



REPUBLIC OF THE PHILIPPINES
CONGRESS OF THE PHILIPPINES
SENATE

Record of the Senate

THIRD REGULAR SESSION
JULY 28 TO SEPTEMBER 30, 1997

VOLUME I, NOS. 1 - 18

Prepared by the Legislative Debate Reporters Service
and the
Legislative Publications Service
Legislative Operations, Secretariat of the Senate
under the supervision of
SECRETARY LORENZO E. LEYNES JR.

RECORD OF THE SENATE

WEDNESDAY, JULY 30, 1997

OPENING OF THE SESSION

At 3:04 p.m., the Senate President, Hon. Ernesto M. Maceda, called the session to order.

The President. The third session of the Senate in the Third Regular Session of the Tenth Congress is hereby called to order.

Let us all stand for the opening prayer to be led by Sen. Edgardo J. Angara.

Everybody rose for the opening prayer.

PRAYER

Senator Angara.

Lord, grant us Your infinite wisdom that we may enact, in this last year of our Tenth Congress, laws that will reflect our commitment to make life better for so many.

Help make our government to be truthful and transparent. Let it tell our people the true state of our economic and political affairs. Let it stop deluding them with false prosperity.

Remind us, O Lord, that before we get excited over who are running in next year's polls, we must first ensure that an electoral exercise will come to pass, and as legislators, we should ensure the sanctity of the ballot, because this gives meaning to the peaceful transfer of political power—the distinguishing mark of a genuine democracy.

And finally, Lord, endow us with the courage to defend our Constitution, our laws, and our democratic way of life.

Amen.

ROLL CALL

The President. The Secretary will please call the roll.

The Secretary, reading:

Senator Heherson T. Alvarez Present

Senator Edgardo J. Angara Present
Senator Anna Dominique M.L. Coseteng .. Present*
Senator Franklin M. Drilon Present
Senator Juan Ponce Enrile Present
Senator Marcelo B. Fernan Present
Senator Juan M. Flavier Present
Senator Neptali A. Gonzales Present
Senator Ernesto F. Herrera Present*
Senator Gregorio B. Honasan Present
Senator Gloria M. Macapagal Present*
Senator Ramon B. Magsaysay Jr. Present*
Senator Orlando S. Mercado Present*
Senator Blas F. Ople Present*
Senator Sergio R. Osmeña III Present
Senator Ramon B. Revilla Present*
Senator Raul S. Roco Present
Senator Alberto G. Romulo Present
Senator Miriam Defensor Santiago Present
Senator Leticia R. Shahani Present*
Senator Vicente C. Sotto III Present
Senator Francisco S. Tatad Present
Senator Freddie N. Webb Present*
The President Present

The President. With 15 senators present, there is a quorum.

Senator Tatad. Mr. President.

The President. The Majority Leader is recognized.

THE JOURNAL

Senator Tatad. Mr. President, I move that we dispense with the reading of the *Journal* of the previous session and consider it approved.

The President. Is there any objection? [*Silence*] There being none, the motion is approved.

Senator Tatad. I move that we proceed to the Reference of Business.

The President. Is there any objection? [*Silence*] There being none, the motion is approved.

The Secretary will read the Reference of Business.

*Arrived after the roll call

ADOPTION OF S. CT. RES. NO. 17

Senator Tatad. Mr. President, I move for the adoption of the resolution.

The President. Is there any objection? [*Silence*] There being none, the motion is approved.

BILL ON SECOND READING

H. No. 9077 - Tax Reform Act of 1997

Senator Tatad. Mr. President, I move that we consider Committee Report No. 454 on House Bill No. 9077 as reported out by the Committee on Ways and Means.

The President. Is there any objection? [*Silence*] There being none, the motion is approved.

Consideration of House Bill No. 9077 is now in order. With the permission of the Body, the Secretary will read only the title of the bill without prejudice to inserting in the *Record* the whole text thereof.

The Secretary. House Bill No. 9077, entitled

AN ACT AMENDING THE NATIONAL INTERNAL REVENUE CODE, AS AMENDED, AND FOR OTHER PURPOSES

The following is the whole text of the bill:

House Bill No. 9077

(AS AMENDED BY SUBSTITUTION)

AN ACT AMENDING THE NATIONAL INTERNAL REVENUE CODE, AS AMENDED, AND FOR OTHER PURPOSES

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

SECTION 1. *Short Title.* - This Act shall be cited as the "Tax Reform Act of 1997."

SECTION 2. *State Policy.* - It is hereby declared the policy of the State to promote sustainable economic growth through the rationalization of the Philippine internal revenue tax system, including tax administration; to provide, as much as possible, an equitable relief to a

greater number of taxpayers in order to improve levels of disposable income and increase economic activity; and to create a robust environment for the business community to enable them to compete better in the regional as well as the global community of nations, at the same time that the State ensures that Government will be able to provide for the needs of those under its jurisdiction and care.

SECTION 3. Section 1 of the National Internal Revenue Code, as amended, hereinafter referred to as the Code, is hereby further amended to read as follows:

"SECTION 1. *Title of the Code.* - This Code shall be known as the National Internal Revenue Code of [1977]1997."

SECTION 4. Section of the Code is renumbered as Section 2 and is amended to read as follows:

"SEC. [3]2. *Powers and [d]Duties of THE BUREAU OF INTERNAL REVENUE.* - The BUREAU OF INTERNAL REVENUE SHALL BE UNDER THE SUPERVISION AND CONTROL OF THE DEPARTMENT OF FINANCE AND ITS powers and duties [of the Bureau of Internal Revenue] shall comprehend the assessment and collection of all national internal revenue taxes, fees, and charges, and the enforcement of all forfeitures, penalties, and fines connected therewith, including the execution of judgments in all cases decided in its favor by the Court of Appeals and the ordinary courts. [Said] THE Bureau shall [also] give effect to and administer the supervisory and police powers conferred to it by this Code or other laws."

SECTION 5. Section 2 of the Code is renumbered as Section 3 and is amended to read as follows:

"SEC. [2]3. *Chief Officials of the Bureau of Internal Revenue.* - The Bureau of Internal Revenue shall have a chief to be known as Commissioner of Internal Revenue, HEREINAFTER REFERRED TO AS THE COMMISSIONER and [two] FOUR (4) assistant chiefs to be known as Deputy Commissioners."

SECTION 6. Section 4 (Specific Provision to be Contained in Regulations) of the Code is hereby transposed to Title IX (Compliance Requirements), Chapter III (Rules and Regulations), and is renumbered as Section 246.

SECTION 7. A new Section 4 is hereby inserted after Section 3 of the Code to read as follows:

"SEC. 4. *POWER OF THE COMMISSIONER TO INTERPRET TAX LAWS AND TO DECIDE TAX CASES.* - THE POWER TO INTERPRET THE PROVISIONS OF THIS CODE AND OTHER TAX LAWS SHALL BE UNDER THE PRIMARY, EXCLUSIVE AND ORIGINAL JURISDICTION OF THE COMMISSIONER, SUBJECT TO REVIEW BY THE SECRETARY OF FINANCE.

THE POWER TO DECIDE DISPUTED ASSESSMENTS, REFUNDS OF INTERNAL REVENUE TAXES, FEES OR OTHER CHARGES, PENALTIES IMPOSED IN RELATION THERETO, OR OTHER MATTERS ARISING UNDER THIS CODE OR OTHER LAWS OR PORTIONS THEREOF ADMINISTERED BY THE BUREAU OF INTERNAL REVENUE IS VESTED IN THE COMMISSIONER, SUBJECT TO THE EXCLUSIVE APPELLATE JURISDICTION OF THE COURT OF TAX APPEALS.

SECTION 8. The present Section 7 of the Code is renumbered as Section 5 and is amended to read as follows:

"SEC. [7]5. *Power of the Commissioner to [o] Obtain [i] Information, [examine,] AND TO [s] Summon, EXAMINE, and [t] Take [t] Testimony OR PERSONS.* - [For the purpose of] IN ascertaining the correctness of any return, OR IN making a return [where] WHEN none has been made, OR IN determining the liability of any person for any internal revenue tax, or IN collecting any such liability, OR IN EVALUATING TAX COMPLIANCE, OR IN IMPROVING THE EFFICIENCY OF INTERNAL REVENUE TAX COLLECTION, the Commissioner is authorized:

"(1) x x x

"(2) To obtain [information] ON A REGULAR BASIS FROM ANY PERSON OTHER THAN THE PERSON WHOSE INTERNAL REVENUE TAX LIABILITY IS SUBJECT TO AUDIT OR INVESTIGATION OF from any office or officer of the national and local governments, government agencies [or its] AND instrumentalities, including the [Central Bank of the Philippines] BANGKO SENTRAL NG PILIPINAS and government-owned or controlled corporations, ANY INFORMATION SUCH AS, BUT

NOT LIMITED TO, COSTS AND VOLUME OF PRODUCTION, RECEIPTS OR SALES AND GROSS INCOMES OF TAXPAYERS, AND THE NAMES, ADDRESSES, AND FINANCIAL STATEMENTS OF REGISTERED PARTNERSHIPS, AND THEIR MEMBERS;

"(3) x x x

"(4) x x x

"(5) x x x"

SECTION 9. The present Section 6 of the Code is hereby renumbered as Section 12.

SECTION 10. The present Section 16 of the Code is hereby renumbered as Section 6 and is amended to read as follows:

"SEC. [16]6. *Power of the Commissioner to [m] Make [a] Assessment AND PRESCRIBE ADDITIONAL REQUIREMENTS FOR TAX ADMINISTRATION AND ENFORCEMENT.* -

"([A]a) *Examination of [r] Returnss and [d] Determination of [t] Tax DUE.* - After a return [is] HAS BEEN filed as required under the provisions of this Code, the Commissioner OR HIS DULY AUTHORIZED REPRESENTATIVE [shall] MAY [examine it and assess] AUTHORIZE THE EXAMINATION OF ANY TAXPAYER AND THE ASSESSMENT OF the correct amount of [the] tax: *PROVIDED, HOWEVER,* THAT FAILURE TO FILE A RETURN SHALL NOT PREVENT THE COMMISSIONER FROM AUTHORIZING THE EXAMINATION OF ANY TAXPAYER.

"The tax of ANY deficiency tax so assessed shall be paid upon notice and demand from the Commissioner OR FROM HIS DULY AUTHORIZED REPRESENTATIVE.

"Any return, statement or declaration filed in an office authorized to receive the same shall not be withdrawn: *Provided,* That WITHIN THREE (3) YEARS FROM THE DATE OF SUCH FILING, the same may be modified, [or] changed, OR AMENDED [by filing another amended return, statement of declaration]: *PROVIDED, FURTHER,* THAT NO NOTICE FOR AUDIT OF INVESTIGATION OF SUCH RETURN, STATEMENT OR DECLARATION

HAS, IN THE MEANTIME, BEEN ACTUALLY SERVED UPON THE TAXPAYER;

"([b]B) X X X

"([c]C) x x x

"([d]D) x x x

"([e]E) x x x

"([f]F) *Authority of the Commissioner to [i]Inquire into [b]Bank [d]Deposit [a]Accounts.* - [The] NOTWITHSTANDING ANY CONTRARY provision[s] of Republic Act No. 1405, [to the contrary notwithstanding,] the Commissioner is hereby authorized to inquire into the bank deposits of: [a decedent for the purpose of determining the gross estate of such decedent.]

(1) A DECEDENT TO DETERMINE HIS GROSS ESTATE; OR

(2) ANY TAXPAYER WHO HAS FILED AN APPLICATION FOR COMPROMISE OF HIS TAX LIABILITY UNDER SECTION 205(A)(2) OF THIS CODE BY REASON OF FINANCIAL INCAPACITY TO PAY HIS TAX LIABILITY; OR

(3) A TAXPAYER WHO WAIVES IN WRITING HIS PRIVILEGE UNDER REPUBLIC ACT NO. 1405; OR

(4) ANY TAXPAYER WHOSE RETURN HAS BEEN AUDITED BY A DULY AUTHORIZED REVENUE OFFICER OF THE BUREAU OF INTERNAL REVENUE AND A CLEAR, DIRECT AND SUBSTANTIAL EVIDENCE OF FRAUD AGAINST THE REVENUE OF THE GOVERNMENT OF OTHER CRIMINAL VIOLATION OF THIS CODE HAS BEEN FOUND TO EXIST.

"In case a taxpayer [offers] FILES AN APPLICATION to compromise the payment of his tax liabilities on [the ground] HIS CLAIM that his financial position demonstrates a clear inability to pay the tax assessed, his [offer] APPLICATION shall not be considered unless AND UNTIL he waives IN WRITING his privilege under [the said law] REPUBLIC ACT NO. 1405, and such waiver shall [serve as] CONSTITUTE THE authority of the Commissioner to inquire into the bank deposits of [said] THE taxpayer.

"([g]G) *Authority to [a]Accredit and [r]Register [t]Tax [a]Agents.* - The Commissioner [may] SHALL ACCREDIT AND REGISTER, [require prior accreditation and registration,] based on THEIR PROFESSIONAL competence, INTEGRITY, and moral fitness, [of persons] INDIVIDUALS and general professional partnerships [or] AND their representatives [in the preparation and filing of required] WHO PREPARE AND FILE tax returns, statements, reports [memoranda], PROTESTS, [or in appearing or in filing protest or] AND OTHER papers with, OR WHO APPEAR BEFORE, the Bureau for taxpayers. [For this purpose] WITHIN ONE-HUNDRED TWENTY (120) DAYS FROM JANUARY 1, 1998, the Commissioner [is empowered to] SHALL create national and regional accreditation boards, THE MEMBERS OF WHICH SHALL SERVE FOR THREE (3) YEARS, AND [to] SHALL designate from among the [ranks of] senior officials of the Bureau, one chairman and two members [in] FOR each board, [and to issue the necessary] SUBJECT TO SUCH rules and regulations [subject to the approval of] AS the Secretary of Finance SHALL PROMULGATE UPON THE RECOMMENDATION OF THE COMMISSIONER.

"([h]H) xxx"

SECTION 11. A new Section 7 is hereby inserted after Section 6 of the Code to read as follows:

SEC. 7. AUTHORITY OF THE COMMISSIONER TO DELEGATE POWER. - THE COMMISSIONER MAY DELEGATE THE POWERS VESTED IN HIM UNDER THE PERTINENT PROVISIONS OF THE CODE TO ANY OR SUCH SUBORDINATE OFFICIALS WITH THE RANK EQUIVALENT TO A DIVISION CHIEF OR HIGHER, SUBJECT TO SUCH LIMITATIONS AND RESTRICTIONS AS MAY BE IMPOSED UNDER RULES AND REGULATIONS TO BE PROMULGATED BY THE SECRETARY OF FINANCE, UPON RECOMMENDATION OF THE COMMISSIONER: *PROVIDED, HOWEVER, THAT THE FOLLOWING POWERS OF THE COMMISSIONER SHALL NOT BE DELEGATED:*

A. THE POWER TO RECOMMEND THE PROMULGATION OF RULES AND REGULATIONS BY THE SECRETARY OF FINANCE;

B. THE POWER TO ISSUE RULINGS OF FIRST IMPRESSION OR TO REVERSE, REVOKE OR MODIFY ANY EXISTING RULING OF THE BUREAU;

C. THE POWER TO COMPROMISE OR ABATE, UNDER SECTION 205(A) AND (B) OF THIS CODE, ANY TAX LIABILITY: *PROVIDED, HOWEVER,* THAT THE POWER TO EXTRA-JUDICIALLY SETTLE CRIMINAL VIOLATIONS UNDER SECTION 205 OF THIS CODE MAY BE DELEGATED BY THE COMMISSIONER, PURSUANT TO RULES AND REGULATIONS TO BE PRESCRIBED BY THE SECRETARY OF FINANCE, UPON RECOMMENDATION OF THE COMMISSIONER FOR THE PURPOSE;

D. THE POWER TO COMPROMISE OR ABATE, UNDER SECTION 204(A) AND (B) OF THIS CODE, ANY TAX LIABILITY: *PROVIDED, HOWEVER,* THAT THE POWER TO EXTRA-JUDICIALLY SETTLE CRIMINAL VIOLATIONS UNDER SECTION 205 OF THIS CODE MAY BE DELEGATED BY THE COMMISSIONER, PURSUANT TO RULES AND REGULATIONS TO BE PRESCRIBED BY THE SECRETARY OF FINANCE, UPON RECOMMENDATION OF THE COMMISSIONER FOR THE PURPOSE;

D. THE POWER TO ASSIGN OR RE-ASSIGN INTERNAL REVENUE OFFICERS TO ESTABLISHMENTS WHERE ARTICLES SUBJECT TO EXCISE TAX ARE PRODUCED OR KEPT, AND;

E. THE POWER TO INQUIRE INTO BANK DEPOSITS PRESCRIBED UNDER SEC. 6(F)(4) OF THIS CODE.

SECTION 12. The present Section 5 of the Code is hereby renumbered as Section 8 and amended as follows:

"SEC. [5] 8. *DUTY OF THE COMMISSIONER TO ENSURE THE PROVISION AND DISTRIBUTION OF Forms, [r]Receipts, [c]Certificates, [a]Appliances, AND THE ACKNOWLEDGMENT OF PAYMENT OF TAXES.* "

"([a]A) x x x

"([b]B) x x x

SECTION 13. Section 8 of the Code is renumbered as Section 9 and is amended to read as follows:

"SEC. [8] 9. *ORGANIZATION OF THE BUREAU INTO Internal [r]Revenue REGIONS AND [d]Districts.*

-- With the approval of the Secretary of Finance, the Commissioner [of Internal Revenue] shall divide the Philippines into such number of revenue REGIONS AND districts as may from time to time be required for administrative purposes. Each [of these] REVENUE district[s] shall be under [the supervision of] a Revenue District Officer, WHO SHALL BE UNDER THE SUPERVISION AND CONTROL OF A REVENUE REGIONAL DIRECTOR."

SECTION 14. The present Section 11 of the Code is renumbered as Section 13 and is amended to read as follows:

"SEC. [11] 13. *Authority of A Revenue (Examiner) OFFICER.* - SUBJECT TO THE RULES AND REGULATIONS TO BE PRESCRIBED BY THE SECRETARY OF FINANCE, UPON THE RECOMMENDATION OF THE COMMISSIONER, [A]a Revenue [Examiner] OFFICER ASSIGNED TO PERFORM ASSESSMENT FUNCTIONS in any district may, [in the name of] PURSUANT TO A LETTER OF AUTHORITY ISSUED BY the Revenue District Officer, [in charge of such district and under the control of such officer as his immediate superior, exercise any power or perform any act which might be exercised or] EXAMINE TAXPAYERS WITHIN THE JURISDICTION OF THE DISTRICT IN ORDER TO COLLECT THE CORRECT AMOUNT OF TAX, OR TO RECOMMEND THE ASSESSMENT OF ANY DEFICIENCY TAX DUE IN THE SAME MANNER THAT THE SAID ACTS COULD HAVE BEEN performed by [such] THE Revenue District Officer himself."

SECTION 15. Section 12 of the Code is renumbered as Section 16 and is amended to read as follows:

"SEC. [12] 16. *Assignment of [i]Internal [r]Revenue [o]Officers INVOLVED IN EXCISE TAX FUNCTIONS to [e]Establishments where [a]Articles subject to [e]Excise [t]Tax are [p]Produced OR KEPT.* - The Commissioner [of Internal Revenue] shall employ, [and] assign, OR RE-ASSIGN internal revenue officers INVOLVED IN EXCISE TAX FUNCTIONS, AS OFTEN AS THE EXIGENCIES OF THE REVENUE SERVICE MAY REQUIRE, [to regional offices and the Regional Director shall assign them] to establishments or places where articles subject to excise tax are produced or kept: *PROVIDED,* THAT AN INTERNAL REVENUE OFFICER ASSIGNED TO ANY SUCH ESTABLISHMENT SHALL IN NO CASE STAY IN

HIS ASSIGNMENT FOR MORE THAN TWO (2) YEARS, SUBJECT TO RULES AND REGULATIONS TO BE PRESCRIBED BY THE SECRETARY OF FINANCE, UPON RECOMMENDATION OF THE COMMISSIONER."

SECTION 16. Section 13 of the Code is renumbered as Section 17 and is amended to read as follows:

"SEC. [13] 17. *Assignment of [i] Internal [r] Revenue [o] Officers and [o] Other [e] Employees to [o] Other [d] Duties.* - The Commissioner [of Internal Revenue] may, [with the approval of the Secretary of Finance] SUBJECT TO THE PROVISIONS OF SECTION 16 AND THE LAWS ON CIVIL SERVICE, AS WELL AS THE RULES AND REGULATIONS TO BE PRESCRIBED BY THE SECRETARY OF FINANCE, UPON THE RECOMMENDATION OF THE COMMISSIONER, assign OR RE-ASSIGN internal revenue officers and [other] employees of the Bureau of Internal Revenue, without change in their official [character or] RANK AND salary, to [such] OTHER OR special duties connected with the ENFORCEMENT OR administration of the revenue laws as the [best interests] EXIGENCIES of the service may require: *PROVIDED*, THAT INTERNAL REVENUE OFFICERS ASSIGNED TO PERFORM ASSESSMENT OR COLLECTION FUNCTIONS SHALL NOT REMAIN IN THE ASSIGNMENT FOR MORE THAN THREE (3) YEARS: *PROVIDED*, *FURTHER*, THAT ASSIGNMENT OF INTERNAL REVENUE OFFICERS AND EMPLOYEES OF THE BUREAU TO SPECIAL DUTIES SHALL NOT EXCEED ONE (1) YEAR."

SECTION 17. A new Section 20 is hereby inserted after Section 19 of the Code to read as follows:

SEC. 20. *REPORT TO OVERSIGHT COMMITTEE.* - THE COMMISSIONER SHALL, WITH REFERENCE TO SECTION 205 OF THIS CODE, SUBMIT TO THE OVERSIGHT COMMITTEE IN CONGRESS, THROUGH THE CHAIRMAN OF THE COMMITTEE ON WAYS AND MEANS OF THE HOUSE OF REPRESENTATIVES AND THE SENATE OF THE PHILIPPINES, A REPORT ON THE EXERCISE OF HIS POWERS PURSUANT TO THE SAID SECTION, EVERY SIX (6) MONTHS OF EACH CALENDAR YEAR.

SECTION 18. Sections 14 and 17 of the Code are hereby renumbered as Sections 18 and 14, respectively.

SECTION 19. Section 20 of the Code is renumbered as Section 22 and subsection (b) thereof is amended to read as follows:

"(b) EXCEPT WHEN OTHERWISE PROVIDED IN THIS CODE, [T]he term '*corporation*' SHALL include[s] partnerships, no matter how created or organized, joint-stock companies, joint accounts (cuentas en participacion), associations, [or] insurance OR MUTUAL FUND companies, JOINT VENTURES OR CONSORTIA, AND REGIONAL OPERATING HEADQUARTERS OF MULTINATIONAL COMPANIES but [does not include] SHALL EXCLUDE general professional partnerships. [and a joint venture or consortium formed for the purpose of undertaking construction projects or engaging in petroleum, coal, geothermal and other energy operations pursuant to an operating or consortium agreement under a service contract with the Government.] '*General professional partnerships*' are partnerships formed by persons for the sole purpose of exercising their common profession, no part of the income of which is derived from engaging in any trade or business."

