejudice to the submission of their written explanations of vote since there are other business to be taken up.

EXPLANATIONS OF VOTES

(Continuation)

By Senator Biazon

Voting in the affirmative, Senator Biazon said that he intently listened to the debates on the bill in regard to two considerations: 1) the level of revenue that the bill would generate; and 2) the level of competitiveness of the industry which may result in more unemployment and the loss of foreign exchange.

He said that after listening to the debates and based on his own study, he came to the conclusion that the Senate version was more balanced. But he pointed out that what was being discussed, however, was the version adopted in the conference committee.

Senator Biazon also expressed his concern on the matter of earmarking of revenue which may send a wrong signal and which could be negated by the budget submitted by the Executive Branch.

Finally, he expressed his appreciation to Senator Defensor Santiago for introducing a sunset clause to balance his two concerns.

By Senator Gordon

In explaining his affirmative vote, Senator Gordon first congratulated Senators Recto and Enrile for their steadfast stand to get more out of a measure that he believed was an opportunity for the country to raise taxes from things that can be termed as a "want" and not a "need" to address the deficit problem of the national government.

He stated that the Senate could not have made a better decision because it appeared that the senators were being pressured into passing the tax measures in a very limited time.

Finally, Senator Gordon reasoned that the threat of a financial downgrade was not exactly the best circumstance for the senators to vote together.

By Senator Madrigal

Following is the explanation of vote of Senator Madrigal:

I rise to explain my vote. My vote will not prevent the passage of this bill. The numbers mustered by the majority coalition have seen to that. In rushing to pass this bill, this Chamber, along with the Lower House, has once more sacrificed every legislator's compelling obligation to deliberate without haste, and attend to the people's business with all due sobriety and diligence. The fiscal measures brought before both Houses of Congress are important, and yet their importance for the

MS

long term have been sacrificed for short-term considerations.

I would have hoped that this Chamber would have seen, as one of our more famous predecessors put it, that loyalty to party ends where loyalty to country begins. This has not been the case. The numbers have it, though the public's interest should not have made it so. I congratulate the majority coalition on its party discipline, which has cast aside all considerations of prudence and legislative independence.

I rise to vote against the present measure before this House, and to explain why. I must oppose approval of this bill because as senators, we are charged with the welfare not only of the fiscal health of this country, but the general health and well-being of our people. This bill achieves neither. It does not attain for the public treasury the appropriate benefits of taxation. It does not achieve, for our people, the common good. This is a bad bill, and I cannot, in good conscience, attach my name to it.

All my colleagues know as well as I, that the objective of taxation is not simply to raise revenues for the government, but must also correct market failures. Market failures are corrected by restricting the conduct of certain activities inimical to the well-being of our people, and by encouraging particular courses of action by imposing higher taxes or instituting incentives through the structure of our taxation.

When it comes to imposing a tax on products that are dangerous to health, and which therefore present a clear and present danger to the well-being of our citizens, taxation becomes another means of implementing the government's policy to attend to the physical well-being of our people. The policy of this Republic is that cigarettes are dangerous to public health. They kill, and their consumption should not be encouraged. At the same time, the consumption of alcohol should be regulated and its consumption by minors or in

unhealthy quantities should be strictly governed by the State. In other words, when a government imposes so-called "sin taxes," the ideal and primary objective of such an imposition must be to discourage smoking and alcohol consumption, in order to minimize their adverse effects on public health. Considerations of revenue generation must be secondary. If this Chamber were to discover the development of a strange fashion that made it socially desirable or acceptable to commit suicide by staying in hotel rooms in which carbon monoxide gas was pumped in until people died, or for people to guzzle desserts laced with strychnine or cyanide, would this Chamber rush to impose a special tax on staying in such death chambers, or impose high tariffs on the manufacture and sale of these poisons? Obviously, it would not. It would denounce such a fashion as crazy and deserving the most energetic suppression by the State.