SECTION 20. Subsection (y) of Section 20 of the Code, now Section 22, is amended to read as follows:

"(y) '*Deposit substitutes*' shall mean an alternative form of obtaining funds from the public (THE TERM '*PUBLIC*' MEANS BORROWING FROM TWENTY (20) OR MORE INDIVIDUAL OR CORPORATE LENDERS AT ANY ONE TIME), other than deposits, through the issuance, endorsement, or acceptance of debt instruments for the borrower's own account, for the purpose of relending or purchasing of receivables and other obligations, or financing their own needs or the needs of their agent or dealer. These instruments may include, but need not be limited to bankers' acceptances, promissory notes, repurchase agreements INCLUDING REVERSE REPURCHASE AGREEMENTS ENTERED INTO BY AND BETWEEN THE *BANGKO SENTRAL NG PILIPINAS* AND ANY AUTHORIZED AGENT BANK, certificates of assignment or participation and similar instrument with recourse: [as may be authorized by the Central Bank of the Philippines, for banks and non-bank financial intermediaries or by the Securities and Exchange Commission of the Philippines for commercial, industrial, finance companies and other non-financial companies] *Provided, however*, That [only] debt instruments issued for inter-bank call loans WITH MATURITY OF NOT MORE THAN FIVE (5)

DAYS to cover deficiency in reserves against deposit liabilities including those between or among banks and quasi-banks shall not be considered as deposit substitute debt instruments."

SECTION 21: The following subsections are hereby added after subsection (z) of Section 22:

(AA) THE TERM 'RANK AND FILE EMPLOYEES' SHALL MEAN ALL EMPLOYEES WHO ARE HOLDING NEITHER MANAGERIAL NOR SUPERVISORY POSITION AS DEFINED UNDER EXISTING PROVISIONS OF THE LABOR CODE OF THE PHILIPPINES, AS AMENDED.

(BB) THE TERM 'SHARES OF STOCK' SHALL INCLUDE SHARES OF STOCK OF A CORPORATION AS WELL AS, UNITS OF PARTICIPATION IN A PARTNERSHIP (EXCEPT GENERAL PROFESSIONAL PARTNERSHIPS), JOINT STOCK COMPANIES, JOINT ACCOUNTS, JOINT VENTURES, ASSOCIATIONS, AND RECREATION OR AMUSEMENT CLUBS (SUCH AS GOLF, POLO OR SIMILAR CLUBS), AND MUTUAL FUND CERTIFICATES.

(CC) 'MUTUAL FUND COMPANY' SHALL MEAN AN OPEN-END INVESTMENT COMPANY AS DEFINED UNDER THE INVESTMENT COMPANY ACT.

(DD) THE TERM 'TRADE, BUSINESS OR PROFESSION' SHALL NOT INCLUDE PERFORMANCE OF SERVICES BY THE TAXPAYER AS AN EMPLOYEE.

(EE) THE TERM 'REGIONAL OPERATING HEADQUARTERS' SHALL MEAN A BRANCH ESTABLISHED IN THE PHILIPPINES BY MULTINATIONAL COMPANIES WHICH ARE ENGAGED IN ANY OF THE FOLLOWING SERVICES: GENERAL ADMINISTRATION AND PLANNING; BUSINESS PLANNING AND COORDINATION; SOURCING AND PROCUREMENT OF RAW MATERIALS AND COMPONENTS; CORPORATE FINANCE ADVISORY SERVICES; MARKETING CONTROL AND SALES PROMOTION; TRAINING AND PERSONNEL MANAGEMENT; LOGISTIC SERVICES; RESEARCH AND DEVELOPMENT SERVICES AND PRODUCT DEVELOPMENT; TECHNICAL SUPPORT AND MAINTENANCE;

DATA PROCESSING AND COMMUNICATION; AND BUSINESS DEVELOPMENT.

(FF) THE TERM 'CLOSELY HELD CORPORATION' MEANS ANY CORPORATION AT LEAST FIFTY PERCENT (50%) IN VALUE OF THE OUTSTANDING CAPITAL STOCK OR AT LEAST FIFTY PERCENT (50%) OF THE TOTAL COMBINED VOTING POWER OF ALL CLASSES OF STOCK ENTITLED TO VOTE IS OWNED DIRECTLY OR INDIRECTLY BY OR FOR NOT MORE THAN TWENTY (20) INDIVIDUALS.

FOR PURPOSES OF DETERMINING WHETHER THE CORPORATION IS A CLOSELY HELD CORPORATION, INsofar AS SUCH DETERMINATION IS BASED ON STOCK OWNERSHIP, THE FOLLOWING RULES SHALL BE APPLIED:

(1) STOCK NOT OWNED BY INDIVIDUALS. - STOCK OWNED DIRECTLY OR INDIRECTLY BY OR FOR A CORPORATION, PARTNERSHIP, ESTATE OR TRUST SHALL BE CONSIDERED AS BEING OWNED PROPORTIONATELY BY ITS SHAREHOLDERS, PARTNERS, OR BENEFICIARIES.

(2) FAMILY AND PARTNERSHIP OWNERSHIPS. - AN INDIVIDUAL SHALL BE CONSIDERED AS OWNING THE STOCK OWNED, DIRECTLY OR INDIRECTLY, BY OR FOR HIS FAMILY, OR BY OR FOR HIS PARTNER. FOR PURPOSES OF THIS PARAGRAPH, THE FAMILY OF AN INDIVIDUAL INCLUDES ONLY HIS BROTHERS AND SISTERS (WHETHER BY WHOLE OR HALF-BLOOD), SPOUSE, ANCESTORS, AND LINEAL DESCENDANTS.

(3) OPTION. - IF ANY PERSON HAS AN OPTION TO ACQUIRE STOCK, SUCH STOCK SHALL BE CONSIDERED AS OWNED BY SUCH PERSON. FOR PURPOSES OF THIS PARAGRAPH, AN OPTION TO ACQUIRE SUCH AN OPTION AND EACH ONE OF A SERIES OF OPTIONS SHALL BE CONSIDERED AS AN OPTION TO ACQUIRE SUCH STOCK.

(4) CONSTRUCTIVE OWNERSHIP AS ACTUAL OWNERSHIP. -- STOCK CONSTRUCTIVELY OWNED BY REASON OF THE APPLICATION OF PARAGRAPH (1) OR (3) HEREOF

SHALL, FOR PURPOSES OF APPLYING PARAGRAPH (1) OR (2), BE TREATED AS ACTUALLY OWNED BY SUCH INDIVIDUAL BY REASON OF THE APPLICATION OF PARAGRAPH (2) HEREOF SHALL NOT BE TREATED AS OWNED BY HIM FOR PURPOSES OF AGAIN APPLYING SUCH PARAGRAPH IN ORDER TO MAKE ANOTHER THE CONSTRUCTIVE OWNER OF SUCH STOCK.

SECTION 22. A new Chapter II of Title II of the Code is hereby inserted after Section 22 to read as follows:

CHAPTER II - TAX ON INCOME

SECTION 23. A new Section 23 is hereby added to Chapter II to read as follows:

SEC. 23. GENERAL PRINCIPLES OF INCOME TAXATION IN THE PHILIPPINES. - EXCEPT WHEN OTHERWISE PROVIDED IN THIS CODE:

(A) AN INDIVIDUAL CITIZEN OF THE PHILIPPINES RESIDING THEREIN IS TAXABLE FOR ALL INCOME DERIVED FROM SOURCES WITHIN AND WITHOUT THE PHILIPPINES;

(B) AN INDIVIDUAL CITIZEN OF THE PHILIPPINES WORKING OR RESIDING OUTSIDE THE PHILIPPINES IS TAXABLE ONLY FOR INCOME DERIVED FROM SOURCES WITHIN THE PHILIPPINES;

(C) AN INDIVIDUAL ALIEN, WHETHER A RESIDENT OR NOT OF THE PHILIPPINES, IS TAXABLE ONLY FOR INCOME DERIVED FROM SOURCES WITHIN THE PHILIPPINES;

(D) A CORPORATION AS DEFINED IN SECTION 22(B) HEREOF WHICH HAS BEEN CREATED, ORGANIZED AND EXISTING UNDER THE LAWS OF THE PHILIPPINES IS TAXABLE FOR ALL INCOME DERIVED FROM SOURCES WITHIN AND WITHOUT THE PHILIPPINES;

(E) A CORPORATION AS DEFINED IN SECTION 22(D) HEREOF WHICH HAS BEEN CREATED, ORGANIZED AND EXISTING UNDER THE LAWS OF ANOTHER COUNTRY WHETHER ENGAGED OR NOT IN TRADE OR BUSINESS IN THE PHILIPPINES IS TAXABLE ONLY ON

INCOME DERIVED FROM SOURCES WITHIN THE PHILIPPINES.

SECTION 24. Chapter II of the Code is renumbered as Chapter III. Section 21 thereof is renumbered as Section 24, and amended to read as follows:

"Chapter [II] III - TAX ON INDIVIDUALS

"SEC. [21] 24. (A) *RATES OF INCOME Tax on [citizens or residents] INDIVIDUAL CITIZEN AND INDIVIDUAL ALIEN RESIDENT OF THE PHILIPPINES.* - [(a) Taxable compensation income. -] (1) [A] AN INCOME tax is hereby imposed [upon the taxable compensation income as defined in Section 27, other than the incomes subject to tax under paragraphs (b), (c), (d), (e) and (f) of this Section, received during each taxable year from all sources determined in accordance with the following schedule]:

(A) ON THE TAXABLE INCOME DEFINED IN SECTION 30 OF THIS CODE, OTHER THAN INCOME SUBJECT TO TAX UNDER SUBSECTIONS (B), (C), (D) AND (E) OF THIS SECTION, DERIVED FOR EACH TAXABLE YEAR FROM ALL SOURCES WITHIN AND WITHOUT THE PHILIPPINES BY EVERY INDIVIDUAL CITIZEN OF THE PHILIPPINES RESIDING THEREIN;

(B) ON THE TAXABLE INCOME DEFINED IN SECTION 30 OF THIS CODE, OTHER THAN INCOME SUBJECT TO TAX UNDER SUBSECTIONS (B), (C), (D) AND (E) OF THIS SECTION, DERIVED FOR EACH TAXABLE YEAR FROM ALL SOURCES WITHIN THE PHILIPPINES BY AN INDIVIDUAL CITIZEN OF THE PHILIPPINES WHO IS WORKING OR RESIDING OUTSIDE OF THE PHILIPPINES;

(C) ON THE TAXABLE INCOME DEFINED IN SECTION 30 OF THIS CODE, OTHER THAN INCOME SUBJECT TO TAX UNDER SUBSECTIONS (B), (C), (D) AND (E), DERIVED FOR EACH TAXABLE YEAR FROM ALL SOURCES WITHIN THE PHILIPPINES BY AN INDIVIDUAL ALIEN WHO IS A RESIDENT OF THE PHILIPPINES.

THE TAX SHALL BE COMPUTED IN ACCORDANCE WITH AND AT THE RATES ESTABLISHED IN THE FOLLOWING SCHEDULE:

"[Not over P2,500	0%	OVER 150,000 BUT NOT OVER 250,000	24,250+25% IN EXCESS OF 150,000
Over P2,500 but not over P5,000	1%		
Over 5,000 but not over 10,000	P25 + 3% of excess over 5,000	OVER 250,000	49,250+30% IN EXCESS OF 250,000
Over 10,000 but not over 20,000	175+7% of excess over 10,000	<p>"[In the case of] FOR married individuals, the husband and wife, subject to the provision of Section [44(d)]50(D) hereof, shall compute separately their individual income tax based on their respective total taxable income: <i>Provided</i>, That if any income cannot be definitely attribut[able]ED to or identifi[able]ED as income exclusively earned or realized by either of the spouses, the same shall be divided equally between the spouses for the purpose of [computing] DETERMINING their respective taxable income.</p>	
Over 20,000 but not over 40,000	875+11% of excess over 20,000	<p>"[(b) Foreign source gross income derived by a nonresident citizen. - A tax is hereby imposed upon the taxable income derived by a nonresident citizen from all sources without the Philippines during each taxable year computed in accordance with the following schedule:</p>	
Over 40,000 but not over 60,000	3,075+15% of excess over 40,000	<p>If the amount subject to tax is-</p>	
Over 60,000 but not over 100,000	6,075+19% of excess over 60,000	<p>"Not over U.S.\$6,000.00 1%</p>	
Over 100,000 but not over 250,000	13,675+24% of excess over 100,000	<p>"Over U.S. \$6,000.00 but not over U.S.\$20,000.00 U.S. \$60 plus 2% of excess over U.S. \$6,000</p>	
Over 250,000 but not over 500,000	49,675+29% of excess over 250,000	<p>"Over U.S. \$20,000.00 U.S.\$340 plus 3% of excess over U.S. \$20,000]</p>	
Over 500,000	122,175+35% of excess over 500,000]	<p>"[(c)](B) <i>RATE OF TAX ON [c] Certain [p] Passive [i] Incomes:</i> " [A tax at the rate prescribed below is hereby imposed upon the amount of the following items of gross income received by a citizen or resident alien from sources within the Philippines:]</p>	
"NOT OVER P15,000	5%	<p>"(I) <i>INTERESTS, ROYALTIES, PRIZES, LOTTO AND OTHER WINNINGS.</i> - A FINAL TAX AT THE RATE OF TWENTY PERCENT (20%) IS HEREBY IMPOSED UPON THE AMOUNT OF [I]interest from any [Philippine] currency bank deposit and yield or any</p>	
OVER P15,000 BUT NOT OVER P30,000	P750+10% IN EXCESS OF P15,000		
OVER 30,000 BUT NOT OVER 70,000	2,250+15% IN EXCESS OF 30,000		
OVER 70,000 BUT NOT OVER 150,000	8,250+20% IN EXCESS OF 70,000		

other monetary benefit from deposit substitutes and from trust funds and similar arrangements; royalties, prizes (except prizes amount to [P3,000] TEN THOUSAND PESOS (P10,000) or less which shall be subject to tax under [paragraph] SUBSECTION (A) OF SECTION 24), LOTTO and other winnings, (except [Philippine Charity] [S]sweepstakes winnings) [-20%; and] DERIVED FROM SOURCES WITHIN THE PHILIPPINES.

"(2) *DIVIDENDS* - A FINAL TAX AT THE FOLLOWING RATES SHALL BE IMPOSED UPON THE [D]ividends EARNED BY AN INDIVIDUAL [received] from a domestic corporation OR FROM A JOINT STOCK COMPANY, INSURANCE OR MUTUAL FUND COMPANIES AND REGIONAL OPERATING HEADQUARTERS OF MULTINATIONAL COMPANIES, OR ON [and] the share of an individual IN THE DISTRIBUTABLE NET INCOME AFTER TAX OF [partner in] a partnership (EXCEPT A GENERAL PROFESSIONAL PARTNERSHIP) OF WHICH HE IS A PARTNER, OR ON THE SHARE OF AN INDIVIDUAL IN THE NET INCOME AFTER TAX OF AN ASSOCIATION, A JOINT ACCOUNT, OR A JOINT VENTURE OR CONSORTIUM OF WHICH HE IS A MEMBER OR A CO-VENTURE [subject to tax under Section 24 (a) at the rate of 15% in 1986; 10% effective January 1, 1987; 5% effective January 1, 1988; and 0% effective January 1, 1989.]:

"4% FOR CALENDAR YEAR 1998;

"8% FOR CALENDAR YEAR 1999; AND

"10% FOR CALENDAR YEAR 2000
AND THEREAFTER.

(C) *TAX ON SALE, BARTER OR EXCHANGE OF SHARES OF STOCK LISTED AND TRADED THROUGH THE LOCAL STOCK EXCHANGE OR THROUGH INITIAL PUBLIC OFFERING.* -

- (1) *CAPITAL GAINS ON THE SALE, BARTER OR EXCHANGE OF SHARES OF STOCK LISTED AND TRADED THROUGH THE LOCAL STOCK EXCHANGE.* - A FINAL TAX AT THE RATE OF ONE-HALF OF ONE PERCENT (1/2 OF 1%) IS HEREBY IMPOSED ON THE GAIN PRESUMED TO HAVE BEEN REALIZED BY AN INDIVIDUAL CITIZEN OR RESIDENT ALIEN ON EVERY SALE, BARTER, EXCHANGE, OR OTHER DISPOSITION

OF SHARES OF STOCK LISTED AND TRADED THROUGH THE LOCAL STOCK EXCHANGE OTHER THAN THE SALE BY A DEALER IN SECURITIES, BASED ON THE GROSS SELLING PRICE OR GROSS VALUE IN MONEY OF THE SHARES OF STOCK SOLD, BARTERED, EXCHANGED, OR OTHERWISE DISPOSED OF WHICH SHALL BE PAID BY THE SELLER OF TRANSFEROR.

IT SHALL BE THE DUTY OF EVERY STOCK BROKER WHO EFFECTED THE SALE SUBJECT TO TAX IMPOSED HEREIN TO COLLECT THE TAX AND REMIT THE SAME TO THE BUREAU OF INTERNAL REVENUE WITHIN FIVE (5) BANKING DAYS FROM THE DATE OF COLLECTION THEREOF AND TO SUBMIT ON MONDAY OF EACH WEEK TO THE SECRETARY OF THE STOCK EXCHANGE, OF WHICH HE IS A MEMBER, A TRUE AND COMPLETE RETURN WHICH SHALL CONTAIN A DECLARATION OF ALL THE TRANSACTIONS EFFECTED THROUGH HIM DURING THE PRECEDING WEEK AND OF TAXES COLLECTED BY HIM AND TURNED OVER TO THE BUREAU OF INTERNAL REVENUE.

(2) *TAX ON SHARES OF STOCK SOLD OR EXCHANGED THROUGH INITIAL PUBLIC OFFERING.* - A FINAL TAX AT THE RATES PRESCRIBED BELOW IS HEREBY IMPOSED ON EVERY SALE, BARTER, EXCHANGE, OR OTHER DISPOSITION THROUGH INITIAL PUBLIC OFFERING OF SHARES OF STOCK IN CLOSELY HELD CORPORATIONS, AS DEFINED IN SECTION 22 (FF), BASED ON THE GROSS SELLING PRICE OR GROSS VALUE IN MONEY OF THE SHARES OF STOCK SOLD, BARTERED, EXCHANGED OR OTHERWISE DISPOSED OF IN ACCORDANCE WITH THE PROPORTION THE SHARES OF STOCK SOLD, BARTERED, EXCHANGED OR OTHERWISE DISPOSED OF BEARS TO THE TOTAL OUTSTANDING SHARES OF STOCK AFTER THE LISTING IN THE LOCAL STOCK EXCHANGE:

UP TO 25%	3%
OVER 25% BUT NOT OVER 33 1/3%	2%
OVER 33 1/3%	1%

THE TAX HEREIN IMPOSED SHALL BE PAID

BY THE ISSUING CORPORATION PRIMARY OFFERING OR BY THE SELLER IN SECONDARY OFFERING.

"[(d)] (D) Capital [g] Gains from [s] Sale[s] of [s] Shares of [s] Stock NOT TRADED IN THE STOCK EXCHANGE. - The provisions of Section [33(b)]38(B) notwithstanding, A FINAL TAX AT THE RATES PRESCRIBED BELOW IS HEREBY IMPOSED UPON THE NET capital gains realized DURING THE TAXABLE YEAR from sale, exchange or OTHER disposition of shares of stock in [any] A domestic corporation [shall be taxed as follows] EXCEPT SHARES SOLD, OR DISPOSED OF THROUGH THE STOCK EXCHANGE.

"[(l)] Net capital gains as defined in Section 33(a)(2) realized during each taxable year from the sale, exchange or disposition of shares of stock not trade through a local stock exchange:]

"Not over P100,000 [10%] 5%;

[Over] ON ANY AMOUNT IN EXCESS

OF P100,000 [20%] 10%

[(e)] (E) Capital [g] Gains from [s] Sales of [r] Real [p] Property. - (1) IN GENERAL. The provisions of Section [33]38(b) notwithstanding, A FINAL TAX OF FIVE PERCENT (5%) BASED ON THE GROSS SELLING PRICE OR FAIR MARKET VALUE AS DETERMINED IN ACCORDANCE WITH SECTION 6(E) OF THIS CODE, WHICHEVER IS HIGHER, IS HEREBY IMPOSED UPON capital gains presumed to have been realized from the sale, exchange, or other disposition of real property located in the Philippines, classified as capital assets, including pacto de retro sales and other forms of conditional sales, by individuals, including estates and trusts: [, shall be taxed at the rate of 5% based on the gross welling price or the fair market value prevailing at the time of sale, whichever is higher] Provided, That the tax liability, if any, on gains from sales or other dispositions of real property to the government or any of its political subdivisions or agencies or to government-owned or controlled corporations shall be determined either under Section [21(a)]24(A) or under this subsection, at the option of the taxpayer;

(2) EXCEPTION - THE PROVISIONS OF PARAGRAPH (1) OF THIS SUB-SECTION TO THE CONTRARY NOTWITHSTANDING, CAPITAL

GAINS PRESUMED TO HAVE BEEN REALIZED FROM THE SALE OR DISPOSITION OF THEIR PRINCIPAL RESIDENCE BY NATURAL PERSONS, THE PROCEEDS OF WHICH IS FULLY UTILIZED IN ACQUIRING OR CONSTRUCTING A NEW PRINCIPAL RESIDENCE WITHIN EIGHTEEN (18) CALENDAR MONTHS FROM THE DATE OF SALE OR DISPOSITION, SHALL BE EXEMPT FROM THE CAPITAL GAINS TAX IMPOSED UNDER THIS SUB-SECTION: PROVIDED, THAT THE HISTORICAL COST OR ADJUSTED BASIS OF THE REAL PROPERTY SOLD OR DISPOSED SHALL BE CARRIED OVER TO THE NEW PRINCIPAL RESIDENCE BUILT OR ACQUIRED: PROVIDED, FURTHER, THAT THE COMMISSIONER SHALL HAVE BEEN DULY NOTIFIED BY THE TAXPAYER WITHIN THIRTY (30) DAYS FROM THE DATE OF SALE OR DISPOSITION THROUGH A PRESCRIBED RETURN OF HIS INTENTION TO AVAIL OF THE TAX EXEMPTION HEREIN MENTIONED: PROVIDED, FINALLY, THAT IF THERE IS NO FULL UTILIZATION OF THE PROCEEDS OF SALE OR DISPOSITION, A PORTION OF THE GAIN PRESUMED TO HAVE BEEN REALIZED FROM THE SALE OR DISPOSITION SHALL BE SUBJECT TO CAPITAL GAINS TAX. FOR THIS PURPOSE, THE GROSS SELLING PRICE OR FAIR MARKET VALUE AT THE TIME OF SALE, WHICHEVER IS HIGHER, SHALL BE MULTIPLIED BY A FRACTION WHICH THE UNUTILIZED AMOUNT BEARS TO THE GROSS SELLING PRICE IN ORDER TO DETERMINE THE TAXABLE PORTION AND THE TAX PRESCRIBED UNDER PARAGRAPH (1) OF THIS SUB-SECTION SHALL BE IMPOSED THEREON.

"[(f)] Simplified Net Income Tax for the Self-Employed and for Professionals Engaged in the Practice of Profession. - A tax is hereby imposed upon the taxable net income as determined in Section 27 received during each taxable year from all sources, other than income covered by paragraphs (b), (c), (d), and (e) of this section by every individual whether a citizen of the Philippines or an alien residing in the Philippines who is self-employed or practices his profession therein, determined in accordance with the following schedule:

Not over P10,000	3%
Over P10,000 but not over P30,000	P300 + 9% of excess over P10,000

Over 30,000 but not over 120,000	2,100+15% of excess over 30,000
Over 120,000 but not over 35,000	15,600+20% of excess over 120,000
Over 350,000	61,600+30% of excess over 350,000"

SECTION 25. Section 22 of the Code is renumbered as Section 25 and hereby further amended to read as follows:

"SEC. [22] 25. *Tax on [n]Nonresident [a]Alien [i]Individual[s], - "[f(a)](A) Nonresident aliens[s] engaged in trade or business within the Philippines. -*

"(1) *In general. - A [N]nonresident alien[s] INDIVIDUAL engaged in trade or business in the Philippines shall be subject to AN INCOME tax in the same manner as [resident] AN INDIVIDUAL citizen[s] and a RESIDENT alien[s] INDIVIDUAL on taxable income received from all sources within the Philippines [, except capital gains realized from buying and/or selling shares of stock of Philippine corporations listed in the dollar or any foreign currency board of stock exchange: *Provided*, that for purposes of this Title,]. [a]A nonresident alien individual who shall come to the Philippines and stay therein for an aggregate period of more than ONE HUNDRED AND EIGHTY (180) days during any calendar year shall be deemed a nonresident alien doing business in the Philippines, Section [20]22[(g)](G) of this Code notwithstanding.*

"(2) *Dividends FROM A DOMESTIC CORPORATION OR JOINT STOCK COMPANY, OR share in the DISTRIBUTABLE net INCOME [profits] of a [taxable partnership, interest, royalties, prizes and other winnings] PARTNERSHIP (EXCEPT A GENERAL PROFESSIONAL PARTNERSHIP), JOINT ACCOUNT, JOINT VENTURE OR ASSOCIATION, INTERESTS, ROYALTIES, PRIZES, LOTTO AND OTHER WINNINGS. - Dividends from a domestic corporation, OR FROM A JOINT STOCK COMPANY, OR THE share [in the net profits of a partnership taxable under Section 24(a),] OF AN INDIVIDUAL NONRESIDENT ALIEN IN THE DISTRIBUTABLE NET INCOME AFTER TAX OF A PARTNERSHIP (EXCEPT A GENERAL*

PROFESSIONAL PARTNERSHIP) OF WHICH HE IS PARTNER, OR THE SHARE OF AN INDIVIDUAL NONRESIDENT ALIEN IN THE NET INCOME AFTER TAX OF AN ASSOCIATION, A JOINT ACCOUNT, OR A JOINT VENTURE OF WHICH HE IS A MEMBER OR A CO-VENTURE, interest, royalties (in any form) and prizes (except prizes amounting to [P3,000] TEN THOUSAND PESOS (P10,000) or less which shall be subject to tax under [paragraph (c)] SUBSECTION (B)(1) of Section [21] 24), LOTTO and other winnings (except [Philippine Charity] [S]sweepstakes winnings), shall be subject to [a] AN INCOME tax of [thirty] TWENTY percent [(30%)] (20%) on the total amount thereof.

(3) *CAPITAL GAINS ON THE SALE, BARTER OR EXCHANGE OF SHARES OF STOCK LISTED AND TRADED THROUGH THE LOCAL STOCK EXCHANGE OR THROUGH INITIAL PUBLIC OFFERING. - A FINAL TAX IS HEREBY IMPOSED ON THE GAIN PRESUMED TO HAVE BEEN REALIZED BY A NONRESIDENT ALIEN INDIVIDUAL ENGAGED IN TRADE OR BUSINESS IN THE PHILIPPINES ON THE SALE, BARTER OR EXCHANGE OF SHARES OF STOCK AT THE RATE OF ONE-HALF OF ONE PERCENT (1/2 OF 1%) BASED ON THE GROSS SELLING PRICE OR GROSS VALUE IN MONEY OF SHARES OF STOCK SOLD, BARTERED OR EXCHANGED THROUGH THE LOCAL STOCK EXCHANGE, AND AT THE RATES OF ONE PERCENT (1%), TWO PERCENT (2%), AND THREE PERCENT (3%) FOR SHARES OF STOCK SOLD, BARTERED OR EXCHANGED THROUGH INITIAL PUBLIC OFFERING, IN ACCORDANCE WITH SECTION 24(C)(1) AND (2) HEREOF.*

"[(3)](4) *Capital gains. - Capital gains realized from sale[s] of shares of stock in domestic corporations NOT TRADED THROUGH THE LOCAL STOCK EXCHANGE, and real properties shall be subject to the tax prescribed under subsections [(d)](D) and [(e)](E) of Section [21] 24.*

"[(b)](B) *Nonresident alien[s] INDIVIDUAL not engaged in trade or business within the Philippines. - There shall be levied, collected and paid for each taxable year upon the entire income received from all sources within the Philippines as interest, dividends, rents, salaries, wages, premiums, annuities, compensation, remuneration, emoluments, or other fixed or determinable annual or periodical or casual gains, profits,*

and income, and capital gains [except capital gains realized from buying and/or selling shares of stock of Philippine corporations listed in the dollar or any acceptable foreign currency board of any stock exchange,] tax equal to [(30%)] TWENTY PERCENT (20%) of such income. [.:Provided, That c]Capital gains realized BY A NONRESIDENT ALIEN NOT ENGAGED IN TRADE OR BUSINESS IN THE PHILIPPINES from THE sale[s] of shares of stock in any domestic corporation and real property shall be subject to the INCOME tax prescribed under subsections (C), [(d)](D) and [(e)](E) of Section 24.

"[(c)] (C) *Alien[s] INDIVIDUAL employed by regional or area headquarters AND REGIONAL OPERATING HEADQUARTERS of multinational [corporations] COMPANIES.* - There shall be levied, collected and paid for each taxable year upon the gross income received by every alien individual employed by regional or area headquarters AND REGIONAL OPERATING HEADQUARTERS established in the Philippines by multinational [corporations] COMPANIES as salaries, wages, annuities, compensation, remuneration and other emoluments, such as honoraria and allowances, from such regional or area headquarters AND REGIONAL OPERATING HEADQUARTERS, a tax equal to FIFTEEN PERCENT (15%) of such gross income: *PROVIDED, HOWEVER, THAT THE SAME TAX TREATMENT SHALL APPLY TO FILIPINOS EMPLOYED AND OCCUPYING THE SAME POSITION AS THOSE OF ALIENS EMPLOYED BY THESE MULTINATIONAL COMPANIES*[: Provided, That the activities of the said regional headquarters or area headquarters shall be limited to acting as supervisory, communications and coordinating center for the affiliates, subsidiaries or branches of such multinational corporations]. For purposes of this chapter, the term '*multinational [corporation] COMPANY*' means a foreign firm or entity engaged in international trade with affiliates or subsidiaries or branch offices in the Asia Pacific Region AND OTHER FOREIGN MARKETS.

"[(d)] (D) *Alien[s] INDIVIDUAL employed by offshore banking units.* - There shall be levied, collected and paid for each taxable year upon the gross income received by every alien individual employed by offshore banking units established in the Philippines as salaries, wages, annuities, compensation, remuneration and other emoluments, such as honoraria and allowances, from such offshore banking units, a tax

equal to FIFTEEN PERCENT (15%) of such gross income: *PROVIDED, HOWEVER, THAT THE SAME TAX TREATMENT SHALL APPLY TO FILIPINOS EMPLOYED AND OCCUPYING THE SAME POSITION AS THOSE OF ALIENS EMPLOYED BY THESE OFFSHORE BANKING UNITS.*

"[(e)] (E) *Alien[s] INDIVIDUAL employed by petroleum service contractor[s] and subcontractor[s].* - AN [A]alien[s] INDIVIDUAL who [are] IS A permanent resident[s] of a foreign country but who [are] IS employed and assigned in the Philippines by A FOREIGN service contractor[s] or by A FOREIGN SERVICE subcontractor[s] engaged in petroleum operations in the Philippines shall be liable to a tax of FIFTEEN PERCENT (15%) of the salaries, wages, annuities, compensation, remuneration and other emoluments, such as honoraria and allowances, received from such contractor[s] or subcontractor[s]: *PROVIDED, HOWEVER, THAT THE SAME TAX TREATMENT SHALL APPLY TO A FILIPINO EMPLOYED AND OCCUPYING THE SAME POSITION AS AN ALIEN EMPLOYED BY PETROLEUM SERVICE CONTRACTOR AND SUBCONTRACTOR.*

"x x x"

SECTION 26. Section 23 of the Code is renumbered as Section 26 and the provisions thereof are deleted and replaced with the following:

"SEC. [23] 26. *Tax [l]Liability of [m]Members of [g]General [p]Professional [p]Partnerships.* -

A GENERAL PROFESSIONAL PARTNERSHIP AS SUCH SHALL NOT BE SUBJECT TO THE INCOME TAX IMPOSED UNDER THIS CHAPTER. PERSONS ENGAGING IN BUSINESS AS PARTNERS IN A GENERAL PROFESSIONAL PARTNERSHIP SHALL BE LIABLE FOR INCOME TAX ONLY IN THEIR SEPARATE AND INDIVIDUAL CAPACITIES.

FOR PURPOSES OF COMPUTING THE DISTRIBUTIVE SHARE OF THE PARTNERS, THE NET INCOME OF THE PARTNERSHIP SHALL BE COMPUTED IN THE SAME MANNER AS A CORPORATION.

EACH PARTNER SHALL REPORT AS GROSS INCOME HIS DISTRIBUTIVE SHARE, ACTUALLY

OR CONSTRUCTIVELY RECEIVED, IN THE NET INCOME OF THE PARTNERSHIP.

SECTION 27. Section 24 of the Code is renumbered as Section 27 and amended to read as follows:

"SEC. [24] 27 - Rates of INCOME tax on domestic corporations. - [(a)](A) In general. - [Unless] EXCEPT AS otherwise provided IN THIS CODE, [a] AN INCOME tax of THIRTY-FIVE PERCENT (35%) is hereby imposed upon the taxable income [received] DERIVED during each taxable year from all sources within and without the Philippines by every corporation, AS DEFINED IN SECTION 24(B) OF THIS CODE AND TAXABLE UNDER THIS TITLE AS A CORPORATION, organized in, or existing under the laws of the Philippines[, and partnerships, no matter how created or organized, but not including general professional partnerships]: PROVIDED, THAT EFFECTIVE JANUARY 1, 1998, THE RATE OF INCOME TAX SHALL BE THIRTY-THREE PERCENT (33%); EFFECTIVE JANUARY 1, 1999, THE RATE SHALL BE THIRTY-ONE AND ONE-HALF PERCENT (31 1/2%); AND EFFECTIVE JANUARY 1, 2000 AND THEREAFTER, THE RATE SHALL BE THIRTY PERCENT (30%).

IN THE CASE OF CORPORATIONS ADOPTING THE FISCAL-YEAR ACCOUNTING PERIOD, THE TAXABLE INCOME SHALL BE COMPUTED WITHOUT REGARD TO THE SPECIFIC DATE WHEN SPECIFIC SALES, PURCHASES AND OTHER TRANSACTIONS OCCUR. THEIR INCOME AND EXPENSES FOR THE FISCAL YEAR SHALL BE DEEMED TO HAVE BEEN EARNED AND SPENT EQUALLY FOR EACH MONTH OF THE PERIOD.

THE REDUCED CORPORATE INCOME TAX RATES SHALL BE APPLIED ON THE AMOUNT COMPUTED BY MULTIPLYING THE NUMBER OF MONTHS COVERED BY THE NEW RATES WITHIN THE FISCAL YEAR BY THE TAXABLE INCOME OF THE CORPORATION FOR THE PERIOD, DIVIDED BY TWELVE.

"[(b)](B) [Private] PROPRIETARY educational institutions AND HOSPITALS. - [Private] PROPRIETARY educational institutions[,] AND HOSPITALS WHICH ARE NONPROFIT [whether stock or nonstock,] shall pay a tax of TEN PERCENT (10%) on their taxable income except those covered by

[paragraph] SUBSECTION [(e)](E) hereof: *Provided*, That if the gross income from unrelated trade, business or other activity exceeds FIFTY PERCENT (50%) of the total gross income derived by [any] SUCH educational institution OR HOSPITAL from all sources, the tax prescribed in [paragraph] SUBSECTION [(a)](1) (A) hereof shall be imposed on the entire taxable income [of the educational institution]. For purposes of this [paragraph] SUBSECTION, the term '*unrelated trade, business or other activity*' means any trade, business or other activity, the conduct of which is not substantially related to the exercise or performance by such educational institution OR HOSPITAL of its [educational] PRIMARY purpose or function. A '*[private] PROPRIETARY educational institution*' is any private school maintained and administered by private individuals or groups WITH AN issued [a] permit to operate [by] FROM the Department of Education Culture and Sports (DECS), OR THE COMMISSION ON HIGHER EDUCATION (CHED), OR THE TECHNICAL EDUCATION AND SKILLS DEVELOPMENT AUTHORITY (TESDA), AS THE CASE MAY BE, in accordance with existing laws and regulations.

"[(c)](C) *Government-owned or controlled corporation, agencies or instrumentalities.* - The provisions of existing special or general laws to the contrary notwithstanding, all corporate taxpayers (WITHOUT EXCEPTION) [not] UNLESS specifically exemptED under Section [26]29 of this Code shall pay A TAX ON THEIR TAXABLE INCOME AT the rates provided in this [s]Section. All corporations, agencies, or instrumentalities owned or controlled by the Government, including the Government Service Insurance System (GSIS) and the Social Security System (SSS), THE PHILIPPINE CHARITY SWEEPSTAKES OFFICE (PCSO) AND THE PHILIPPINE AMUSEMENT AND GAMING CORPORATION (PAGCOR), NOTWITHSTANDING ANY PROVISION TO THE CONTRARY IN THEIR RESPECTIVE SPECIAL CHARTERS shall pay such rate of tax upon their taxable income as are imposed by this Section upon associations or corporations engaged in a similar business, industry, or activity.

"[(d)](D) *Mutual life insurance companies.* - Mutual life insurance companies organized in and existing under the laws of the Philippines shall pay a tax of TEN PERCENT (10%) of their gross investment income consisting of interest, dividends, rents, net capital gains, and income from any other business than life insurance

derived from all sources, except those covered by paragraph [(e))(5) hereof.

"[(e))(E) *RATES OF Tax on [c]Certain PASSIVE [i]Incomes [derived by domestic corporations].* -

"(1) *Interest from [d]Deposits and [y]Yield or any other [m]Monetary [b]Benefit from [d]Deposit [s]Substitutes and from [t]Trust [f]Fund and [s]Similar [a]Arrangements, and [r]Royalties.* - A FINAL TAX AT THE RATE OF TWENTY PERCENT (20%) IS HEREBY IMPOSED UPON THE AMOUNT OF [I]interest from any [Philippine] currency bank deposit[s] and yield or any other monetary benefit from deposit substitutes and from trust funds and similar arrangements received by domestic corporations, and royalties, derived from sources within the Philippines [shall be subject to a 20% tax].

(2) *CAPITAL GAINS ON THE SALE, BARTER OR EXCHANGE OF SHARES OF STOCK LISTED AND TRADED THROUGH THE LOCAL STOCK EXCHANGE OR THROUGH INITIAL PUBLIC OFFERING.* - A FINAL TAX IS HEREBY IMPOSED ON THE GAIN PRESUMED TO HAVE BEEN REALIZED BY A DOMESTIC CORPORATION ON THE SALE, BARTER OR EXCHANGE OF SHARES OF STOCK AT THE RATE OF ONE-HALF OF ONE PERCENT (1/2 OF 1%) BASED ON THE GROSS SELLING PRICE OR GROSS VALUE IN MONEY OF SHARES OF STOCK SOLD, BARTERED OR EXCHANGED THROUGH THE LOCAL STOCK EXCHANGE, AND AT THE RATES OF ONE PERCENT (1%), TWO PERCENT (2%), AND THREE PERCENT (3%) FOR SHARES OF STOCK SOLD, BARTERED OR EXCHANGED THROUGH INITIAL PUBLIC OFFERING, IN ACCORDANCE WITH SECTION 24(C)(1) AND (2) HEREOF.

"[(2))(3) *Capital [g]Gains from the [s]Sale[s] of [s]Shares of [s]Stock NOT TRADED IN THE STOCK EXCHANGE.* - A FINAL TAX AT THE RATES PRESCRIBED BELOW SHALL BE IMPOSED ON [C]capital gains realized DURING THE TAXABLE YEAR from the sale, exchange or OTHER disposition of shares of stock in [any] A domestic corporation [shall be taxed as follows] EXCEPT SHARES SOLD, OR DISPOSED OF THROUGH THE STOCK EXCHANGE:

"[(a) Net capital gains as defined in Section 33(a)(2) realized during each taxable year from sale or exchange

or other disposition of shares of stock not traded through a local stock exchange:]

"NOT OVER P100,000 [10%]5%;

"[Over] AMOUNT IN EXCESS OVER P100,000 [20%]10%

"[(3) Tax on income derived under the Expanded Foreign Currency Deposit System. - Income derived by a depository bank under the expanded foreign currency deposit system from foreign currency transactions with nonresidents, offshore banking units in the Philippines, local commercial banks including branches of foreign banks that may be authorized by the Central Bank to transact business with foreign currency depository system units and other depository banks under the expanded foreign currency deposit system shall be exempt from all taxes, except taxable income from such transactions as may be specified by the Secretary of Finance, upon recommendation of the Monetary Board to be subject to the usual income tax payable by banks; provided, that interest income from foreign currency loans granted by such depository banks under said expanded system to residents (other than offshore banking units in the Philippines or other depository banks under the expanded system) shall be subject to a 10% tax.

"Any income of nonresident from transactions with depository banks under the expanded system shall be exempt from income tax.]

"(4) *Intercorporate dividends.* - Dividends received by a domestic corporation from another domestic corporation shall not be subject to tax."

(5) *CAPITAL GAINS REALIZED FROM THE SALE, EXCHANGE OR DISPOSITION OF LANDS AND/OR BUILDINGS.* - A FINAL TAX OF FIVE PERCENT (5%) IS HEREBY IMPOSED ON THE GAIN PRESUMED TO HAVE BEEN REALIZED ON THE SALE, EXCHANGE OR DISPOSITION OF LANDS AND/OR BUILDINGS WHICH ARE NOT ACTUALLY USED IN THE BUSINESS OF A CORPORATION AND ARE TREATED AS CAPITAL ASSETS, BASED ON THE GROSS SELLING PRICE OR FAIR MARKET VALUE AS DETERMINED IN ACCORDANCE WITH SECTION 6(E) OF THIS CODE, WHICHEVER IS HIGHER, OF SUCH LANDS AND/OR BUILDINGS.

(F) *MINIMUM CORPORATE INCOME TAX*

ON CORPORATIONS. - (1) IMPOSITION OF TAX. - A MINIMUM INCOME TAX OF THREE-FOURTHS OF ONE PERCENT (3/4 OF 1%) OF THE HISTORICAL COST LESS ACCUMULATED DEPRECIATION OF THE NET ASSETS AS DEFINED HEREIN IS HEREBY IMPOSED ON A CORPORATION TAXABLE UNDER THIS TITLE BEGINNING ON THE FOURTH YEAR IMMEDIATELY FOLLOWING THE YEAR IN WHICH THE START UP OF BUSINESS OPERATIONS OF THE CORPORATION HAS COMMENCED: PROVIDED, HOWEVER, THAT THE MINIMUM INCOME TAX IS GREATER THAN THE TAX COMPUTED UNDER SUBSECTIONS (A) AND (C) OF THIS SECTION FOR THE TAXABLE YEAR.

(2) CARRY FORWARD OF EXCESS MINIMUM TAX. - ANY EXCESS OF THE MINIMUM CORPORATE INCOME TAX OVER THE NORMAL INCOME TAX AS COMPUTED UNDER SUBSECTIONS (A) AND (C) OF THIS SECTION SHALL BE CARRIED FORWARD AND CREDITED AGAINST THE NORMAL INCOME TAX FOR THE THREE IMMEDIATELY SUCCEEDING TAXABLE YEARS.

(3) RELIEF FROM THE MINIMUM CORPORATE INCOME TAX UNDER CERTAIN CONDITIONS. - THE SECRETARY OF FINANCE IS HEREBY AUTHORIZED TO SUSPEND THE IMPOSITION OF THE MINIMUM CORPORATE INCOME TAX OF ANY CORPORATION WHICH SUFFERS LOSSES ON ACCOUNT OF PROLONGED LABOR DISPUTE, OR BECAUSE OF FORCE MAJEURE, OR BECAUSE OF LEGITIMATE BUSINESS REVERSES.

THE SECRETARY OF FINANCE IS HEREBY AUTHORIZED TO PROMULGATE, UPON RECOMMENDATION OF THE COMMISSIONER, THE NECESSARY RULES AND REGULATIONS THAT SHALL DEFINE THE TERMS AND CONDITIONS UNDER WHICH HE MAY SUSPEND THE IMPOSITION OF THE MINIMUM CORPORATE INCOME TAX IN A MERITORIOUS CASE.

(4) NET ASSETS DEFINED. - FOR PURPOSES OF APPLYING THE MINIMUM CORPORATE INCOME TAX PROVIDED UNDER THIS SUBSECTION (F), THE TERM 'NET ASSETS' SHALL

MEAN ASSETS, WHEREVER SITUATED, OWNED BY THE CORPORATION AS OF THE END OF THE TAXABLE YEAR, EXCLUDING:

(A) SHARES OF STOCK IN OTHER CORPORATIONS;

(B) LOANS OR INDEBTEDNESS INCURRED FROM OR OTHER PAYABLE TO OTHER CORPORATIONS OR TO INDIVIDUALS OR TO THE GOVERNMENT; AND

(C) INCOME-PRODUCING FINANCIAL ASSETS, THE INCOME FROM WHICH IS SUBJECT TO A FINAL TAX OR EXEMPTED FROM THE INCOME TAX UNDER THIS CODE OR UNDER ANY SPECIAL LAW.

SECTION 28. Section 25 of the Code is hereby renumbered as Section 28 and amended to read as follows:

"SEC. [25] 28. Rates of INCOME Tax on Foreign Corporations. -

"[(a)] (A) Tax on Resident Foreign Corporations. -

"(1) In general. - [Unless] EXCEPT AS otherwise provided IN THIS CODE, a corporation organized, authorized, or existing under the laws of any foreign country, engaged in trade or business within the Philippines, shall be subject to [a] AN INCOME tax equivalent to THIRTY-FIVE PERCENT (35%) of the taxable income derived in the preceding taxable year from all sources within the Philippines: PROVIDED, THAT EFFECTIVE JANUARY 1, 1998, THE RATE OF INCOME TAX SHALL BE THIRTY-THREE PERCENT (33%); EFFECTIVE JANUARY 1, 1999, THE RATE SHALL BE THIRTY-ONE AND ONE-HALF PERCENT (31 OF 1/2%); AND JANUARY 1, 2000 AND THEREAFTER, THE RATE SHALL BE THIRTY PERCENT (30%).

IN THE CASE OF CORPORATIONS ADOPTING THE FISCAL YEAR ACCOUNTING PERIOD, THE TAXABLE INCOME SHALL BE COMPUTED WITHOUT REGARD TO THE SPECIFIC DATE WHEN SALES, PURCHASES AND OTHER TRANSACTIONS OCCUR. THEIR INCOME AND EXPENSES FOR THE FISCAL YEAR SHALL BE DEEMED TO HAVE BEEN EARNED

AND SPENT EQUALLY FOR EACH MONTH OF THE PERIOD.

THE REDUCED CORPORATE INCOME TAX RATES SHALL BE APPLIED ON THE AMOUNT COMPUTED BY MULTIPLYING THE NUMBER OF MONTHS COVERED BY THE NEW RATES WITHIN THE FISCAL YEAR BY THE TAXABLE INCOME OF THE CORPORATION FOR THE PERIOD, DIVIDED BY TWELVE.