This attitude seems to have escaped us during our debates in this Chamber. On the floor, there was an unhealthy focus on the purely fiscal wisdom of the different scenarios concerning proposed tax rates on low-end or low-tiered cigarettes. In other words, concern was expressed over whether revenues are best generated from taxing cheap or expensive cyanide, instead of posing larger questions on the mass production and marketing of the poison, so to speak. This analogy explains why the distinguished sponsor of this bill failed to convince me then, as now, to adopt the proposed tax rates. They did not balance the need to address the true purpose of a sumptuary tax, which is as important as the need to raise revenues while taking into consideration the economic interests of the tobacco farmers. Since this bill was purportedly drafted only as a purely revenue-raising measure, it lost sight of the true nature of a "sin tax," which is a tax imposed on luxury goods that have adverse effects on health (*Source: European Observatory on Health Care Systems*), in order to diminish the consumption of those goods. Furthermore, my assessment of the

A
16

correlative effects of the proposed tax rates on low-end cigarettes depended on an econometric model that showed that the level of consumption and demand would not decrease as a consequence of this law. This bill, when it becomes a law, will not be an effective deterrent to smoking, and as direct consequence, will actually entail health costs that far exceed any benefits to the coffers of the same state required to provide public health to the millions of smokers in this country. Furthermore, the distinguished sponsor never showed a study or an econometric model serving as a basis for his proposal; we were only shown projections.

But I, too, have seen projections. Studies made by the World Health Organization and the World Bank show that tobacco consumption only increases the poverty of individuals and families. They further reveal that poverty and tobacco create a vicious circle of addiction and spending. In most countries, tobacco use tends to be higher among the poor. Poor families, in turn, spend a larger proportion of their income on tobacco. Money spent on tobacco cannot be spent on basic human needs such as food, shelter, education and health care. In the case of the poorest, where a significant portion of their meager income is required to buy food, expenditures on tobacco may make the difference between an adequate diet and malnutrition.

Tobacco can also worsen poverty among users and their families, since tobacco users are at a much higher risk of falling ill and dying prematurely of cancer, heart attacks, respiratory diseases or other tobacco-related diseases, depriving families of much-needed income and imposing additional costs for health care. And while the tobacco industry provides jobs for thousands of people, the vast majority employed in the tobacco sector earn very little, while the big tobacco companies reap enormous profits.

It is the poorer and the poorest who tend to smoke the most. And yet the poorest of the poor lack the means to pay for the vast medical costs smoking inflicts on smokers. The smokers' addiction to nicotine drives them to spend money on tobacco, diverting critical resources that could otherwise be spent on vital necessities. Countries suffer huge economic losses due to high healthcare costs and lost productivity as a result of tobacco-related illnesses and premature deaths.

As fully discussed in the study entitled "Incremental Tax Effects on Consumption of Low-Priced Cigarettes" conducted by my Senate office, in close consultation with Prof. Victor Abola of the University of Asia and the Pacific and other economists, which I manifested on the floor on 14 December 2004, the proper tax rate that should be imposed for low-tiered cigarettes in order to achieve the maximum revenue the government could raise without affecting the market's demand for the said classification of cigarettes, is the imposition of a 356% excise tax rate which would redound to an increase of Php3.99 per pack.

And yet this bill failed to consider the health deficit that would be incurred due to the government's obligation to provide social services in the form of treating poor people who succumb to cigarette-caused diseases. Simple arithmetic easily shows that with the accepted amount of health costs being incurred, conservatively pegged at Php27 Million per day or a translated Php9.8 Billion per year, the government could possibly incur a loss of approximately Php 1.8 billion. That is, given that Senator Recto's optimistic projections of Php 8 billion are correct.

Though the present tax rate of 353% would not negatively affect the demand of existing smokers, it would serve as a deterrent to the youth who will not be able to afford to take up smoking in the first place. Thus, a win-win situation would be attained as the government would thereby

be able to generate maximum revenues to address the current fiscal crisis and at the same time, decrease the number of smokers in the future by decreasing the number of new or first-time smokers.*