"(2) *International carrier[s]*. - AN [I]international carrier[s] doing business in the Philippines shall pay a tax of two and one-half percent (2 1/2%) on [their] ITS 'Gross Philippine Billings' as defined hereunder:

"[(A)](a) *International air carrier*. - "Gross Philippine Billings' [means gross revenue realized from uplifts of passenger anywhere in the world and excess baggage, cargo and mail originating from the Philippines covered by passage documents sold in the Philippines: *Provided*, That documents sold outside the Philippines under a "prepaid ticket advice" scheme for passengers originating from the Philippines shall be considered as documents sold in the Philippines. Gross revenue from chartered flights originating from the Philippines shall likewise form part of the Gross Philippine Billings regardless of the place of sale or payment of the passage documents. For purposes of determining the taxability of revenues from chartered flights, the term '*originating from the Philippines*' shall include flights of passengers who stay in the Philippines for more than forty-eight (48) hours prior to embarkation.] REFERS TO THE AMOUNT OF GROSS REVENUES DERIVED FROM CARRIAGE OF PERSONS, EXCESS BAGGAGE, CARGO AND MAIL ORIGINATING FROM THE PHILIPPINES IN A CONTINUOUS AND UNINTERRUPTED FLIGHT, IRRESPECTIVE OF THE PLACE OF SALE OR ISSUE AND THE PLACE OF PAYMENT OF THE TICKET OR PASSAGE DOCUMENT: *PROVIDED*, THAT TICKETS REVALIDATED, EXCHANGED AND/OR INDORSED TO ANOTHER INTERNATIONAL AIRLINE FORMS PART OF THE GROSS PHILIPPINE BILLINGS IF THE PASSENGER BOARDS A PLANE IN A PORT OR POINT IN THE PHILIPPINES: *PROVIDED, FURTHER*, THAT FOR A FLIGHT WHICH ORIGINATES FROM THE PHILIPPINES, BUT TRANSSHIPMENT OF PASSENGER TAKES PLACE AT ANY PORT OUTSIDE THE PHILIPPINES ON ANOTHER AIRLINE, ONLY THE ALIQUOT PORTION OF

THE COST OF THE TICKET CORRESPONDING TO THE LEG FLOWN FROM THE PHILIPPINES TO THE POINT OF TRANSSHIPMENT SHALL FORM PART OF GROSS PHILIPPINE BILLINGS.

"[(B)](b) x x x

"x x x

"[(4)] *Offshore banking units*. - The provisions of any law to the contrary notwithstanding, income derived by offshore banking units authorized by the Central Bank of the Philippines from foreign currency transactions with nonresidents, other offshore banking units, local commercial banks, including branches of foreign banks that may be authorized by the Central Bank to transact business with offshore banking units shall be exempt from all taxes except taxable income from such transactions as may be specified by the Secretary of Finance, upon recommendation of the Monetary Board, to be subject to the normal income tax payable by banks; *Provided*, That any interest income derived from foreign currency loans granted to residents other than offshore banking units or local branches of foreign banks that may be authorized by the Central Bank of the Philippines to transact business with offshore banking units, shall be subject only to a 10% tax.

Any income of nonresidents from transactions with said offshore banking units shall be exempt from income tax.]

"[(5)] (4) *Tax on branch profits remittances*. - Any profit remitted by a branch to its head office shall be subject to a tax of FIFTEEN PERCENT (15%) WHICH SHALL BE BASED ON THE TOTAL PROFITS APPLIED OR EARMARKED FOR REMITTANCE WITHOUT ANY DEDUCTION FOR THE TAX COMPONENT THEREOF (except those ACTIVITIES WHICH ARE registered with the [Export Processing] PHILIPPINE ECONOMIC Zone Authority[0];). [Provided, That any profit remitted by a branch to its head office authorized to engage in petroleum operations in the Philippines shall be subject to a tax of seven and a half percent (7 1/2%). In both cases, t]The tax shall be collected and paid in the same manner as provided in Sections [50]56 and [51]57 of this Code[:; and provided, further,] *PROVIDED*, [t]That interest, dividends, rents, royalties, including remuneration for technical services, salaries, wages, premiums, annuities, emoluments or other fixed or determinable annual, periodic[all] or casual gains, profits,

income and capital gains received by a foreign corporation during each taxable year from all sources within the Philippines shall not be [considered] TREATED as branch profits unless the same are effectively connected with the conduct of its trade or business in the Philippines.

(5) REGIONAL OR AREA HEADQUARTERS OF MULTINATIONAL COMPANIES. - REGIONAL OR AREA HEADQUARTERS SHALL NOT BE SUBJECT TO INCOME TAX.

FOR PURPOSES OF THIS SECTION, 'REGIONAL OR AREA HEADQUARTERS' SHALL MEAN A BRANCH ESTABLISHED IN THE PHILIPPINES BY MULTINATIONAL COMPANIES AND WHICH HEADQUARTERS DO NOT EARN OR DERIVE INCOME FROM THE PHILIPPINES AND WHICH ACT AS SUPERVISORY, COMMUNICATIONS AND COORDINATING CENTER FOR THEIR AFFILIATES, SUBSIDIARIES, OR BRANCHES IN THE ASIA PACIFIC REGION AND OTHER FOREIGN MARKETS.

"(6) Tax on [c] Certain [i] Incomes [r] Received by A [r] Resident [f] Foreign [c] Corporation[s].

"([A]a) Interest from deposits and yield or any other monetary benefit from deposit substitutes, trust fund and similar arrangements and royalties. - Interest on [Philippine] ANY currency bank deposit[s] and yield or any other monetary benefit from deposit substitutes and from trust fund and similar arrangements and royalties derived from sources within the Philippines shall be subject to a TWENTY (20%) tax.

"[(B) Income derived under the Expanded Foreign Currency Deposit System. - Income derived by a depository bank under the expanded foreign currency deposit system from foreign currency transactions with nonresidents, offshore banking units in the Philippines, local commercial banks including branches of foreign banks that may be authorized by the Central Bank of the Philippines to transact business with foreign currency deposit system units and other depository banks under the expanded foreign currency deposit system shall be exempt from all taxes, except taxable income from such transactions as may be specified by the Secretary of Finance, upon recommendation of the Monetary Board to be subject to the usual income tax payable by banks; provided, that interest income from foreign currency

loans granted by such depository banks under said expanded system to residents (other than offshore banking units in the Philippines or other depository banks under the expanded system) shall be subject to a (10%) tax.

"Any income of nonresidents from transactions with depository banks under the expanded system shall be exempt from income tax.]

(B) CAPITAL GAINS ON THE SALE, BARTER OR EXCHANGE OF SHARES OF STOCK LISTED AND TRADED THROUGH THE LOCAL STOCK EXCHANGE OR THROUGH INITIAL PUBLIC OFFERING. - A FINAL TAX IS HEREBY IMPOSED ON THE GAIN PRESUMED TO HAVE BEEN REALIZED BY A RESIDENT FOREIGN CORPORATION ON THE SALE, BARTER OR EXCHANGE OF SHARES OF STOCK AT THE RATE OF ONE-HALF OF ONE PERCENT (1/2 OF 1%) BASED ON THE GROSS SELLING PRICE OR GROSS VALUE IN MONEY OF SHARES OF STOCK SOLD, BARTERED OR EXCHANGED THROUGH THE LOCAL STOCK EXCHANGE, AND AT THE RATES OF ONE PERCENT (1%), TWO PERCENT (2%) AND THREE PERCENT (3%) FOR SHARES OF STOCK SOLD, BARTERED OR EXCHANGED THROUGH INITIAL PUBLIC OFFERING, IN ACCORDANCE WITH SECTION 24 (C)(1) AND (2) HEREOF.

"([C]c) Capital [g] Gains from [s] Sale[s] of [s] Shares of [s] Stock NOT TRADED IN THE STOCK EXCHANGE. - A FINAL TAX AT THE RATES PRESCRIBED BELOW IS HEREBY IMPOSED UPON THE NET [C] capital gains realized DURING THE TAXABLE YEAR from THE sale, exchange or OTHER disposition of shares of stock in [any] A domestic corporation [shall be taxed as follows] EXCEPT SHARES SOLD OR DISPOSED OF THROUGH THE STOCK EXCHANGE:

"[(1) Net capital gains as defined in Section 33(a)(2) realized during each taxable year from sale or exchange or other disposition of shares of stock not traded through a local stock exchange shall be taxed as follows:]

"Not over P100,000 [10%] 5%;
 [Over] ON ANY AMOUNT
 IN EXCESS
 OF P100,000 [20%] 10%

"(D)d) *Interpolate [d]Dividends.* - Dividends received by a resident foreign corporation from a domestic corporation liable to tax under this Code shall not be subject to tax under this Title.

"[(b)](B) *TAX ON Nonresident [f]Foreign [c]Corporation[s].* -

"(1) *In general.* - [Unless] EXCEPT AS otherwise provided IN THIS CODE, a foreign corporation not engaged in trade or business in the Philippines shall pay a tax equal to THIRTY-FIVE PERCENT (35%) of the gross income received during each taxable year from all sources within the Philippines such as interest, dividends, rents, royalties, salaries, premiums (except reinsurance premiums), annuities, emoluments or other fixed or determinable annual, periodic[al] or casual gains, profits and income, and capital gains, except capital gains subject to tax under subparagraph 5([C]c) AND (d): *PROVIDED, THAT EFFECTIVE JANUARY 1, 1998, THE RATE OF INCOME TAX SHALL BE THIRTY-THREE PERCENT (33%); EFFECTIVE JANUARY 1, 1999, THE RATE SHALL BE THIRTY-ONE AND ONE-HALF PERCENT (31 1/2%), AND; EFFECTIVE JANUARY 1, 2000 AND THEREAFTER, THE RATE SHALL BE THIRTY PERCENT (30%).*

"(2) *Nonresident [c]Cinematographic [f]Film [o]Owner[s], [l]Lessor[s] or [d]Distributor[s].* - Cinematographic film owners, lessors, or distributors shall pay a tax of TWENTY FIVE PERCENT (25%) of their gross income from all sources within the Philippines.

"(3) *Nonresident [o]Owner[s] OR LESSOR of [v]Vessels [c]Chartered by Philippine [n]Nationals.* - [Rentals, lease and charter fees derived by] A nonresident owner[s] OR LESSOR of vessels [chartered by Philippine nationals and which charter or lease has been duly approved by the Maritime Industry Authority] shall be subject to a tax OF FOUR AND A HALF PERCENT (4 1/2%) OF GROSS RENTALS, LEASE OR CHARTER FEES FROM LEASES OR CHARTERS TO FILIPINO CITIZENS OR CORPORATIONS, AS APPROVED BY THE MARITIME INDUSTRY AUTHORITY.

"(4) *Nonresident OWNER OR [l]Lessor[s] of [a]Aircrafts, [m]Machineries and [o]Other [e]Equipment.* - Rentals, charter and other fees derived by A nonresident lessor[s] of aircrafts, machineries and other equipment shall be subject to a tax of [not less than (5%) but not more

than (10%) to be fixed and determined by the President upon recommendation of the Secretary of Finance: *Provided, That the rate of 7 1/2% shall be imposed on such rentals, charter and other fees until such time as the President shall have prescribed the rates appropriate for each category of property] SEVEN AND A HALF PERCENT (7 1/2%) OF GROSS RENTALS OR FEES."*

"(5) *Tax on [c]Certain [i]Incomes [r]Received by A [n]Nonresident [f]Foreign [c]Corporation[s].* -

"(A) *Interest on foreign loans* [contracted on or after August 1, 1986 shall be subject to a 20% tax]. - A FINAL WITHHOLDING TAX AT THE RATE OF TWENTY PERCENT (20%) IS HEREBY IMPOSED ON THE AMOUNT OF INTEREST ON FOREIGN LOANS CONTRACTED ON OR AFTER AUGUST 1, 1986;

"(B) *INTERCORPORATE DIVIDENDS.* - [On dividends received from a domestic corporation liable to tax under this Chapter, the tax shall be] A FINAL WITHHOLDING TAX AT THE RATE OF FIFTEEN PERCENT (15%) IS HEREBY IMPOSED ON THE AMOUNT of [the] dividends received FROM A DOMESTIC CORPORATION, which shall be collected and paid as provided in Section [50]56 ([a]A) of [the National Internal Revenue Code, as amended] THIS CODE, subject to the condition that the country in which the nonresident foreign corporation is domiciled shall allow a credit against the tax due from the nonresident foreign corporation taxes deemed to have been paid in the Philippines equivalent to TWENTY PERCENT (20%) FOR 1997, EIGHTEEN PERCENT (18%) FOR 1998, SIXTEEN AND ONE-HALF PERCENT (16 1/2%) FOR 1999, AND FIFTEEN PERCENT (15%) THEREAFTER, which represents the difference between the regular INCOME tax OF THIRTY-FIVE (35%) IN 1997, THIRTY-THREE PERCENT (33%) IN 1998, THIRTY-ONE AND ONE-HALF PERCENT (31 1/2%) IN 1999, AND THIRTY PERCENT (30%) THEREAFTER on corporations and the [tax] FIFTEEN (15%) TAX on dividends as provided in this subparagraph;

(c) *CAPITAL GAINS ON THE SALE, BARTER OR EXCHANGE OF SHARES OF STOCK LISTED AND TRADED THROUGH THE LOCAL STOCK EXCHANGE OR THROUGH INITIAL PUBLIC OFFERING.* - A FINAL TAX IS HEREBY IMPOSED ON THE G. IN PRESUMED TO HAVE BEEN REALIZED BY A NONRESIDENT FOREIGN

CORPORATION ON THE SALE, BARTER OR EXCHANGE OF SHARES OF STOCK AT THE RATE OF ONE-HALF OF ONE PERCENT (1/2 OF 1%) BASED ON THE GROSS SELLING PRICE OR GROSS VALUE IN MONEY OF SHARES OF STOCK SOLD, BARTERED OR EXCHANGED THROUGH THE LOCAL STOCK EXCHANGE, AND AT THE RATES OF ONE PERCENT (1%), TWO PERCENT (2%), AND THREE PERCENT (3%) FOR SHARES OF STOCK SOLD, BARTERED OR EXCHANGED THROUGH INITIAL PUBLIC OFFERING, IN ACCORDANCE WITH SECTION 24 (C)(1) AND (2) HEREOF.

"(d) *Capital [g] Gains from [s] Sales of [s] Stock NOT TRADED IN THE STOCK EXCHANGE.* - A FINAL TAX AT THE RATES PRESCRIBED BELOW IS HEREBY IMPOSED UPON THE NET [C] capital gains realized DURING THE TAXABLE YEAR from THE sale, exchange or OTHER disposition of shares of stock in [any] A domestic corporation [shall be taxed as follows] EXCEPT SHARES SOLD, OR DISPOSED OF THROUGH THE STOCK EXCHANGE:

"[(1) Net capital gain as defined in Section 33(a)(2) realized during each taxable year from the sale or exchange or other disposition of shares of stock not traded through a local stock exchange shall be taxed as follows:]

"Not over P100,000 [10%] 5%;

[Over ON ANY AMOUNT IN EXCESS OF P100,000 [20%] 10%

SECTION 29. Subsection (h) of Section 26, now Section 29, of the Code is amended to read as follows:

"(h) [Club organized and operated exclusively for pleasure, recreation, and other non-profitable purposes, no part of the net income of which inures to the benefit of any private stockholder or member] A NONSTOCK AND NONPROFIT EDUCATIONAL INSTITUTION;"

SECTION 30. The Title of Chapter IV of the Code is hereby deleted and replaced as follows:

"SEC. [27]30. *Taxable [i] Income DEFINED.* - The term "taxable income" means the pertinent items of gross income specified in this code, less the deductions AND/OR PERSONAL AND ADDITIONAL

EXEMPTIONS, if any, authorized [by] FOR such types of income by this Code or other special laws; *Provided*, That for purposes of Section 21(b), 'taxable income' means gross income from all sources without the Philippines less the deductions allowed in Section 29(m)."

SECTION 32. A new Chapter V governing the computation of gross income is hereby inserted after Section 30 to read as follows:

CHAPTER V
COMPUTATION OF GROSS INCOME

SECTION 33. Section 28 of the Code is hereby renumbered as Section 31 and amended to read as follows:

"SEC. [28]31. *Gross [i] Income.* - ([a]A) *General [d] Definition.* - EXCEPT WHEN OTHERWISE PROVIDED IN THIS TITLE, [G] gross income means all income DERIVED from whatever source [derived], including (but not limited to) the following items:

"(1) Compensation for services IN WHATEVER FORM PAID, including BUT NOT LIMITED TO fees, SALARIES, WAGES, commissions, and similar items;

"(2) Gross income derived from THE CONDUCT OF TRADE OR business OR THE EXERCISE OF A PROFESSION;

"(3) Gains derived from dealings in property;

"(4) Interest;

"(5) Rents;

"(6) Royalties;

"(7) Dividends;

"(8) Annuities;

"(9) Prizes and winnings;

"(10) Pensions; and

"(11) Partner's distributive share [of the gross] FROM THE NET income of THE general professional partnership.

"([b]B) *Exclusions from [g] Gross [i] Income.* -

The following items shall not be included in gross income and shall be exempt from taxation under this Title:

"(1) x x x

"(2) x x x

"(3) *Gifts, [b]Bequests, and [d]Devises.* - The value of property acquired by gift, bequest, devise, or descent[; but the]: *PROVIDED, HOWEVER, THAT income from such property AS WELL AS GIFT, BEQUEST, DEVISE, OR DESCENT OF INCOME FROM ANY PROPERTY, IN CASES OF TRANSFERS OF DIVIDED INTEREST, shall be included in gross income.*

"(4) *Interest on Government Securities.* - Interest upon the obligations of the Government of the Republic of the Philippines or any political subdivisions thereof but in the case of such obligations issued after the approval of this code, only to the extent provided in the Act authorizing the issue thereof.]

"[(5)(4) *Compensation for [i]Injuries or [s]Sickness.* - x x x

"[(6)(5) *Income [e]Exempt under [t]Treaty.* - x x x

"[(7)(6) *Retirement [b]Benefits, [p]Pensions, [g]Gratuities, etc.* -

"[(A)a] Retirement benefits received by officials and employees of private firms, whether individual or corporate, in accordance with a reasonable private benefit plan maintained by the employer: *Provided, That the retiring official or employee has been in the service of the same employer for at least 10 years and is not less than 50 years of age at the time of his retirement: Provided, further, That the benefits granted under this subparagraph shall be availed of by an official or employee only once. For purposes of this subsection, the term 'reasonable private benefit plan' means a pension, gratuity, stock bonus or profit-sharing plan maintained by an employer for the benefit of some or all of his officials or employees, wherein contributions are made by such employer for THE officials or employees, or both, for the purpose of distributing to such officials and employees the earnings and principal of the fund thus accumulated, and wherein it is provided in said plan that at no time shall any part of the corpus or income of the fund be used for, or be*

[delivered]DIVERTED to, any purpose other than for the exclusive benefit of the said officials and employees.

"[(B)b] Any amount received by an official or employee or by his heirs from the employer as a consequence of separation of such official or employee from the service of the employer [due to] BECAUSE OF death, sickness or other physical disability or for any cause beyond the control of the said officials or employee.

"[(C)c] x x x

"[(D)d] x x x

"[(E)e] [Payments of benefits made under the Social Security Act of 1954, as amended.] BENEFITS RECEIVED FROM OR ENJOYED UNDER THE SOCIAL SECURITY SYSTEM IN ACCORDANCE WITH THE PROVISIONS OF REPUBLIC ACT NO. 8282; AND

"(F) Benefits received from the GSIS UNDER REPUBLIC ACT NO. 8291 INCLUDING [and the] retirement gratuity received by government officials and employees.

"[(8)(7). *Miscellaneous [i]Items.* -

"[(A)a] *INCOME DERIVED BY FOREIGN GOVERNMENT.* - Income [received] DERIVED FROM [their] investments in the Philippines in loans, stocks, bonds or other domestic securities, or from interest on [their] deposits in banks in the Philippines by [(i)(1) foreign governments, [(ii)(2) financing institutions owned, controlled, or enjoying refinancing from [them,] FOREIGN GOVERNMENTS; and [(iii)(3) international or regional [financing] FINANCIAL institutions established by FOREIGN governments.

"[(B)b] *INCOME DERIVED BY THE GOVERNMENT OR ITS POLITICAL SUBDIVISIONS.* - x x x

"[(C) Income derived as rewards under Section 28] of this Code, as amended.]

"[(D) Interest earned from deposits maintained with a bank under the expanded foreign currency deposit system.]

"[(E)(c) *PRIZES AND AWARDS.* - x x x

(d) *PRIZES AND AWARDS IN SPORTS COMPETITION.* - ALL PRIZES AND AWARDS GRANTED TO ATHLETES IN LOCAL AND INTERNATIONAL SPORTS COMPETITIONS AND TOURNAMENTS WHETHER HELD IN THE PHILIPPINES OR ABROAD AND SANCTIONED BY THEIR NATIONAL SPORTS ASSOCIATIONS.

"[(F)] (e) *13th [m]Month [p]Pay and [o]Other [b]Benefits.* - GROSS BENEFITS RECEIVED BY OFFICIALS AND EMPLOYEES OF PUBLIC AND PRIVATE ENTITIES: *PROVIDED, HOWEVER,* THAT THE TOTAL EXCLUSION UNDER THIS SECTION SHALL NOT EXCEED THIRTY THOUSAND PESOS (P30,000) WHICH SHALL COVER:

[(i)](1) Benefits received by officials and employees of the national and local government pursuant to Republic Act No. 6686;

[(ii)](2) Benefits received by employees pursuant to Presidential Decree No. 851, as amended by Memorandum Order No. 28, dated August 13, 1986;

[(iii)](3) Benefits received by officials and employees not covered by Presidential Decree No. 851, as amended by Memorandum Order No. 28, dated August 13, 1986; and

[(iv)](4) Other benefits such as productivity incentives and Christmas bonus [in an amount not exceeding Twelve thousand pesos (P12,000) which shall be integrated in the 13th month pay solely for purpose of this Act.

Provided, however, That the exclusion shall only apply to the first Thirty thousand pesos (P30,000)].

(f) *GSIS, SSS, MEDICARE AND OTHER CONTRIBUTIONS.* - GSIS, SSS, MEDICARE AND PAG-IBIG CONTRIBUTIONS, AND UNION DUES OF INDIVIDUALS.

SECTION 34. A new Section 32 is hereby inserted after Section 31 to read as follows:

SEC. 32. - *SPECIAL TREATMENT OF FRINGE BENEFIT.* - (A) *IMPOSITION OF TAX.* - A FINAL TAX OF THIRTY PERCENT (30%) IS HEREBY IMPOSED ON THE GROSSED UP MONETARY VALUE OF FRINGE BENEFIT FURNISHED OR

GRANTED TO THE EMPLOYEE (EXCEPT RANK AND FILE EMPLOYEES AS DEFINED HEREIN) BY THE EMPLOYER, WHETHER AN INDIVIDUAL OR A CORPORATION, (UNLESS THE FRINGE BENEFIT IS REQUIRED BY THE NATURE OF, OR NECESSARY TO THE TRADE, BUSINESS OR PROFESSION OF THE EMPLOYER, OR WHEN THE FRINGE BENEFIT IS FOR THE CONVENIENCE OR ADVANTAGE OF THE EMPLOYER). THE TAX HEREIN IMPOSED IS PAYABLE BY THE EMPLOYER WHICH TAX SHALL BE PAID IN THE SAME MANNER AS PROVIDED FOR UNDER SECTION 56(A) OF THIS CODE. THE GROSSED UP MONETARY VALUE OF THE FRINGE BENEFIT SHALL BE DETERMINED BY DIVIDING THE ACTUAL MONETARY VALUE OF THE FRINGE BENEFIT BY SEVENTY PERCENT (70%): *PROVIDED, HOWEVER,* THAT FRINGE BENEFIT FURNISHED TO EMPLOYEES AND TAXABLE UNDER SUBSECTIONS B, C, D AND E OF SECTION 25 SHALL BE TAXED AT THE APPLICABLE RATES IMPOSED THEREAT: *PROVIDED, FURTHER,* THAT THE GROSSED UP VALUE OF THE FRINGE BENEFIT SHALL BE DETERMINED BY DIVIDING THE ACTUAL MONETARY VALUE OF THE FRINGE BENEFIT BY THE DIFFERENCE BETWEEN ONE HUNDRED PERCENT (100%) AND THE APPLICABLE RATES OF INCOME TAX UNDER SUBSECTIONS B, C, D, AND E OF SECTION 25.

(B) *FRINGE BENEFIT DEFINED.* - FOR PURPOSES OF THIS SECTION, THE TERM '*FRINGE BENEFIT*' MEANS ANY GOOD, SERVICE, OR OTHER BENEFIT FURNISHED OR GRANTED IN CASH OR IN KIND BY AN EMPLOYER TO AN INDIVIDUAL EMPLOYEE (EXCEPT RANK AND FILE EMPLOYEES AS DEFINED HEREIN) SUCH AS, BUT NOT LIMITED TO, THE FOLLOWING:

- (1) HOUSING;
- (2) EXPENSE ACCOUNT;
- (3) VEHICLE OF ANY KIND;
- (4) HOUSEHOLD PERSONNEL SUCH AS MAID, DRIVER AND OTHERS;
- (5) INTEREST ON LOAN AT LESS THAN MARKET RATE TO THE EXTENT OF THE

DIFFERENCE BETWEEN THE MARKET RATE AND ACTUAL RATE GRANTED;

(6) MEMBERSHIP FEES, DUES AND OTHER EXPENSES BORNE BY THE EMPLOYER FOR THE EMPLOYEE IN SOCIAL AND ATHLETIC CLUBS OR OTHER SIMILAR ORGANIZATIONS;

(7) EXPENSES FOR FOREIGN TRAVEL;

(8) HOLIDAY AND VACATION EXPENSES;

(9) EDUCATIONAL ASSISTANCE TO THE EMPLOYEE OR HIS DEPENDENTS;

(1) LIFE OR HEALTH INSURANCE AND OTHER NON-LIFE INSURANCE PREMIUMS OR SIMILAR AMOUNTS IN EXCESS OF WHAT THE LAW ALLOWS;

(C) *FRINGE BENEFITS NOT TAXABLE.* - THE FOLLOWING FRINGE BENEFITS ARE NOT TAXABLE:

(1) FRINGE BENEFITS WHICH ARE AUTHORIZED AND EXEMPTED FROM TAX UNDER SPECIAL LAWS;

(2) CONTRIBUTIONS OF THE EMPLOYER FOR THE BENEFIT OF THE EMPLOYEE TO RETIREMENT, INSURANCE AND HOSPITALIZATION BENEFIT PLANS;

(3) BENEFITS GIVEN TO THE RANK AND FILE EMPLOYEES, WHETHER GRANTED UNDER A COLLECTIVE BARGAINING AGREEMENT OR NOT; AND

(4) *DE MINIMIS* BENEFITS AS DEFINED IN THE RULES AND REGULATIONS TO BE PROMULGATED BY THE SECRETARY OF FINANCE, UPON RECOMMENDATION OF THE COMMISSIONER.

THE SECRETARY OF FINANCE IS HEREBY AUTHORIZED TO PROMULGATE, UPON RECOMMENDATION OF THE COMMISSIONER, SUCH RULES AND REGULATIONS AS ARE NECESSARY TO CARRY OUT EFFICIENTLY AND FAIRLY THE PROVISIONS OF THIS SECTION, TAKING INTO ACCOUNT THE PECULIAR NATURE AND SPECIAL NEED OF THE TRADE, BUSINESS OR PROFESSION OF THE EMPLOYER.

SECTION 35. A new Chapter VI, allowing the deductibility of certain expenses from gross income, is hereby inserted in the Code and shall read as follows:

CHAPTER VI
ALLOWABLE DEDUCTIONS

SECTION 36. Section 29 of the Code is hereby renumbered as Section 33 and amended to read as follows:

"SEC. [29]33. *Deductions from [g]Gross [i]Income.* - In computing taxable income subject to income tax under Sections [21(1)]24[(a)]; 25(A); 26; [24]27([a]A0, ([b]B) and ([c]C); and [25] 28([a]A)(1), there shall be allowed [as]THE FOLLOWING deductions [the items specified in paragraphs (a) to (i) of this Section: *Provided, however,* That, in computing taxable]FROM GROSS income: [subject to tax under Section 21(f) in the case of individuals engaged in business or practice of profession, only the following direct costs shall be allowed as deductions:]

[(a) Raw materials, supplies and direct labor;

(b) Salaries of employees directly engaged in activities in the course of or pursuant to the business or practice of their profession;

(c) Telecommunications, electricity, fuel, light and water;

(d) Business rental;

(e) Depreciation;

(f) Contributions made to the Government and accredited relief organizations for the rehabilitation of calamity-stricken areas declared by the President; and

(g) Interest paid or accrued within a taxable year on loans contracted from accredited financial institutions which must be proven to have been incurred in connection with the conduct of a taxpayer's profession, trade or business.

"For individuals whose cost of goods sold and direct costs are difficult to determine, including professionals as herein defined, a maximum of forty percent (40%) of their gross receipts shall be allowed as deductions to answer for business or professional expenses as the case may be.

"In the case of an individual, the optional standard deduction under paragraph (k) shall be allowed in lieu of itemized deductions under said paragraphs (a) to (i). In addition, the appropriate personal and additional exemptions allowed under paragraph (l) may be claimed by an individual whose income is subject to tax under Section 21(a): *Provided*, That no deductions other than the deduction provided in paragraph (l) may be allowed from compensation income arising from personal services rendered under an employer-employee relationship.]

"[(a)] (A) *Expenses.* -

"(l) *ORDINARY AND NECESSARY TRADE, Business OR PROFESSIONAL [e]Expenses.* -

"([A]a) *In [g]General.* - THERE SHALL BE ALLOWED AS DEDUCTION FROM GROSS INCOME [A]all THE ordinary and necessary expenses paid or incurred during the taxable year in carrying on [any trade or business, including a reasonable allowance for salaries or other compensation for personal services actually rendered; travelling expenses while away from home in the pursuit of a trade, profession or business; rentals or other payments required to be made as a condition to the continued use or possession, for the purpose of the trade, profession or business, of property to which the taxpayer has not taken or is not taking title or in which he has no equity.] OR WHICH ARE DIRECTLY ATTRIBUTABLE TO, THE DEVELOPMENT, MANAGEMENT, OPERATION AND/OR CONDUCT OF THE TRADE, BUSINESS OR EXERCISE OF A PROFESSION, INCLUDING:

(1) A REASONABLE ALLOWANCE FOR SALARIES, WAGES, AND OTHER FORMS OF COMPENSATION FOR PERSONAL SERVICES ACTUALLY RENDERED, INCLUDING THE GROSSED UP MONETARY VALUE OF FRINGE BENEFIT FURNISHED OR GRANTED BY THE EMPLOYER TO THE EMPLOYEE: *PROVIDED*, THAT THE FINAL TAX IMPOSED UNDER SECTION 32 HEREOF HAS BEEN PAID;

(2) A REASONABLE ALLOWANCE FOR TRAVEL EXPENSES, HERE AND ABROAD, WHILE AWAY FROM HOME IN THE PURSUIT OF TRADE, BUSINESS OR PROFESSION;

(3) A REASONABLE ALLOWANCE FOR RENTALS AND/OR OTHER PAYMENTS WHICH ARE REQUIRED AS A CONDITION FOR THE

CONTINUED USE OR POSSESSION, FOR PURPOSES OF THE TRADE, BUSINESS OR PROFESSION, OF PROPERTY TO WHICH THE TAXPAYER HAS NOT TAKEN OR IS NOT TAKING TITLE OR IN WHICH HE HAS NO EQUITY OTHER THAN THAT OF A LESSEE, USER OR POSSESSOR;

(4) A REASONABLE ALLOWANCE FOR ENTERTAINMENT, AMUSEMENT AND RECREATION EXPENSES WHICH ARE DIRECTLY CONNECTED TO THE DEVELOPMENT, MANAGEMENT AND OPERATION OF THE TRADE, BUSINESS OR PROFESSION OF THE TAXPAYER, OR WHICH ARE DIRECTLY RELATED TO OR IN FURTHERANCE OF THE CONDUCT OF HIS TRADE, BUSINESS OR EXERCISE OF A PROFESSION, SUBJECT TO SUCH LIMITATIONS AS THE SECRETARY OF FINANCE MAY BY RULES AND REGULATIONS PRESCRIBE, UPON RECOMMENDATION OF THE COMMISSIONER, TAKING INTO ACCOUNT THE NEEDS AS WELL AS THE SPECIAL CIRCUMSTANCES, NATURE AND CHARACTER OF THE TRADE, BUSINESS, OR PROFESSION OF THE TAXPAYER: *PROVIDED*, THAT ANY EXPENSE INCURRED FOR ENTERTAINMENT, AMUSEMENT OR RECREATION WHICH IS CONTRARY TO LAW, MORALS, PUBLIC POLICY OR PUBLIC ORDER SHALL IN NO CASE BE ALLOWED AS A DEDUCTION.

(B) NO DEDUCTION FROM GROSS INCOME SHALL BE ALLOWED UNDER SUBSECTION (A) HEREOF UNLESS THE TAXPAYER SHALL SUBSTANTIATE WITH SUFFICIENT EVIDENCE SUCH AS OFFICIAL RECEIPTS OR OTHER ADEQUATE RECORDS (1) THE AMOUNT OF THE EXPENSE BEING DEDUCTED, AND (2) THE DIRECT CONNECTION OR RELATION OF THE EXPENSE BEING DEDUCTED TO THE DEVELOPMENT, MANAGEMENT, OPERATION AND/OR CONDUCT OF THE TRADE, BUSINESS OR PROFESSION OF THE TAXPAYER.

(C) *BRIBES, KICKBACKS AND OTHER SIMILAR PAYMENTS.* - NO DEDUCTION FROM GROSS INCOME SHALL BE ALLOWED UNDER SUBSECTION (A) HEREOF FOR ANY PAYMENT MADE, DIRECTLY OR INDIRECTLY, TO AN OFFICIAL OR EMPLOYEE OF THE NATIONAL GOVERNMENT, OR TO AN OFFICIAL OR

EMPLOYEE OF ANY LOCAL GOVERNMENT UNIT, OR TO AN OFFICIAL OR EMPLOYEE OF A GOVERNMENT-OWNED OR CONTROLLED CORPORATION, OR TO AN OFFICIAL OR EMPLOYEE OR REPRESENTATIVE OF A FOREIGN GOVERNMENT, IF THE PAYMENT CONSTITUTES A BRIBE OR KICKBACK.

"(2) *Expenses [a]Allowable to [p]Private [e]Educational [i]Institutions.* - In addition to the expenses allowable as deductions under [subparagraph (a)(1)(A) above] THIS CHAPTER, a private educational institution, referred to under Section [24(b)]27(B) of this Code, may at its option elect either (A) to deduct expenditures otherwise considered as capital outlays of depreciable assets incurred during the taxable year for the expansion of school facilities or (B) to deduct allowance for depreciation thereof under paragraph ([f])F of this Section.

"[(b)](B) *Interest.* -

"(1) *In [g]General.* - The amount of interest paid or [accrued] INCURRED within a taxable year on indebtedness in connection with the taxpayer's profession, trade or business[, except on indebtedness incurred or continued to purchase or carry obligation the interest upon which is exempt from taxation as income under this Title.] SHALL BE ALLOWED AS DEDUCTION FROM GROSS INCOME: *PROVIDED, HOWEVER, THAT THE TAXPAYER'S OTHERWISE ALLOWABLE DEDUCTION FOR INTEREST EXPENSE SHALL BE REDUCED BY AN AMOUNT EQUAL TO THE FOLLOWING PERCENTAGES OF THE INTEREST INCOME SUBJECTED TO FINAL TAX:*

(A) 39% BEGINNING JANUARY 1, 1998;

(B) 37% BEGINNING JANUARY 1, 1999;

(C) 33% BEGINNING JANUARY 1, 2000.

"(2) *EXCEPTIONS.* - No deduction shall be allowed in respect of interest under the succeeding [sub-paragraphs:]SUBSECTIONS:

(A) ON INDEBTEDNESS INCURRED TO PURCHASE, OR CONTINUED TO CARRY, AN OBLIGATION THE INTEREST ON WHICH IS EXEMPT FROM TAXATION AS INCOME UNDER THIS TITLE;

"[(I)](b) If within the taxable year an individual taxpayer reporting income on the cash basis incurs an indebtedness on which an interest is paid in advance through discount or otherwise: *Provided,* That such interest shall be allowed as a deduction in the year the indebtedness is paid: [and] *Provided, further,* That if the indebtedness is payable in periodic amortizations, the amount of interest which corresponds to the amount of the principal amortized or paid during the year shall be allowed as deduction in such taxable year[.];

"[(ii)](c) If both the taxpayer and the person to whom the payment has been made or is to be made are persons specified under Section [30(b)]35(B)[.]; OR

"[(iii)](d) If the indebtedness is incurred to finance petroleum exploration.

(3) AT THE OPTION OF THE TAXPAYER, INTEREST INCURRED TO ACQUIRE PROPERTY USED IN TRADE, BUSINESS OR EXERCISE OF A PROFESSION MAY BE ALLOWED AS A DEDUCTION OR TREATED AS A CAPITAL EXPENDITURE.

(4) *ADDITIONAL ALLOWANCE FOR INTEREST EXPENSE ON LOANS INCURRED TO ACQUIRE OR PURCHASE THE FIRST FAMILY HOME.* - THE AMOUNT OF INTEREST PAID OR INCURRED DURING THE TAXABLE YEAR BY AN INDIVIDUAL TAXPAYER ON LOANS CONTRACTED WITH AN ACCREDITED FINANCIAL INSTITUTION TO ACQUIRE OR PURCHASE THE FIRST FAMILY HOME, SHALL BE DEDUCTIBLE FROM HIS GROSS INCOME WHETHER DERIVED FROM EMPLOYMENT OR FROM ENGAGING IN TRADE, BUSINESS OR THE EXERCISE OF PROFESSION: *PROVIDED,* THAT FOR PURPOSES OF THIS DEDUCTION A CERTIFICATION ISSUED BY THE FINANCIAL INSTITUTION SHALL BE REQUIRED TO SUBSTANTIATE THE SAID DEDUCTION.

"[(c)](C) *Taxes.* -

"(1) *In [g]General.* - Taxes paid on [accrued] INCURRED within the taxable year in connection with the taxpayer's profession, trade or business, SHALL BE ALLOWED AS DEDUCTION, except:

"(a) The income tax provided for under this Title;

"(b) Income[, war profits, and excess profits] taxes

imposed by authority of any foreign country; but this deduction shall be allowed in the case of a taxpayer who does not signify in his return his desire to have to any extent the benefits of paragraph (3) of this subsection (relating to credits for taxes of foreign countries);

"(c) Estate and donor's taxes; AND

"(d) Taxes assessed against local benefits of a kind tending to increase the value of the property assessed[;and];

["(E) Electric energy consumption tax imposed by Batas Pambansa Blg. 36]

PROVIDED, THAT TAXES ALLOWED UNDER THIS SUBSECTION, WHEN REFUNDED OR CREDITED, SHALL BE INCLUDED AS PART OF GROSS INCOME IN THE YEAR OF RECEIPT TO THE EXTENT OF THE INCOME TAX BENEFIT OF SAID DEDUCTION.

"(2) *Limitations on [d] Deductions.* -

"[(A)] In the case of a nonresident alien individual and a foreign corporation, the deductions for taxes provided in paragraph (1) of this subsection [(c)](C) shall be allowed only if and to the extent that they are connected with income from sources within the Philippines [;and].

["(B) In the case of a citizen of a foreign country residing in the Philippines whose income from sources within such foreign country is not taxable under this Title, only that portion of the taxes paid to such foreign country which corresponds to his taxable income under this Title shall be allowed as deduction.]

"(3) *Credit [a] Against [t] Tax for [t] Taxes of [f] Foreign [c] Countries.* - If the taxpayer signifies in his return his desire to have the benefits of this paragraph, the tax imposed by this Title shall be credited with:

"[(A)a] *Citizen and [d] Domestic [c] Corporation.* - In the case of a citizen of the Philippines and of a domestic corporation, the amount of income[, war profits, and excess profits] taxes paid or accrued during the taxable year to any foreign country; AND

["(B) *Alien resident of the Philippines.* - In the case of an alien resident of the Philippines, the amount of any such taxes paid or accrued during the taxable year to

any foreign country, if the foreign country of which such alien resident is a citizen or subject, in imposing such taxes, allows a similar credit to citizens of the Philippines residing in such country;and]

"[(C)](b) *Partnerships and [e] Estates.* - In the case of any such individual who is a member of a general professional partnership or a beneficiary of an estate or trust, his proportionate share of such taxes of the general professional partnership or the estate or trust paid or accrued during the taxable year to a foreign country, if his distributive share of the income of such partnership or trust is reported for taxation under this Title.

"[Nonresident] AN alien individual[s] and A foreign corporation[s] shall not be allowed the credits against the tax for the taxes of foreign countries allowed under this paragraph.

"(4) x x x

"(5) x x x

"(6) *Year in [w] Which [c] Credit [t] Taken.* - The credits provided for in [paragraph] SUBSECTION (C)(3) OF THIS SECTION may, at the option of the taxpayer and irrespective of the method of accounting employed in keeping his books, be taken in the year in which the taxes of the foreign country accrued, subject, however, to the conditions prescribed in [paragraph] SUBSECTION (C)(5) OF THIS SECTION. If the taxpayer elects to take such credits in the year in which the taxes of the foreign country accrued, the credits for all subsequent years shall be taken upon the same basis, and no portion of any such taxes shall be allowed as a deduction in the same or any succeeding year.

"(7) *Proof of [c] Credits.* - The credits provided in [paragraph] SUBSECTION (C)(3) shall be allowed only if the taxpayer establishes to the satisfaction of the Commissioner THE FOLLOWING:

"[(A)a] x x x

"[(B)b] x x x

"[(C)c] x x x

"(8) *Taxes of foreign subsidiary.* - For purposes of this subsection, a domestic corporation, which owns a majority of the voting stock of a foreign corporation from which it receives dividends in any taxable year shall be

deemed to have paid the same proportion of any income, war profits, or excess profits taxes paid by such foreign corporation to any foreign country, upon or with respect to the accumulated profits of such foreign corporation from which such dividends were paid which the amount of such dividend bears to the amount of such accumulated profits: *Provided*, That the amount of tax deemed to have been paid under this subsection shall in no case exceed the same proportion of the tax against which credit is taken which the amount of such dividends bears to the among of the entire taxable income of the domestic corporation in which such dividends are included. The term "*accumulated profits*" when used in this subsection in reference to a foreign corporation, means the amount of its gains, profits, or income in excess of the income, war profits, and excess profits taxes imposed upon or with respect to such profits or income; and the Commissioner shall have full power to determine from the accumulated profits of what year or years such dividends were paid, treating dividends paid in the first 60 days of any year as having been paid from the accumulated profits of the preceding year or years (unless to his satisfaction shown otherwise), and in other respects treating dividends as having been paid from the most recently accumulated gains, profits, or earnings. In the case of a foreign corporation, the income, war profits, and excess profits taxes of which are determined on the basis of an accounting period of less than one year, the word 'year' as used in this subsection shall be construed to mean such accounting period.]

["(9) *Taxes of shareholder paid by corporation.* - The deduction for taxes allowed by paragraph (c) shall be allowed to a corporation in the case of taxes imposed upon a shareholder of the corporation upon his interest as shareholder which are paid by the corporation without reimbursement from the shareholder, but in such cases no deduction shall be allowed the shareholder for the amount of such taxes.]

"[(d)D]. *Losses.* -

"(1) [*By individuals*] *IN GENERAL.* - [In the case of individual, I]Losses actually sustained during the taxable year and not compensated for by insurance or [otherwise] *OTHER FORMS OF INDEMNITY SHALL BE ALLOWED AS DEDUCTIONS:*

"([A]A) x x x

["(B) If incurred in any transaction entered into for profit, though not connected with the trade or business;]

"[(C)](b) Of property connected with the trade, [or] business OR PROFESSION, if the loss arises from fires, storms, shipwreck, or other casualties, or from robbery, theft, or embezzlement.

"The Secretary of Finance, upon recommendation of the Commissioner [of Internal Revenue], is hereby authorized to promulgate rules and regulations prescribing, among other things, the time and manner by which the taxpayer shall submit a declaration of loss sustained from casualty or from robbery, theft or embezzlement during the taxable year: *Provided*, however, That the time limit to be so prescribed in the regulations shall not be less than THIRTY (30) days nor more than NINETY (90) days from the date of [the occurrence] *DISCOVERY* of the casualty or robbery, theft, or embezzlement giving rise to the loss.

"[(D)](c) No loss shall be allowed as a deduction under this [paragraph]SUBSECTION if at the time of the filing of the return, such loss has been claimed as a deduction for estate tax purposes in the estate tax return.

["(2) *By corporation.* - In the case of a corporation, all losses actually sustained and charged off within the taxable year and not compensated for by insurance or otherwise.]

[(3)](2) *Proof of [I]Loss.* - In the case of a nonresident alien individual or foreign corporation, the losses deductible [are]SHALL BE those actually sustained during the year incurred in business, [or] trade OR EXERCISE OF A PROFESSION conducted within the Philippines, [and losses actually sustained during the year in transactions entered into for profit in the Philippines although not connected with their business or trade,] when such losses are not compensated for by insurance or [otherwise] *OTHER FORMS OF INDEMNITY.* The Secretary of Finance, upon recommendation of the Commissioner [of Internal Revenue], is hereby authorized to promulgate rules and regulations prescribing, among other things, the time and manner by which the taxpayer shall submit a declaration of loss sustained from casualty or from robbery, theft, or embezzlement during the taxable year: *Provided*, That the time to be so prescribed in the regulations shall not be less than THIRTY (30) days nor more than NINETY (90) days from the date of [the occurrence] *DISCOVERY* of the casualty or robbery, theft, or embezzlement giving rise to the loss[.]; AND

(3) *NET OPERATING LOSS CARRY-OVER.* -

THE AGGREGATE NET OPERATING LOSS OF THE BUSINESS FOR THE THREE (3) CONSECUTIVE TAXABLE YEARS IMMEDIATELY PRECEDING THE TAXABLE YEAR, WHICH HAD NOT BEEN PREVIOUSLY OFFSET AS DEDUCTION FROM GROSS INCOME: *PROVIDED, HOWEVER,* THAT ANY NET LOSS INCURRED IN A TAXABLE YEAR DURING WHICH THE TAXPAYER WAS EXEMPT FROM INCOME TAX SHALL NOT BE ALLOWED AS A DEDUCTION UNDER THIS SUBSECTION: *PROVIDED, FURTHER,* THAT A NET OPERATING LOSS CARRY-OVER SHALL BE ALLOWED ONLY IF THERE HAS BEEN NO SUBSTANTIAL CHANGE IN THE OWNERSHIP OF THE BUSINESS IN THAT -

(I) NOT LESS THAN SEVENTY-FIVE PERCENT (75%) IN NOMINAL VALUE OF OUTSTANDING ISSUED SHARES, IF THE BUSINESS IS IN THE NAME OF A CORPORATION, IS HELD BY OR ON BEHALF OF THE SAME PERSONS; OR

(II) NOT LESS THAN SEVENTY-FIVE PERCENT (75%) OF THE PAID UP CAPITAL OF THE CORPORATION, IF THE BUSINESS IS IN THE NAME OF A CORPORATION, IS HELD BY OR ON BEHALF OF THE SAME PERSONS.