And yet here is the Congress of the Philippines ignoring its constitutional obligation to safeguard the health of our people, while gladly promoting suicide by lung cancer at the same time making sure that the poor's shortened lifetimes enrich the rich man's coffers and only barely, the coffers of the state. The nature of this bill about to become law is that of State-sanctioned murder accompanied by a thorough picking of our people's pockets. It promotes smoking by the majority segment of our population, the poor. It encourages them to kill themselves, while callously maximizing the revenues that can be obtained from their self-extermination. It digs a fiscal hole for the government to fall into when smokers then seek medical assistance from the State.*

This bill about to become law is anti-poor. It promotes social costs that far outweigh the purported economic benefits derived from the taxes it imposes. It does nothing to deter lethal habits while it does everything to make the State profit from those habits while closing its eyes to State policies guaranteeing our citizens healthy and productive lives. For all these reasons I vote no to this bill. I only vote for life; and this bill does nothing to preserve it.

INSTRUCTION OF THE CHAIR

The Chair instructed the Secretariat to record the negative vote of Senators Lim and Madrigal.

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 FUNDS AND OF A PERFORMANCE EVALUATION BOARD AND FOR OTHER PURPOSES.

Senator Pangilinan announced that as agreed earlier with Senate President Drilon and Senator Pimentel, the session would be suspended so that the senators could go into caucus to discuss said measure.

Thereupon, the Chair requested all the senators to proceed to the Office of the Senate President for the caucus.

SUSPENSION OF SESSION

With the permission of the Body, the Chair suspended the session.

It was 5:05 p.m.

RESUMPTION OF SESSION

At 6:11 p.m., the session was resumed.

REMARKS OF SENATOR PANGILINAN

Senator Pangilinan noted that as agreed upon in caucus, consideration of Senate Bill No. 1871 would be resumed in January 2005.

SUSPENSION OF CONSIDERATION OF SENATE BILL NO. 1871

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

RECONSIDERATION OF THE APPROVAL OF THE JOURNAL

Upon motion of Senator Pangilinan, there being no objection, the Body reconsidered the approval of the Journal of Session No. 46.

*As corrected by Senator Madrigal as of January 10, 2005.

46
16

APPROVAL OF THE JOURNAL AS CORRECTED

Upon motion of Senator Pangilinan, there being no objection, the Body dispensed with the reading of the Journal of Session No. 46 and considered it approved, subject to the correction of Senate Enrile on page 136, right column, fourth paragraph, to insert the words OR AFTER between the words "on" and "October."

INQUIRY OF SENATOR PIMENTEL

Senator Pimentel asked whether Senator Lacson could be allowed to submit a written explanation of his vote on the Conference Committee Report on the sin tax bill.

The Chair replied that such a motion would mean a suspension of the Rules of the Senate.

MOTION TO SUSPEND THE RULES OF THE SENATE

Senator Pangilinan moved that the Rules of the Senate be suspended to allow Senator Lacson to submit a written explanation of his vote.

Upon query of Senator Arroyo, Senator Pimentel explained that Senator Lacson wanted to avail himself of his right to submit a written explanation of his vote on the conference committee report had he been present at the day's session.

Senator Arroyo expressed concern that the Body might set a precedent by accommodating such a request as he pointed out that under the Rules, a Member must be physically present to cast his vote.

At this juncture, the Chair suggested that Senator Lacson premise his explanation by stating that had he been allowed to vote, he would have voted negatively for the following reasons; that

way, Senator Lacson would not actually be casting a vote and would just be putting on record his explanation of vote.

Senator Arroyo agreed to the suggestion.

For his part, Senator Pimentel found the suggestion to be a reasonable compromise, saying that he would relay the matter to Senator Lacson.

Upon query of Senator Biazon, the Chair affirmed that the result of the voting would remain the same.

Thereafter, Senator Pangilinan withdrew the motion to suspend the Rules of the Senate.

COMMITTEE MEMBERSHIP

At the instance of Senator Angara, upon motion of Senator Pangilinan, there being no objection, Senator Enrile was elected member of the Committee on Peace, Unification and Reconciliation in lieu of Senator Ejercito Estrada (J).

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 Monday, January 10, 2005.

It was 6:19 p.m.

I hereby certify to the correctness of the foregoing.

By: Oscar G. Yabes
OSCAR G. YABES
Secretary of the Senate

Approved on January 10, 2005