FOR PURPOSES OF THIS SECTION, THE TERM SHALL MEAN THE EXCESS OF ALLOWABLE DEDUCTION OVER GROSS INCOME OF THE BUSINESS IN A TAXABLE YEAR:

PROVIDED, THAT FOR MINES OTHER THAN OIL AND GAS WELLS, A NET OPERATING LOSS WITHOUT THE BENEFIT OF INCENTIVES PROVIDED FOR UNDER EXECUTIVE ORDER NO. 226, AS AMENDED, OTHERWISE KNOWN AS THE OMNIBUS INVESTMENTS CODE OF 1987, INCURRED IN ANY OF THE FIRST TEN (10) YEARS OF OPERATION MAY BE CARRIED OVER AS A DEDUCTION FROM TAXABLE INCOME FOR THE NEXT FIVE (5) YEARS IMMEDIATELY FOLLOWING THE YEAR OF SUCH LOSS. THE ENTIRE AMOUNT OF THE LOSS SHALL BE CARRIED OVER TO THE FIRST OF THE FIVE (5) TAXABLE YEARS FOLLOWING THE LOSS, AND ANY PORTION OF SUCH LOSS WHICH EXCEEDS THE TAXABLE INCOME OF SUCH FIRST YEAR SHALL BE DEDUCTED IN LIKE MANNER FROM THE TAXABLE INCOME OF THE NEXT

REMAINING FOUR (4) YEARS.

"(4) x x x

"(5) x x x

"(6) x x x

"(7) x x x

"([e]E) *Bad [d]Debts.* -

"(1) *In [g]General.* - Debts due to the taxpayer actually ascertained to be worthless and charged off within the taxable year except those not connected with profession, trade or business and those sustained in a transaction entered into between parties mentioned under Section [30]35([b]B) of this Code: *PROVIDED,* THAT RECOVERY OF BAD DEBTS PREVIOUSLY ALLOWED AS DEDUCTION IN PRECEDING YEARS SHALL BE INCLUDED AS PART OF THE GROSS INCOME IN THE YEAR OF RECOVERY TO THE EXTENT OF THE INCOME TAX BENEFIT OF SAID DEDUCTION.

"(2) x x x

"([f]F) *Depreciation.* -

"(1) x x x

"(2) x x x

"(3) *Agreement as to [u]Useful [l]Life on which [d]Depreciation [r]Rate is [b]Based.* - Where under RULES AND regulations prescribed by the Secretary of Finance, UPON THE RECOMMENDATION OF THE COMMISSIONER, the taxpayer and the Commissioner [of Internal Revenue] have entered into an agreement in writing specifically dealing with the useful life and rate of depreciation of any property, the rate so agreed upon shall be binding on both the taxpayer and the [Secretary of Finance] NATIONAL GOVERNMENT in the absence of facts and circumstances not taken into consideration [in the] DURING the adoption of such agreement. The responsibility of establishing the existence of such facts and circumstances shall rest with the party initiating the modification. Any change in the agreed rate and useful life OF THE DEPRECIABLE PROPERTY AS specified in the agreement shall not be effective for taxable years [before] PRIOR TO the taxable year in which notice in

writing by certified mail is served by the party INITIATING SUCH CHANGE to the OTHER PARTY TO THE agreement [initiating such change]:

PROVIDED, HOWEVER, THAT WHERE THE TAXPAYER HAS ADOPTED SUCH USEFUL LIFE AND DEPRECIATION RATE FOR ANY DEPRECIABLE ASSET AND CLAIMED THE DEPRECIATION EXPENSES AS DEDUCTION FROM HIS GROSS INCOME, WITHOUT ANY WRITTEN OBJECTION ON THE PART OF THE COMMISSIONER OR HIS DULY AUTHORIZED REPRESENTATIVE, THE AFORESAID USEFUL LIFE AND DEPRECIATION RATE SO ADOPTED BY THE TAXPAYER FOR THE AFORESAID DEPRECIABLE ASSET SHALL BE CONSIDERED BINDING FOR PURPOSES OF THIS SUBSECTION.

"(4) Depreciation of [p]Properties [u]Used in [p]Petroleum [o]Operations. - An allowance for depreciation in respect [to] OF all properties directly related to production of petroleum initially placed in service in a taxable year under the straight-line or [double-] declining balance method of depreciation at the option of the service contractor.

"However, if the service contractor initially elects the [double-]declining BALANCE method, it may at any subsequent date, shift to the straight-line method.

"The useful life of properties used in or related to production of petroleum shall be TEN (10) years or such shorter life as may be permitted by the Commissioner [of Internal Revenue].

"x x x

(5) DEPRECIATION OF PROPERTIES USED IN MINING OPERATIONS. - AN ALLOWANCE FOR DEPRECIATION IN RESPECT OF ALL PROPERTIES USED IN MINING OPERATIONS OTHER THAN PETROLEUM OPERATIONS, SHALL BE COMPUTED AS FOLLOWS:

(A) AT THE NORMAL RATE OF DEPRECIATION IF THE EXPECTED LIFE IS TEN (10) YEARS OR LESS; OR

(B) DEPRECIATED OVER ANY NUMBER OF YEARS BETWEEN FIVE (5) YEARS AND THE EXPECTED LIFE IF THE LATTER IS MORE THAN TEN (10) YEARS, AND THE DEPRECIATION

THEREON ALLOWED AS DEDUCTION FROM TAXABLE INCOME: PROVIDED, THAT THE CONTRACTOR NOTIFIES THE COMMISSIONER AT THE BEGINNING OF THE DEPRECIATION PERIOD WHICH DEPRECIATION RATE ALLOWED BY THIS SECTION WILL BE USED.

"[5](6) Depreciation [d]Deductible by [n]Nonresident [a]Aliens or [f]Foreign [c]Corporations. - In the case of a nonresident alien individual or foreign corporation, a reasonable allowance for the deterioration property arising out of its use or employment or its non-use in the business, [or]trade OR PROFESSION shall be permitted only when such property is located in the Philippines.

"([g]G). Depletion of [o]Oil and [g]Gas [w]Wells and [m]Mines.

"(1) In [g]General. - In the case of oil and gas wells [and] OR mines, a reasonable allowance for depletion or amortization computed in accordance with the cost depletion method shall be granted under rules and regulations to be prescribed by the Secretary of Finance, UPON RECOMMENDATION OF THE COMMISSIONER: Provided, That when the allowance FOR DEPLETION shall equal the capital invested no further allowance shall be granted: Provided, further, That after production in commercial quantities has commenced, certain intangible exploration and development drilling costs (A) shall be deductible in the year incurred if such expenditures are incurred for non-producing wells AND/OR MINES, or (B) shall be deductible in full in the year paid or incurred or, at the election of the taxpayer, may be capitalized and amortized if such expenditures incurred are not producing wells AND/OR MINES in the same contract area.

"x x x

"x x x

"(2) Election to [d]Deduct [e]Exploration and [d]Development [e]Expenditures. - In computing taxable income FROM MINING OPERATIONS, the taxpayer may, at his option, deduct exploration and development expenditures accumulated as cost or adjusted basis for cost depletion [as of January 1, 1978, as well] as OF DATE OF PROSPECTING AS WELL AS exploration and development expenditures paid or incurred during the taxable year: Provided, That the

total amount deductible for exploration and development expenditures shall not exceed twenty-five percent (25%) of the [taxable] NET income from mining operations computed without the benefit of any tax incentives under existing laws. [This subparagraph shall not apply to expenditures for the acquisition or improvement of property of a character which is subject to the allowance for depreciation under Section 29(f)(1) of this Code but the allowance for depreciation thereon shall be treated as expenditure]. THE ACTUAL EXPLORATION AND DEVELOPMENT EXPENDITURES MINUS TWENTY-FIVE PER CENTUM (25%) OF THE NET INCOME FROM MINING SHALL BE CARRIED FORWARD TO THE SUCCEEDING YEARS UNTIL FULLY DEDUCTED.

"The election by the taxpayer to deduct the exploration and development expenditures is irrevocable and shall be binding in succeeding taxable years.

NET INCOME FROM MINING OPERATIONS AS USED IN THIS SUBSECTION SHALL MEAN GROSS INCOME FROM OPERATIONS LESS ALLOWABLE DEDUCTIONS WHICH ARE NECESSARY OR RELATED TO MINING OPERATIONS. ALLOWABLE DEDUCTIONS SHALL INCLUDE MINING, MILLING AND MARKETING EXPENSES, DEPRECIATION OF PROPERTIES DIRECTLY USED IN THE MINING OPERATIONS. THIS PARAGRAPH SHALL NOT APPLY TO EXPENDITURES FOR THE ACQUISITION OR IMPROVEMENT OF PROPERTY OF A CHARACTER WHICH IS SUBJECT TO THE ALLOWANCE FOR DEPRECIATION.

"In no case shall this paragraph apply with respect to amounts paid or incurred for the exploration and development of oil and gas.

"The term '*exploration expenditures*' means expenditures paid or incurred for the purpose of ascertaining the existence, location, extent, or quality of any deposit of ore or other mineral, and paid or incurred before the beginning of the development stage of the mine or deposit.

"The term '*development expenditures*' means expenditures paid or incurred during the development stage of the mine or other natural deposits. The development stage of a mine or other natural deposit

shall begin at the time when deposits of ore or other minerals are shown to exist in sufficient commercial quantity and quality and shall end upon commencement of actual commercial extraction.

"(3) *Depletion of [o]Oil and [g]Gas [w]Wells and [m]Mines [d]Deductible by a [n]Nonresident [a]Alien [i]Individual or [f]Foreign [c]Corporation.* - In the case of a nonresident alien individual or a foreign corporation, allowance for depletion of oil and gas wells or mines under [sub]paragraph (1) OF THIS SUBSECTION shall be authorized only in respect to oil and gas wells or mines located within the Philippines.

"([h]H). *Charitable and [o]Other [c]Contributions.* -

"(1) *In [g]General.* - Contributions or gifts actually paid or made within the taxable year to, or for the use of the Government of the Philippines or any of its agencies or any political subdivision thereof [for] exclusively FOR public purposes, or to domestic corporations or associations organized and operated exclusively for religious, charitable, scientific, youth and sports development, cultural or educational purposes or for the rehabilitation of veterans, or to social welfare institutions, OR TO NON-GOVERNMENT ORGANIZATIONS, DULY ACCREDITED BY AN APPROPRIATE GOVERNMENT AGENCY IN ACCORDANCE WITH RULES AND REGULATIONS PROMULGATED BY THE SECRETARY OF FINANCE, UPON RECOMMENDATION OF THE COMMISSIONER, no part of the net income of which inures to the benefit of any private stockholder or individual in an amount not in excess of [(6%)] TEN PERCENT (10%) in the case of an individual, and [3%] FIVE PERCENT (5%) in the case of a corporation, of the taxpayer's taxable income derived from TRADE, business OR PROFESSION as computed without the benefit of this and the following subparagraphs.

"(2) *Contributions [d]Deductible in [f]Full.* - Notwithstanding the provisions of the preceding subparagraph, donations to the following institutions or entities shall be deductible in full:

"([A]a) *Donations to the Government.* - Donations to the Government of the Philippines or to any of its agencies or political subdivisions including fully-owned government corporations exclusively to finance, to provide for, or to be used in undertaking priority activities in education, health, youth and sports development,

human settlements, science and culture, and in economic development according to a national priority plan [to be] determined by the NATIONAL ECONOMIC AND DEVELOPMENT AUTHORITY (NEDA), in consultation with appropriate government agencies, including its regional development councils and private philanthropic persons and institutions: *Provided*, That any donation which is made to the Government or to any of its agencies or political subdivisions not in accordance with the said annual priority plan shall be subject to the limitations prescribed in [sub]paragraph (1) of this [Section]SUBSECTION;

"([B]b) x x x

"([C]c) *Donations to [certain private foundations] ACCREDITED NON-GOVERNMENT ORGANIZATIONS.* - The term ['private foundation'] 'NON-GOVERNMENT ORGANIZATION' means a nonprofit domestic corporation:

"(i) x x x

"(ii) x x x

"(iii) x x x

"(iv) x x x

"Subject to such terms and conditions as may be prescribed by the Secretary of Finance, the term '*utilization*' means:

"([i]I) Any amount in cash or in kind (including administrative expenses) paid or utilized to accomplish one or more purposes for which the [private foundation] ACCREDITED NON-GOVERNMENT ORGANIZATION was created or organized.

"([ii]II) Any amount paid to acquire an asset used (or held for use) directly in carrying out one or more purposes for which the [foundation] ACCREDITED NON-GOVERNMENT ORGANIZATION was created or organized.

"An amount set aside for a specific project which comes within one or more purposes of the [foundation] ACCREDITED NON-GOVERNMENT ORGANIZATION was created or organized.

"An amount set aside for a specific project which comes within one or more purposes of the [foundation]

ACCREDITED NON-GOVERNMENT ORGANIZATION may be treated as a utilization, but only if at the time such amount is set aside, the [private foundation] ACCREDITED NON-GOVERNMENT ORGANIZATION [establishes] HAS ESTABLISHED to the satisfaction of the Commissioner [of Internal Revenue] that the amount will be paid for the specific project within a period to be prescribed in RULES AND regulations to be promulgated by the Secretary of Finance UPON RECOMMENDATION OF THE COMMISSIONER, but not to exceed FIVE (5) years, and the project is one which can be better accomplished by setting aside such amount than by immediate payment of funds.

"(3) *Valuation.* - [Properties other than cash donated shall be valued in accordance with the rules and regulations prescribed by the Secretary of Finance in consultation with appropriate government agencies.] THE AMOUNT OF ANY CHARITABLE CONTRIBUTION OF PROPERTY OTHER THAN MONEY SHALL BE VALUED BASED ON THE HISTORICAL OR ACQUISITION COST OF SAID PROPERTY.

"(4) *Proof of [d] Deductions.* - Contributions or gifts shall be allowable as deduction only if verified under the RULES AND regulations prescribed by the Secretary of Finance, UPON RECOMMENDATION OF THE COMMISSIONER.

(I) *RESEARCH AND DEVELOPMENT.* -

(1) *IN GENERAL.* - A TAXPAYER MAY TREAT RESEARCH OR DEVELOPMENT EXPENDITURES WHICH ARE PAID OR INCURRED BY HIM DURING THE TAXABLE YEAR IN CONNECTION WITH HIS TRADE, BUSINESS OR PROFESSION AS ORDINARY AND NECESSARY EXPENSES WHICH ARE NOT CHARGEABLE TO CAPITAL ACCOUNT. THE EXPENDITURES SO TREATED SHALL BE ALLOWED AS DEDUCTION DURING THE TAXABLE YEAR WHEN PAID OR INCURRED.

(2) *AMORTIZATION OF CERTAIN RESEARCH AND DEVELOPMENT EXPENDITURES.* - AT THE ELECTION OF THE TAXPAYER AND IN ACCORDANCE WITH THE RULES AND REGULATIONS TO BE PRESCRIBED BY THE SECRETARY OF FINANCE, UPON RECOMMENDATION OF THE COMMISSIONER, THE FOLLOWING RESEARCH AND

DEVELOPMENT EXPENDITURES MAY BE TREATED AS DEFERRED EXPENSES:

(A) PAID OR INCURRED BY THE TAXPAYER IN CONNECTION WITH HIS TRADE, BUSINESS OR PROFESSION;

(B) NOT TREATED AS EXPENSES UNDER PARAGRAPH (1) HEREOF; AND

(C) CHARGEABLE TO CAPITAL ACCOUNT BUT NOT CHARGEABLE TO PROPERTY OF A CHARACTER WHICH IS SUBJECT TO DEPRECIATION OR DEPLETION.

IN COMPUTING TAXABLE INCOME, SUCH DEFERRED EXPENSES SHALL BE ALLOWED AS DEDUCTION RATABLY DISTRIBUTED OVER A PERIOD OF NOT LESS THAN SIXTY (60) MONTHS AS MAY BE ELECTED BY THE TAXPAYER (BEGINNING WITH THE MONTH IN WHICH THE TAXPAYER FIRST REALIZES BENEFITS FROM SUCH EXPENDITURES).

THE ELECTION PROVIDED BY PARAGRAPH (2) HEREOF MAY BE MADE FOR ANY TAXABLE YEAR BEGINNING AFTER THE EFFECTIVITY OF THIS ACT, BUT ONLY IF MADE NOT LATER THAN THE TIME PRESCRIBED BY LAW FOR FILING THE RETURN FOR SUCH TAXABLE YEAR. THE METHOD SO ELECTED, AND THE PERIOD SELECTED BY THE TAXPAYER, SHALL BE ADHERED TO IN COMPUTING TAXABLE INCOME FOR THE TAXABLE YEAR FOR WHICH THE ELECTION IS MADE AND FOR ALL SUBSEQUENT TAXABLE YEARS UNLESS, WITH THE APPROVAL OF THE COMMISSIONER, A CHANGE TO A DIFFERENT METHOD IS AUTHORIZED WITH RESPECT TO A PART OR ALL OF SUCH EXPENDITURES. THE ELECTION PAID OR INCURRED DURING ANY TAXABLE YEAR PRIOR TO THE TAXABLE YEAR FOR WHICH THE TAXPAYER MAKES THE ELECTION.

(3) *LIMITATIONS ON DEDUCTION.* - THIS SUBSECTION SHALL NOT APPLY TO:

(A) ANY EXPENDITURE FOR THE ACQUISITION OR IMPROVEMENT OF LAND, OR FOR THE IMPROVEMENT OF PROPERTY TO BE USED IN CONNECTION WITH RESEARCH AND DEVELOPMENT OF A CHARACTER WHICH IS

SUBJECT TO DEPRECIATION AND DEPLETION; AND

(B) ANY EXPENDITURE PAID OR INCURRED FOR THE PURPOSE OF ASCERTAINING THE EXISTENCE, LOCATION, EXTENT, OR QUALITY OF ANY DEPOSIT OF ORE OR OTHER MINERAL, INCLUDING OIL OR GAS.

"[(I)](J) *Pension [t]Trusts.* - An employer establishing or maintaining a pension trust to provide for the payment of reasonable pensions to his employees shall be allowed as a deduction (in addition to the contributions to such trust during the taxable year to cover the pension liability accruing during the year, allowed as a deduction under subsection ([a]A)(1) of this Section) a reasonable amount transferred or paid into such trust during the taxable year in excess of such contributions, but only if such amount (1) has not [therefore] THERETOFORE been allowable as a deduction, and (2) is apportioned in equal parts over a period of TEN (10) consecutive years beginning with the year in which the transfer or payment is made.

"[(j)](K). *Additional [r]Requirements for [d]Deductibility of [c]Certain [p]Payments.* - xxx

"[(k)](L) *Optional [s]Standard [d]Deduction.* -- In lieu of the deductions allowed under the preceding [paragraphs] SUBSECTIONS [of this Section], an individual subject to tax under Section [21(a)], 24, other than a nonresident alien, may elect a standard deduction in an amount not exceeding ten percent (10%) of his gross income. Unless the taxpayer signifies in his return his intention to elect the optional standard deduction, he shall be considered as having availed himself of the deductions allowed in the preceding subsections. [The Secretary of Finance shall prescribe the manner of the election.] Such election when made in the return is made: *PROVIDED*, THAT AN INDIVIDUAL WHO IS ENTITLED TO AND CLAIMED FOR THE OPTIONAL STANDARD DEDUCTION SHALL NOT BE REQUIRED TO SUBMIT WITH HIS TAX RETURN SUCH FINANCIAL STATEMENTS OTHERWISE REQUIRED UNDER THIS CODE: *PROVIDED, FURTHER*, THAT EXCEPT WHEN THE COMMISSIONER OTHERWISE PERMITS, THE SAID INDIVIDUAL SHALL KEEP SUCH RECORDS PERTAINING TO HIS GROSS INCOME DURING THE TAXABLE YEAR, AS MAY BE REQUIRED BY THE RULES AND REGULATIONS PROMULGATED BY THE SECRETARY OF

FINANCE UPON RECOMMENDATION OF THE COMMISSIONER.

"x x x"

SECTION 37. Subsection 29(1) of the Code is hereby repealed and a new Section 34 is hereby created to read as follows:

SEC. 34. *ALLOWANCE OF PERSONAL EXEMPTION FOR INDIVIDUAL TAXPAYER.* - (A) FOR PURPOSES OF DETERMINING THE TAX PROVIDED IN SECTION 24(A) OF THIS TITLE, THERE SHALL BE ALLOWED A BASIC PERSONAL EXEMPTION OF TWENTY-FIVE THOUSAND PESOS (P25,000) FOR EVERY INDIVIDUAL TAXPAYER.

IN THE CASE OF MARRIED INDIVIDUALS WHERE ONLY ONE OF THE SPOUSES IS DERIVING GROSS INCOME, ONLY SUCH SPOUSE SHALL BE ALLOWED THE PERSONAL EXEMPTION.

(B) *ADDITIONAL EXEMPTION FOR DEPENDENTS.* - THERE SHALL BE ALLOWED AN ADDITIONAL EXEMPTION OF SIX THOUSAND FIVE HUNDRED PESOS (P6,500) FOR EACH DEPENDENT NOT EXCEEDING FOUR (4).

THE ADDITIONAL EXEMPTION FOR DEPENDENTS SHALL BE CLAIMED BY ONLY ONE OF THE SPOUSES IN THE CASE OF MARRIED INDIVIDUALS.

IN THE CASE OF LEGALLY SEPARATED SPOUSES, ADDITIONAL EXEMPTIONS MAY BE CLAIMED ONLY BY THE SPOUSE WHO HAS CUSTODY OF THE CHILD OR CHILDREN: *PROVIDED*, THAT THE TOTAL AMOUNT OF ADDITIONAL EXEMPTIONS THAT MAY BE CLAIMED BY BOTH SHALL NOT EXCEED THE MAXIMUM ADDITIONAL EXEMPTIONS HEREIN ALLOWED.

FOR PURPOSES OF THIS SUBSECTION, A 'DEPENDENT' MEANS A LEGITIMATE, RECOGNIZED NATURAL OR LEGALLY ADOPTED CHILD CHIEFLY DEPENDENT UPON AND LIVING WITH THE TAXPAYER IF SUCH DEPENDENT IS NOT MORE THAN TWENTY-ONE (21) YEARS OF AGE, UNMARRIED AND NOT

GAINFULLY EMPLOYED OR IF SUCH DEPENDENT, REGARDLESS OF AGE, IS INCAPABLE OF SELF-SUPPORT BECAUSE OF MENTAL OR PHYSICAL DEFECT.

(C) *CHANGE OF STATUS.* - IF THE TAXPAYER MARRIES OR SHOULD HAVE ADDITIONAL DEPENDENT(S) AS DEFINED ABOVE DURING THE TAXABLE YEAR, THE TAXPAYER MAY CLAIM THE CORRESPONDING ADDITIONAL EXEMPTION, AS THE CASE MAY BE, IN FULL FOR SUCH YEAR.

IF THE TAXPAYER DIES DURING THE TAXABLE YEAR, HIS ESTATE MAY STILL CLAIM THE PERSONAL AND ADDITIONAL EXEMPTIONS FOR HIMSELF AND HIS DEPENDENT(S) AS IF HE DIED AT THE CLOSE OF SUCH YEAR.

IF THE SPOUSE OR ANY OF THE DEPENDENTS DIES OR IF ANY OF SUCH DEPENDENTS MARRIES, BECOMES TWENTY-ONE (21) YEARS OLD OR BECOMES GAINFULLY EMPLOYED DURING THE TAXABLE YEAR, THE TAXPAYER MAY STILL CLAIM THE SAME EXEMPTIONS AS IF THEY DIED, OR IF SUCH DEPENDENTS MARRY, BECOME TWENTY-ONE (21) YEARS OLD OR BECOME GAINFULLY EMPLOYED AT THE CLOSE OF SUCH YEAR.

(D) *PERSONAL EXEMPTION ALLOWABLE TO NONRESIDENT ALIEN INDIVIDUAL.* - A NONRESIDENT ALIEN INDIVIDUAL ENGAGED IN TRADE, BUSINESS OR IN THE EXERCISE OF A PROFESSION IN THE PHILIPPINES SHALL BE ENTITLED TO PERSONAL EXEMPTION IN THE AMOUNT EQUAL TO THE EXEMPTIONS ALLOWED IN THE INCOME TAX LAW IN THE COUNTRY OF WHICH HE IS A SUBJECT OR CITIZEN, TO CITIZENS OF THE PHILIPPINES NOT RESIDING IN SUCH COUNTRY, NOT TO EXCEED THE AMOUNT FIXED IN THE PRECEDING SECTION AS EXEMPTION FOR CITIZENS OR RESIDENTS OF THE PHILIPPINES: *PROVIDED*, THAT SAID NONRESIDENT ALIEN SHOULD FILE A TRUE AND ACCURATE RETURN OF THE TOTAL INCOME RECEIVED BY HIM FROM ALL SOURCES IN THE PHILIPPINES, AS REQUIRED BY THIS TITLE.

SECTION 38. Section 34 of the Code is renumbered as Section 39 and is amended to read as follows:

"SEC. [34] 39. *Determination of amount [of] and recognition of gain or loss.* -

"([a]A) *Computation of [g]Gain or [l]Loss.* - x x x.

"([b]B) *Basis for determining gain or loss from disposition of property.* - x x x.

(1) The cost thereof in the case of property acquired on or [before] AFTER March 1, 1913, if such property was acquired by purchase; or

"(2) x x x

"(3) x x x

"(4) If the property [other than capital asset referred to in Section 21 (e),] was acquired for less than an adequate consideration in money or money's worth, the basis of such property is [(i)] the amount paid by the transferee for the property [or (ii) the transferor's adjusted basis at the time of the transfer whichever is greater].

"(5) x x x

"([c]C) *Exchange of Property.* - x x x

"(1) *General Rule.* - x x x

"(2) *Exception.* - x x x

(a) x x x.

(b) x x x.

(c) x x x.

No gain or loss shall also be recognized if property is transferred to a corporation by person in exchange for stock OR UNIT OF PARTICIPATION in such a corporation of which as a result of such exchange said person alone or together with others, not exceeding four (4) persons, gains control of said corporation[;]: *Provided*, That stocks issued for services shall not be considered as issued in return for property.

SECTION 39. A new Section is hereby inserted after Section 41, now Section 46 of the Code to read as follows:

"SEC. 47. *ACCOUNTING FOR LONG-TERM*

CONTRACTS. - INCOME FROM LONG-TERM CONTRACTS SHALL BE REPORTED FOR TAX PURPOSES IN THE MANNER AS PROVIDED IN THIS SECTION. AS USED HEREIN, THE TERM 'LONG-TERM CONTRACTS' MEANS BUILDING, INSTALLATION, OR CONSTRUCTION CONTRACTS COVERING A PERIOD IN EXCESS OF ONE (1) YEAR. PERSONS WHOSE GROSS INCOME IS DERIVED IN WHOLE OR IN PART FROM SUCH CONTRACTS SHALL REPORT SUCH INCOME UPON THE BASIS OF PERCENTAGE OF COMPLETION. THE RETURN SHOULD BE ACCOMPANIED BY A CERTIFICATE OF ARCHITECTS, OR ENGINEERS SHOWING THE PERCENTAGE OF COMPLETION DURING THE TAXABLE YEAR OF THE ENTIRE WORK PERFORMED UNDER CONTRACT. THERE SHOULD BE DEDUCTED FROM SUCH GROSS INCOME ALL EXPENDITURES MADE DURING THE TAXABLE YEAR ON ACCOUNT OF THE CONTRACT, ACCOUNT BEING TAKEN OF THE MATERIAL AND SUPPLIES ON HAND AT THE BEGINNING AND END OF THE TAXABLE PERIOD FOR USE IN CONNECTION WITH THE WORK UNDER THE CONTRACT BUT NOT YET SO APPLIED. IF UPON COMPLETION OF A CONTRACT, IT IS FOUND THAT THE TAXABLE NET INCOME ARISING THEREUNDER HAS NOT BEEN CLEARLY REFLECTED FOR ANY YEAR OR YEARS, THE COMMISSIONER MAY PERMIT OR REQUIRE AN AMENDED RETURN."

SECTION 40. Section 44 of the Code is hereby renumbered as Section 50 and amended to read as follows:

"SEC. [44] 50. *Individual Return[s].* -- ([a]A) *Requirements.* -- (1) Except as provided in paragraph (2) of this Section, the following individuals are required to file an income tax return:

(A) Every Filipino citizen, [whether] residing in the Philippines [or abroad],

(B) EVERY FILIPINO CITIZEN, RESIDING OUTSIDE THE PHILIPPINES, ON HIS INCOME FROM SOURCES WITHIN THE PHILIPPINES,

[(B)] (C) Every alien residing in the Philippines, [regardless of whether the] ON [gross] income [was] derived from sources within [or without] the Philippines, and

[(C)] (D) Every nonresident alien engaged in trade or business OR IN THE EXERCISE OF PROFESSION in the Philippines. .

(2) The following individuals shall not be required to file an income tax return:

(A) AN [Individuals] INDIVIDUAL whose gross income does not exceed his total personal and additional exemptions for dependents under Section [29]34: *Provided*, That a citizen of the Philippines [engaged in business or practice of profession within or without the Philippines] and any alien individual engaged in business or practice of profession within the Philippines shall file an income tax return, regardless of the amount of gross income.

[(B)] Regardless of the amount of income, the following individuals shall not also be required to file an income tax return:

(i) Individuals whose income consists solely of interest, prizes, winnings, royalties, dividends, share of an individual person in a partnership referred to under Section 21(c);

(ii) Alien employees of regional or area headquarters of multinational corporations with respect to income referred to under Section 22(c);

(iii) Aliens employed by offshore banking units with respect to income under Section 22(d);

(iv) Alien employees of service contractors and subcontractors engaged in petroleum exploration in the Philippines with respect to income referred to under Section 22(e); and

(v) Other individuals not required to file an income tax return, pursuant to other provisions of this Code and other laws, general or special.]

[(C)] (B) AN [Individuals] INDIVIDUAL with respect to pure compensation income, as defined in Section [28]31([a]A)(1), derived from sources within the Philippines, the income tax on which has been CORRECTLY withheld under the provisions of Section [(72)] 78 of this Code: *Provided*, That an individual deriving compensation concurrently from two or more employers at any time during the taxable year shall file an income tax return: *Provided, further*, That an

individual whose pure compensation income DERIVED FROM SOURCES WITHIN THE PHILIPPINES exceeds [Sixty] SEVENTY-SIX Thousand Pesos (P76,000) shall [also] file an income tax return.

(C) AN INDIVIDUAL WHOSE SOLE INCOME HAS BEEN SUBJECTED TO FINAL WITHHOLDING TAX PURSUANT TO SECTION 56(A) OF THIS CODE, AND

(D) AN INDIVIDUAL WHO IS EXEMPT FROM INCOME TAX PURSUANT TO THE PROVISIONS OF THIS CODE AND OTHER LAWS, GENERAL OR SPECIAL.

(3) THE FOREGOING NOTWITHSTANDING, ANY INDIVIDUAL NOT REQUIRED TO FILE AN INCOME TAX RETURN MAY NEVERTHELESS BE REQUIRED TO FILE AN INFORMATION RETURN PURSUANT TO RULES AND REGULATIONS PRESCRIBED BY THE SECRETARY OF FINANCE, UPON RECOMMENDATION OF THE COMMISSIONER."

[(3)] (4) The income tax return shall be filed in duplicate[, and shall set forth specifically the gross amount of income from all sources, except that of nonresident aliens engaged in trade or business in the Philippines, which shall contain only such income derived from sources within the Philippines.] BY THE FOLLOWING PERSONS:

(A) A RESIDENT CITIZEN -- ON HIS INCOME FROM ALL SOURCES;

(B) A NON-RESIDENT CITIZEN -- ON HIS INCOME DERIVED FROM SOURCES WITHIN THE PHILIPPINES;

(C) A RESIDENT ALIEN -- ON HIS INCOME DERIVED FROM SOURCES WITHIN THE PHILIPPINES;

(D) A NON-RESIDENT ALIEN -- ON HIS INCOME DERIVED FROM SOURCES WITHIN THE PHILIPPINES.

(b) *Where to file.* - Except in cases where the Commissioner [of Internal Revenue] otherwise permits, the return shall be filed with AN AUTHORIZED AGENT BANK, Revenue District Officer, Collection Agent or

duly authorized treasurer of the CITY OR municipality in which such person has his legal residence or principal place of business in the Philippines, or if there be no legal residence or place of business in the Philippines, [then] with the Office of the Commissioner of Internal Revenue.

x x x"

SECTION 41. Section 45 of the Code is renumbered as Section 51 and paragraph (c) thereof is amended to read as follows:

"SEC. [45] 51. *Corporation Returns.*

"x x x

(c) *Return of [c]Corporation [c]Contemplating [d]Dissolution OR REORGANIZATION.* - Every corporation shall, within thirty (30) days after the adoption by the corporation of a resolution or plan for [the] ITS dissolution; [of the corporation] or for the liquidation of the whole or any part of its capital stock, including corporations which have been notified of possible involuntary dissolution by the Securities and Exchange Commission; OR FOR ITS REORGANIZATION, render a correct return to the Commissioner [of Internal Revenue], verified under oath, setting forth the terms of such resolution or plan and such other information as the Secretary of Finance, UPON RECOMMENDATION OF THE COMMISSIONER, shall, by RULES AND regulationS, prescribe.

The dissolving OR REORGANIZING corporation SHALL, prior to the issuance BY THE SECURITIES AND EXCHANGE COMMISSION of the Certificate of Dissolution OR REORGANIZATION, AS MAY BE DEFINED BY RULES AND REGULATIONS PRESCRIBED BY THE SECRETARY OF FINANCE, UPON RECOMMENDATION OF THE COMMISSIONER, [by the Securities and Exchange Commission shall] secure a certificate of tax clearance from the Bureau of Internal Revenue which certificate shall be submitted to the Securities and Exchange Commission."

SECTION 42. Section 48 of the Code is renumbered as Section 54 and amended to read as follows:

"SEC. [48] 54. *Returns of General Professional Partnerships.* - Every general professional partnership shall file, in duplicate, a return of its income, except

income exempt under Section [28] 31 [(b)B] of this Title, setting forth the items of the gross income and the deductions allowed by this Title, and the names; TAXPAYER IDENTIFICATION NUMBERS (TIN), [and] addresses and shares of EACH of the partners."

SECTION 43. Section 50 of the Code is renumbered as Section 56 and amended to read as follows:

"SEC. [50] 56. *Withholding of Tax [a]At Source.* - (a) *Withholding of [f]Final. [t]Tax on [c]Certain [i]Incomes.* - The tax imposed or prescribed by Sections [21(c), 21(d)(2); 22(a)(2), (b), (c), (d), (e); 24(e)(1), (e)(2)(B), (e)(3); and 25(a)(4), (a)(5), (a)(6)(A), (a)(6)(B), (a)(6)(C)(ii), (b)(1), (b)(2), (b)(3), (b)(4), (b)(5)(A), (b)(5)(B), (b)(5)(c)(ii)] 24(B)(1), 24(B)(2); 24(C)(1), 24(C)(2); 25(A)(2), 25(A)(3), 25(B), 25(C), 25(D), 25(E); 27(E)(1), 27(E)(2); 28(A)(4), 28(A)(6)(a), 28(A)(6)(B), 28(A)(6)(c), 28(B)(1), 28(B)(2), 28(B)(3), 28(B)(4), 28(B)(5)(A), 28(B)(5)(B), 28(B)(5)(C), 32 and 283 of this Code on specified items of income shall be withheld by payor-corporation and/or person and paid in the same manner and subject to the same conditions as provided in Section [51] 57 of [the National Internal Revenue] THIS Code.

(b) *Withholding of [c]Creditable [t]Tax [a]At [s]Source.* - The Secretary of Finance may, upon the recommendation of the Commissioner [of Internal Revenue], require [also] the withholding of a tax on the items of income payable to NATURAL OR JURIDICAL persons, [(natural or juridical)] residing in the Philippines, by payor-corporation/persons as provided for by law, at the rate of not less than [Two and a half] ONE percent [(2 1/2%)] (1%) but not more than thirty[-five] percent [(35%)] (30%) thereof, which shall be credited against the income tax liability of the taxpayer for the taxable year."

SECTION 44. Section 51 of the Code is renumbered as Section 57 and amended to read as follows:

"SEC. [51] 57. *Returns and Payment of Taxes Withheld [a]At Source.* - ([a]A) *Quarterly [r]Returns and [p]Payments of [t]Taxes [w]Withheld.* - Taxes deducted and withheld under Section [50] 56 BY WITHHOLDING AGENTS shall be covered by a return and paid to, EXCEPT IN CASES WHERE THE COMMISSIONER OTHERWISE PERMITS, [the] AN AUTHORIZED AGENT BANK, Revenue District Officer, Collection Agent, or duly authorized Treasurer of the city or municipality where the withholding agent has his legal residence or principal place of business, or

where the withholding agent is a corporation, where the principal office is located. [The Commissioner of Internal Revenue may, with the approval of the Secretary of Finance, require the withholding agents to pay or deposit the taxes deducted or withheld at more frequent intervals when necessary to protect the interest of the Government.]

The taxes deducted and withheld by the withholding agent shall be held as a special fund in trust for the government until paid to the collecting officers.

"The return for final withholding tax shall be filed and the payment made within TWENTY-FIVE (25) days from the close of each calendar quarter, while the return for creditable withholding taxes shall be filed and the payment made not later than the last day of the month following the close of the quarter during which withholding was made: [.] PROVIDED, THAT THE COMMISSIONER, WITH THE APPROVAL OF THE SECRETARY OF FINANCE, MAY REQUIRE THESE WITHHOLDING AGENTS TO PAY OR DEPOSIT THE TAXES DEDUCTED OR WITHHELD AT MORE FREQUENT INTERVALS WHEN NECESSARY TO PROTECT THE INTEREST OF THE GOVERNMENT.

[(b)B] *Statement of [i] Income [p] Payments [m] Made and [t] Taxes [w] Withheld.* - x x x

(C) *Annual INFORMATION [r] Return.* - Every withholding agent required to deduct and withhold taxes under Section [50] 56 shall submit to the Commissioner [of Internal Revenue a reconciliation statement of quarterly payments and] AN ANNUAL INFORMATION RETURN CONTAINING THE list of payees and income payments, AMOUNT OF TAXES WITHHELD FROM EACH PAYEE AND SUCH OTHER PERTINENT INFORMATION AS MAY BE REQUIRED BY THE COMMISSIONER. In the case of final withholding taxes, the return shall be filed on or before January 31 of the succeeding year, and for creditable withholding taxes, not later than March 1 of the year following the year for which the annual report is being submitted. This return, if made and filed in accordance with the RULES AND regulations approved by the Secretary of Finance, UPON RECOMMENDATION OF THE COMMISSIONER, shall be sufficient compliance with the requirements of Section [61] 67 of this Title in respect to the income payments.

"x x x

"([d]D) x x x

"(E) NO REGISTRATION OF ANY DOCUMENT TRANSFERRING REAL PROPERTY SHALL BE EFFECTED BY THE REGISTER OF DEEDS UNLESS THE COMMISSIONER OR HIS DULY AUTHORIZED REPRESENTATIVE HAS CERTIFIED THAT SUCH TRANSFER HAS BEEN REPORTED, AND THE CAPITAL GAINS OR CREDITABLE WITHHOLDING TAX, IF ANY, HAS BEEN PAID: PROVIDED, HOWEVER, THAT THE INFORMATION AS MAY BE REQUIRED BY RULES AND REGULATIONS TO BE PRESCRIBED BY THE SECRETARY OF FINANCE, UPON RECOMMENDATION OF THE COMMISSIONER, SHALL BE ANNOTATED BY THE REGISTER OF DEEDS IN THE TRANSFER CERTIFICATE OF TITLE OR CONDOMINIUM CERTIFICATE OF TITLE: PROVIDED, FURTHER, THAT IN CASES OF TRANSFER OF PROPERTY TO A CORPORATION, PURSUANT TO A MERGER, CONSOLIDATION OR REORGANIZATION, AND WHERE THE LAW ALLOWS DEFERRED RECOGNITION OF INCOME IN ACCORDANCE WITH SECTION 39, THE INFORMATION AS MAY BE REQUIRED BY RULES AND REGULATIONS TO BE PRESCRIBED BY THE SECRETARY OF FINANCE, UPON RECOMMENDATION OF THE COMMISSIONER, SHALL BE ANNOTATED BY THE REGISTER OF DEEDS AT THE BACK OF THE TRANSFER CERTIFICATE OF TITLE OF THE REAL PROPERTY INVOLVED: PROVIDED, FINALLY, THAT ANY VIOLATION OF THIS PROVISION BY THE REGISTER OF DEEDS SHALL BE SUBJECT TO THE PENALTIES IMPOSED UNDER SECTION 270 OF THIS CODE.

SECTION 45. Section 55 of the Code is renumbered as Section 61 and amended to read as follows:

"SEC. [55] 61. *Exemption [a] Allowed to [e] Estates and [t] Trusts.* - For the purpose of the tax provided for in this Title, there shall be allowed an exemption of [Six thousand pesos] TWENTY-FIVE THOUSAND PESOS (P25,000) from the income of the estate or trust.

SECTION 46. Section 64 of the Code is renumbered as Section 70 and is amended to read as follows:

"SEC. [64] 70. *Disposition of Income Tax Returns, Publication of Lists of [Persons Filing Returns and Paying Taxes] TAXPAYERS AND FILERS.* - x x x

The Commissioner [of Internal Revenue] may, in each year, cause to be prepared and published in any newspaper [and otherwise make available to public inspection upon written request and pursuant to regulations to be prescribed by the Secretary of Finance.] THE lists containing the names and addresses of persons who have filed income tax returns [with the amount of income declared and the income tax paid by each. The list of taxpayers for the preceding taxable year in each municipality or city shall be posted at the main entrance of the respective municipal building or city hall.]”

SECTION 47. Section 69 of the Code is renumbered as Section 75 and amended to read as follows:

"SEC. [69] 75. *Final Adjustment Return.* - Every corporation liable to tax under Section [24] 27 shall file a final adjustment return covering the total taxable income for the preceding calendar or fiscal year. If the sum of the quarterly tax payments made during the said taxable year is not equal to the total tax due on the entire taxable [net] income of that year, the corporation shall either:

(a) Pay the [excess] BALANCE OF TAX still due; or

(B) CARRY-OVER THE EXCESS CREDIT; OR

[(b)] (C) Be CREDITED OR refunded with the excess amount paid, as the case may be.

"In case the corporation is entitled to a TAX CREDIT OR refund of the excess estimated quarterly income taxes paid, the [refundable] EXCESS amount shown on its final adjustment return may be CARRIED OVER AND credited against the estimated quarterly income tax liabilities for the taxable quarters of the succeeding taxable yearS. ONCE THE OPTION TO CARRY-OVER AND APPLY THE EXCESS QUARTERLY INCOME TAX AGAINST INCOME DUE FOR THE TAXABLE QUARTERS OF THE SUCCEEDING TAXABLE YEARS HAS BEEN MADE, SUCH OPTION SHALL BE CONSIDERED IRREVOCABLE FOR THAT TAXABLE PERIOD AND NO APPLICATION FOR CASH REFUND OR ISSUANCE OF A TAX CREDIT CERTIFICATE SHALL BE ALLOWED THEREFOR."

SECTION 48. Section 70 of the Code is renumbered as Section 76 and paragraph (a) thereof is amended to read as follows:

"SEC. [70] 76. *PLACE AND TIME OF FILING AND PAYMENT OF QUARTERLY CORPORATE INCOME TAX.*

(a) *Place of [f] Filing.* - EXCEPT AS THE COMMISSIONER OTHERWISE PERMITS, [T] the quarterly income tax declaration required in Section [68] 74 and the final adjustment return required in Section [69] 75 shall be filed with the Revenue District Officer or [the] Collection Agent or duly authorized Treasurer of the CITY OR municipality having jurisdiction over the location of the principal office of the corporation filing the return or place where its main books of accounts and other data from which the return is prepared are kept.

"x x x"

SECTION 49. Section 74 of the Code is renumbered as Section 80 and amended to read as follows:

"SEC. [74] 80. *FILING OF Return and [p] Payment [to the Government] of [t] Taxes [w] Withheld.* - EXCEPT AS THE COMMISSIONER OTHERWISE PERMITS, [T] taxes deducted and withheld [hereunder] by the employer on wages of employees shall be covered by a return and paid to aN AUTHORIZED BANK, [c] Collection [a] Agent, OR THE DULY AUTHORIZED TREASURER of the city or municipality [in which] WHERE the employer has his legal residence or principal place of business, or, in case the employer is a corporation, [in which] WHERE the principal office is located.

"The return shall be filed and the payment made within twenty-five (25) days from the close of each calendar quarter[. The taxes deducted and withheld by employers shall be held in a special fund in trust for the government until the same are paid to the said collecting officers.]: PROVIDED, HOWEVER, THAT [T] the Commissioner [of Internal Revenue] may, with the approval of the Secretary of Finance, require the employers to pay or deposit the taxes deducted and withheld at more frequent intervals, in cases where such requirement is deemed necessary to protect the interest of the government.

THE TAXES DEDUCTED AND WITHHELD BY EMPLOYERS SHALL BE HELD IN A SPECIAL FUND IN TRUST FOR THE GOVERNMENT UNTIL THE SAME ARE PAID TO THE SAID COLLECTING OFFICERS."

SECTION 50. Section 76 of the Code is renumbered as Section 82 and amended to read as follows:

"SEC. [76] 82. *Statements and Returns.* - (a) *Requirements.* - Every employer required to deduct and withhold a tax [in respect of the wages of an employee] shall furnish to each such employee in respect of his employment during the calendar year, on or before January thirty-first of the succeeding year, or if his employment is terminated before the close of such calendar year, on the same day of which the last payment of wages is made, a written statement [showing] CONFIRMING the wages paid by the employer to such employee during the calendar year, and the amount of tax deducted and withheld under this Chapter in respect of such wages. The statement required to be furnished by this Section in respect of any wages shall [be furnished at such other times shall] contain such other information, and shall BE FURNISHED AT SUCH OTHER TIME AND in such form as the Secretary of Finance, UPON THE RECOMMENDATION OF THE COMMISSIONER, may, by RULES AND regulations, prescribe.

"(b) *ANNUAL INFORMATION Returns.* - Every employer required to deduct and withhold the taxes in respect of the wages of his employees shall, on or before January thirty-first of the succeeding year, submit to the Commissioner [of Internal Revenue a] AN ANNUAL INFORMATION return CONTAINING A LIST OF EMPLOYEES, [of] the total amount OF COMPENSATION INCOME OF EACH EMPLOYEE, TOTAL AMOUNT OF TAXES withheld THEREFROM during the year, accompanied by copies of the statement THEREFROM during the year, accompanied by copies of the statement referred to in the preceding paragraph AND SUCH OTHER INFORMATION AS MAY BE DEEMED NECESSARY. This return, if made and filed in accordance with RULES AND regulations promulgated by the Secretary of Finance, UPON RECOMMENDATION OF THE COMMISSIONER, shall be sufficient compliance with the requirements of Section [61] 67 of this Title in respect of such wages.

"(c) x x x."

SECTION 51. Section 77, Chapter I of Title III of the Code is renumbered as Section 83 and amended to read as follows:

"SEC. [77] 83. *Rates of [e] Estate [t] Tax.* - There shall be levied, assessed, collected, and paid upon the transfer

of the net estate as determined in accordance with Sections [78]84 and [79]85 of every decedent, whether resident or nonresident of the Philippines, a tax based on the value of such net estate, as computed in accordance with the following schedules:

"If the net estate is:

[Over	But Not Over	The Tax Shall Be	Plus	Of Excess Over
P200,000	Exempt			
P200,000	500,000	5% nil	P 200,000	
500,000	2,000,000	P 15,000	8%	500,000
2,000,000	5,000,000	135,000	12%	2,000,000
5,000,000	10,000,000	495,000	21%	5,000,000
10,000,000	And Over	1,545,000	35%	10,000,000]

Over	But Not Over	The Tax Shall Be	Plus	Of Excess Over
P200,000	Exempt			
P200,000	500,000	0	5%	P 200,000
500,000	2,000,000	P 15,000	8%	500,000
2,000,000	5,000,000	135,000	11%	2,000,000
5,000,000	10,000,000	465,000	15%	5,000,000
10,000,000	And Over	1,215,000	20%	10,000,000

SECTION 52. Section 79 of the Code is renumbered as Section 85 and amended to read as follows:

"SEC. [79] 85. - *Computation of [n] Net [e] Estate [and Estate Tax].* - For the purpose of the tax imposed in this Chapter, the value of the net estate shall be determined:

"([a]A) In the case of a citizen or resident of the Philippines, by deducting from the value of the gross estate -

"(1) *Expenses, [l] Losses, [i] Indebtedness, and [t] Taxes.* - Such amounts -

([A]a) For actual funeral expenses or in amount

equal to five per cent[um] of the gross estate, whichever is lower but in no case to exceed [P100,000] P200,000;

[(B)b] x x x

[(C)c] x x x

[(D)d] x x x

[(E)e] x x x

"(2) Property [p]Previously [t]Taxed. - x x x

"(3) Transfers for [p]Public [u]Use. - x x x

"(4) The [f]Family [h]Home. - x x x.

(5) STANDARD DEDUCTION - AN AMOUNT EQUIVALENT TO ONE MILLION PESOS (P1,000,000)."

(6) MEDICAL EXPENSES. - MEDICAL EXPENSES INCURRED BY THE DECEDENT WITHIN ONE YEAR PRIOR TO HIS DEATH WHICH SHALL BE DULY SUBSTANTIATED WITH RECEIPTS: PROVIDED, THAT IN NO CASE SHALL THE DEDUCTIBLE MEDICAL EXPENSES EXCEED FIVE HUNDRED THOUSAND PESOS (P500,000).

(7) AMOUNT RECEIVED BY HEIRS UNDER REPUBLIC ACT 4917. — ANY AMOUNT RECEIVED BY THE HEIRS FROM THE DECEDENT'S EMPLOYER AS A CONSEQUENCE OF THE DEATH OF THE DECEDENT- EMPLOYEE IN ACCORDANCE WITH REPUBLIC ACT 4917: PROVIDED, THAT SUCH AMOUNT IS INCLUDED IN THE GROSS ESTATE OF THE DECEDENT.

"[(b)B) Deductions [a]Allowed to [n]Nonresident [e]Estates. - x x x."

SECTION 53. Section 83 of the Code is hereby renumbered as Section 89 and sub-sections (a) and (d) thereof are amended to read as follows:

"SEC. [83]89. ESTATE TAX [R]returns. -

"([a]A) Requirements. - In all cases of transfers subject to THE tax IMPOSED HEREIN, or where, though exempt from tax, the gross value of the estate exceeds [Three] TWO HUNDRED thousand pesos,

OR REGARDLESS OF THE GROSS VALUE OF THE ESTATE, WHERE THE SAID ESTATE CONSISTS OF REGISTERED OR REGISTERABLE PROPERTY SUCH AS REAL PROPERTY, MOTOR VEHICLE, SHARES OF STOCK OR OTHER SIMILAR PROPERTY FOR WHICH A CLEARANCE FROM THE BUREAU OF INTERNAL REVENUE IS REQUIRED AS A CONDITION PRECEDENT FOR THE TRANSFER OF OWNERSHIP THEREOF IN THE NAME OF THE TRANSFEREE, the executor, or THE administrator, or any of the legal heirs, as the case may be, shall file a return under oath in duplicate, setting forth:

"(1) x x x

"(2) x x x

"(3) x x x

"Provided, however, That estate TAX returns showing a gross value [of] EXCEEDING [Fifty thousand] TWO MILLION pesos (P2,000,000) [or more] shall be [accompanied] SUPPORTED with a statement [of] DULY CERTIFIED TO BY A CERTIFIED PUBLIC ACCOUNTANT CONTAINING THE FOLLOWING:

"[(1)](A) x x x

"[(2)](B) x x x

"[(3)](C) the amount of tax due whether paid or still due and outstanding [duly certified to by a certified public accountant].

"[(b)B) x x x

"[(c)C) x x x

"[(d)D) Place of Filing. - Except in cases where the Commissioner [of Internal Revenue] OTHERWISE permits, the return required under Subsection ([a]A) shall be filed with [the] AN AUTHORIZED AGENT BANK, OR Revenue District Officer, Collection [Agent] OFFICER, or duly authorized Treasurer of the city or municipality in which the decedent was domiciled at the time of his death or if there be no legal residence in the Philippines, [then] with the Office of the Commissioner [of Internal Revenue]."

SECTION 54. Section 92 of the Code is renumbered

as Section 98 and paragraphs (a) and (b) are amended to read as follows:

"SEC. [92]98. Rates of [t]Tax [p]Payable by [d]Donor."

"([a]A) In general - The tax for each calendar year shall be computed on the basis of the total net gifts made during the calendar year in accordance with the following schedule:

"If the net gift is:"

[Over	But Not Over	The Tax Shall Be	Plus	Of Excess Over
P200,000	Exempt			
P200,000	500,000	5% nil	P200,000	
500,000	2,000,000	P15,000	8%	500,000
2,000,000	5,000,000	135,000	12%	2,000,000
5,000,000	10,000,000	495,000	21%	5,000,000
10,000,000	And Over	1,545,000	35%	10,000,000]

Over	But Not Over	The Tax Shall Be	Plus	Of Excess Over
P200,000	Exempt			
P200,000	500,000	0	5%	P 200,000
500,000	2,000,000	P15,000	8%	500,000
2,000,000	5,000,000	135,000	11%	2,000,000
5,000,000	10,000,000	465,000	15%	5,000,000
10,000,000	And Over	1,215,000	20%	10,000,000

"([b]B) Tax [p]Payable by [d]Donor if [d]Donee is a [s]Stranger. - When the donee or beneficiary is a stranger, the tax payable by the donor shall be THIRTY PER CENT (30%) of the net gifts. x x x

"([c]C) x x x."

SECTION 55. Section 96 is renumbered as Section 102 and is amended to read as follows:

"SEC. [96] 102. FILING OF Return[s] AND PAYMENT OF TAX. - ([a]A) x x x

"([b]B) Time and [p]Place of [f]Filing AND PAYMENT. -- The return of the donor required in this Section shall be filed within thirty (30) days after the date the gift is made AND THE TAX DUE THEREON SHALL BE PAID AT THE TIME OF FILING. [and, e]Except in cases where the Commissioner OTHERWISE permits, the return shall be filed AND THE TAX PAID [with me] TO AN AUTHORIZED AGENT BANK, THE Revenue District Officer, Collection Agent or duly authorized Treasurer of the city or municipality [in which] WHERE the donor was domiciled at the time of the transfer, or if there be no legal residence in the Philippines, [then] with the Office of the Commissioner [of Internal Revenue]. IN THE CASE OF GIFTS MADE BY A NON-RESIDENT, THE RETURN MAY BE FILED WITH THE PHILIPPINE EMBASSY OR CONSULATE IN THE COUNTRY WHERE HE IS DOMICILED AT THE TIME OF THE TRANSFER, OR DIRECTLY WITH THE OFFICE OF THE COMMISSIONER."

SECTION 56. Section 97 of the Code is hereby deleted.

SECTION 57. Section 106 of the Code is hereby renumbered as Section 111 and Sub-section (d) thereof further amended to read as follows:

"SEC. [106] 111. Refunds or [t]Tax [c]Credit of [i]Input [t]Taxes shall be [m]Made. - In proper cases, the Commissioner shall grant a refund or issue the tax credit CERTIFICATE for creditable input taxes within [sixty (60)] ONE HUNDRED TWENTY (120) days from the date of submission of complete documents in support of the application filed in accordance with [subparagraphs] SUBSECTIONS ([a]A) and ([b]B) hereof. In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the [sixty-day] ONE HUNDRED TWENTY-DAY period, appeal the decision or the unacted claim with the Court of Tax Appeals."

SECTION 58. Sections 107 (Registration of value-added taxpayer) and 109 (Notification requirements) of the Code are hereby deleted.

SECTION 59. Section 110 of the Code is hereby renumbered as Section 113 and is amended to read as follows:

"SEC. [110] 113. *Return and [p]Payment of [v]Value-added [t]Tax.* -

"([a]A) *In [g]General.* - Every person liable to pay the value-added tax imposed under this Title shall file a quarterly return of the amount of his gross sales or receipts within twenty-FIVE [(20)] (25) days following the close of each taxable quarter prescribed for each taxpayer[;]: *PROVIDED, HOWEVER, THAT VAT-REGISTERED PERSONS SHALL PAY THE VALUE-ADDED TAX ON A MONTHLY BASIS.*

[*Provided, That*] A [a]ny person whose registration has been cancelled in accordance with Section [107]237 [hereof], shall file a return and pay the tax due thereon within twenty-FIVE [(20)] (25) days from the date of cancellation of registration: *PROVIDED, THAT [O]nly one consolidated return shall be filed by the taxpayer for his principal place of business or head office and all branches.*

"([b]B) *Where to [f]File the [r]Return and [p]Pay the [t]Tax.* - EXCEPT AS THE COMMISSIONER OTHERWISE PERMITS, [T]he return shall be filed with and the tax paid to [a]N AUTHORIZED AGENT bank, REVENUE COLLECTION OFFICER OR DULY AUTHORIZED CITY OR MUNICIPAL TREASURER IN THE PHILIPPINES [duly accredited by the Commissioner] located within the revenue district where the taxpayer is registered or required to register[: *Provided, however, That VAT-registered persons shall pay the value-added tax on a monthly basis: provided, further, that in case no accredited bank is located within the revenue district, the return shall be filed with the tax paid to the Revenue District Officer, Collection Agent, or duly authorized Treasurer of the municipality where the place of business is located in the order mentioned]."*

"([c]C) x x x"

SECTION 60. Section 124-A of the Code is hereby deleted.

SECTION 61. Section 125 of the Code is renumbered as Section 129 and paragraphs (a)(1) and (b) thereof are amended to read as follows:

"SEC. [125] 129. *Returns and [p]Payment of [p]Percentage [t]Taxes.* - ([a]A) *Returns of [g]Gross [s]Sales, [r]Receipts or [e]Earnings and [p]Payment of [t]Tax.* - (1) *Persons [l]Liable to [p]Pay [p]Percentage [t]Taxes.* - Every person subject to the percentage taxes

imposed under this Title shall file a quarterly return of the amount of his gross sales, receipts or earnings and pay the tax due thereon within twenty-FIVE [(20)] (25) days after the end of each taxable quarter: *Provided,* That in the case of a person whose VAT registration is cancelled and who becomes liable to the tax imposed in Section [112] 115 of this Code, the tax shall accrue from the date of cancellation and shall be paid in accordance with the provisions of this Section.

"x x x"

"([b]B) *Where to [f]File.* - EXCEPT AS THE COMMISSIONER OTHERWISE PERMITS, [E]very person liable to the percentage tax under this Title may, at his option, file a separate return for each branch or place of business, or a consolidated return for all branches or places of business with the AUTHORIZED AGENT BANK, Revenue District Officer, Collection Agent or duly authorized Treasurer of the city or municipality where said business or principal place of business is located, as the case may be."

SECTION 62. Section 127, Chapter 1 [General Provisions] of Title VI (Excise Taxes on Certain Goods) of the Code is renumbered as Section 131 and paragraph (a) thereof is amended to read as follows:

"SEC. [127] 131. *FILING OF RETURN AND Payment of [e]Excise [t]tax[es] on [d]Domestic [p]Products.* - ([a]A) *Persons liable, time for payment.* - Unless otherwise especially allowed, excise taxes on domestic products shall be paid by the manufacturer or producer before removal from the place of production; *Provided,* that the excise tax on locally manufactured petroleum products and indigenous petroleum levied under Sections 145 and 151(a)(4), respectively, of this Title shall be paid within 15 days from the date of removal thereof from the place of production]. *PERSONS LIABLE TO FILE A RETURN, FILING OF RETURN ON REMOVAL AND PAYMENT OF TAX.* - (1) *PERSONS LIABLE TO FILE A RETURN.* - EVERY PERSON LIABLE TO PAY EXCISE TAX IMPOSED UNDER THIS TITLE SHALL FILE A SEPARATE RETURN FOR EACH PLACE OF PRODUCTION SETTING FORTH, AMONG OTHERS, THE DESCRIPTION AND QUANTITY OR VOLUME OF PRODUCTS TO BE REMOVED, THE APPLICABLE TAX BASE AND THE AMOUNT OF TAX DUE THEREON: *PROVIDED, HOWEVER, THAT IN THE CASE OF INDIGENOUS PETROLEUM, NATURAL GAS OR LIQUEFIED NATURAL GAS,*

THE EXCISE TAX SHALL BE PAID BY THE FIRST BUYER, PURCHASER OR TRANSFEREE FOR LOCAL SALE, BARTER, OR TRANSFER, WHILE THE EXCISE TAX ON EXPORTED PRODUCTS SHALL BE PAID BY THE OWNER, LESSEE, CONCESSIONAIRE OR OPERATOR OF THE MINING CLAIM.

Should domestic products be removed from the place of production without the payment of the tax, the owner or person having possession thereof shall be liable for the tax due thereon.

(2) *TIME FOR FILING OF RETURN AND PAYMENT OF THE TAX.* - UNLESS OTHERWISE SPECIFICALLY ALLOWED, THE RETURN SHALL BE FILED AND THE EXCISE TAX PAID BY THE MANUFACTURER OR PRODUCER BEFORE REMOVAL OF DOMESTIC PRODUCTS FROM PLACE OF PRODUCTION: *PROVIDED*, THAT THE EXCISE TAX ON LOCALLY MANUFACTURED PETROLEUM PRODUCTS AND INDIGENOUS PETROLEUM LEVIED UNDER SECTIONS 149 AND 152(A)(4), RESPECTIVELY, OF THIS TITLE SHALL BE PAID WITHIN FIFTEEN (15) DAYS FROM THE DATE OF REMOVAL THEREOF FROM THE PLACE OF PRODUCTION: *PROVIDED, FURTHER*, THAT THE EXCISE TAX ON NON-METALLIC MINERAL OR MINERAL PRODUCTS, OR QUARRY RESOURCES SHALL BE DUE AND PAYABLE UPON REMOVAL OF SUCH PRODUCTS FROM THE LOCALITY WHERE MINED OR EXTRACTED, BUT WITH RESPECT TO THE EXCISE TAX ON LOCALITY PRODUCED OR EXTRACTED METALLIC MINERAL OR MINERAL PRODUCTS, THE PERSON LIABLE SHALL FILE A RETURN AND PAY THE TAX WITHIN FIFTEEN (15) DAYS AFTER THE END OF THE CALENDAR QUARTER WHEN SUCH PRODUCTS WERE REMOVED SUBJECT TO SUCH CONDITIONS AS MAY BE PRESCRIBED BY RULES AND REGULATIONS TO BE PROMULGATED BY THE SECRETARY OF FINANCE UPON RECOMMENDATION OF THE COMMISSIONER. FOR THIS PURPOSE, THE TAXPAYER SHALL FILE A BOND IN AN AMOUNT WHICH APPROXIMATES THE AMOUNT OF EXCISE TAX DUE ON THE REMOVALS FOR THE SAID QUARTER. THE FOREGOING RULES NOTWITHSTANDING, FOR IMPORTED MINERAL OR MINERAL PRODUCTS, WHETHER METALLIC OR NON-METALLIC, THE EXCISE

TAX DUE THEREON SHALL BE PAID BEFORE THEIR REMOVAL FROM CUSTOMS CUSTODY: *PROVIDED, FINALLY*, THAT EXCISE TAX ON ALCOHOL AND TOBACCO PRODUCTS SHALL BE PAID BY THE MANUFACTURER OR PRODUCER WITHIN TWO (2) DAYS AFTER REMOVAL OF SAID PRODUCTS FROM THE PLACE OF PRODUCTION.

(3) *PLACE FOR FILING OF THE RETURN AND PAYMENT OF THE TAX.* - EXCEPT AS THE COMMISSIONER OTHERWISE PERMITS, THE RETURN SHALL BE FILED WITH AND THE TAX PAID TO ANY AUTHORIZED AGENT BANK OR REVENUE COLLECTION OFFICER, OR DULY AUTHORIZED CITY OR MUNICIPAL TREASURER IN THE PHILIPPINES.

(4) *EXCEPTIONS.* - THE SECRETARY OF FINANCE, UPON RECOMMENDATION OF THE COMMISSIONER MAY, BY RULES AND REGULATIONS, PRESCRIBE:

(A) THE TIME FOR FILING THE RETURN AT INTERVALS OTHER THAN THE TIME PRESCRIBED IN THE PRECEDING PARAGRAPHS FOR A PARTICULAR CLASS OR CLASSES OF TAXPAYERS AFTER CONSIDERING FACTORS SUCH AS VOLUME OF REMOVALS, ADEQUATE MEASURES OF SECURITY AND SUCH OTHER RELEVANT INFORMATION REQUIRED TO BE SUBMITTED UNDER THE PERTINENT PROVISIONS OF THIS CODE; AND

(B) THE MANNER AND TIME OF PAYMENT OF EXCISE TAXES OTHER THAN AS HEREIN PRESCRIBED, UNDER A TAX PREPAYMENT, ADVANCE DEPOSIT OR SIMILAR SCHEMES. IN THE CASE OF LOCALLY PRODUCED OR EXTRACTED MINERALS AND MINERAL PRODUCTS OR QUARRY RESOURCES WHERE THE MINE SITE OR PLACE OF EXTRACTION IS NOT THE SAME AS THE PLACE OF PROCESSING OR PRODUCTION, THE RETURN SHALL BE FILED WITH THE TAX PAID TO THE REVENUE DISTRICT OFFICE HAVING JURISDICTION OVER THE LOCALITY WHERE THE SAME ARE MINED, EXTRACTED OR QUARRIED: *PROVIDED, HOWEVER*, THAT FOR METALLIC MINERALS PROCESSED ABROAD, THE RETURN SHALL BE FILED AND THE TAX DUE THEREON PAID TO THE REVENUE DISTRICT OFFICE

HAVING JURISDICTION OVER THE LOCALITY WHERE THE SAME ARE MINED, EXTRACTED OR QUARRIED.

"([b]B) *Determination of [g]Gross [s]Selling [p]Price of [g]Goods subject to [a]Ad [v]Valorem [t]Tax.*
- x x x

"([c]C) x x x

"([d]D) x x x."

SECTION 63. Section 128 of the Code is hereby renumbered as Section 132 and amended to read as follows:

"SEC. [128] 132. *Payment of [e]Excise [t]Taxes on [i]Imported [a]Articles.* -

"([a]A) *Persons liable.* - x x x

"In the case of tax-free articles brought or imported into the Philippines by persons, entities, or agencies exempt from tax which are subsequently sold, transferred or exchanged in the Philippines to non-exempt persons or entities, the purchasers or recipients shall be considered the importers thereof, and shall be liable for the duty and internal revenue tax due on such importation. [The tax due on such article shall constitute a lien on the article itself, superior to all other charges or liens, irrespective of the possessor thereof.]

THE PROVISION OF ANY SPECIAL OR GENERAL LAW TO THE CONTRARY NOTWITHSTANDING, THE IMPORTATION OF CIGARS AND CIGARETTES, DISTILLED SPIRITS 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 THIS SHALL NOT APPLY TO CIGARS AND CIGARETTES, DISTILLED SPIRITS AND WINES BROUGHT DIRECTLY INTO THE DULY CHARTERED OR LEGISLATED FREEPORTS OF THE SUBIC SPECIAL ECONOMIC AND FREEPORT ZONE, CREATED UNDER R.A. NO. 7227; THE CAGAYAN SPECIAL ECONOMIC ZONE AND FREEPORT, CREATED UNDER R.A. NO. 7922; AND THE ZAMBOANGA CITY SPECIAL ECONOMIC ZONE, CREATED UNDER R.A. NO. 7903, AND ARE NOT TRANSSHIPPED TO ANY

OTHER PORT IN THE PHILIPPINES: *PROVIDED, FURTHER,* THAT IF SUCH ARTICLES DIRECTLY BROUGHT INTO THE DULY CHARTERED OR LEGISLATED FREEPORTS 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 OR DUTY-FREE GOODS, PRODUCTS, MACHINERY, EQUIPMENT AND OTHER SIMILAR ARTICLES, FROM ONE FREEPORT TO ANOTHER FREEPORT SHALL NOT BE DEEMED AN INTRODUCTION INTO THE PHILIPPINE CUSTOMS TERRITORY.

THE TAX DUE ON SUCH GOODS, PRODUCTS, MACHINERY, EQUIPMENT OR OTHER SIMILAR ARTICLES SHALL CONSTITUTE A LIEN ON THE ARTICLE ITSELF, SUPERIOR TO ALL OTHER CHARGES OR LIENS, IRRESPECTIVE OF THE POSSESSOR THEREOF.

"([b]B) x x x."

SECTION 64. Section 131 of this Code is hereby renumbered as Section 135 and amended to read as follows:

"SEC. [131] 135. *Domestic [d]Denatured [a]Alcohol.* - Domestic alcohol of not less than one hundred eighty degrees proof (ninety percent absolute alcohol) shall, when suitably denatured and rendered unfit for oral intake, be exempt from the [specific] EXCISE tax prescribed in Section [138] 142: *Provided, however,* That such denatured alcohol shall be subject to tax under Section [100] 105 (a) of this Code: *Provided, further,* That if such alcohol is to be used for motive power, it shall be taxed under Section [145] 149 [(a)](4) of this Code; *PROVIDED, FINALLY,* THAT ANY ALCOHOL, PREVIOUSLY RENDERED UNFIT FOR ORAL INTAKE AFTER DENATURING BUT SUBSEQUENTLY RENDERED FIT FOR ORAL INTAKE AFTER UNDERGOING FERMENTATION, DILUTION, PURIFICATION, MIXTURE OR ANY OTHER SIMILAR PROCESS SHALL BE TAXED UNDER SECTION 142 OF THIS CODE AND SUCH TAX SHALL BE PAID BY THE PERSON IN POSSESSION OF SUCH TAX SHALL BE PAID BY THE PERSON IN POSSESSION OF

SUCH REPROCESSED SPIRITS.

SECTION 65. Section 132 of this Code is hereby renumbered as Section 136 and amended to read as follows:

"SEC. [132] 136. *Petroleum [p]Products [s]Sold to [foreign] [i]International [c]Carriers, AND EXEMPT ENTITIES OR AGENCIES.* - Petroleum products sold on [an international carrier for [its] use or consumption outside the Philippines shall not be subject to excise taxes: *Provided*, That the country of the said exempts from similar taxes petroleum products sold to Philippine carriers.] THE FOLLOWING ARE EXEMPT FROM EXCISE TAX.

(1) INTERNATIONAL CARRIERS OF PHILIPPINE OR FOREIGN REGISTRY ON THEIR USE OR CONSUMPTION OUTSIDE THE PHILIPPINES; *PROVIDED*, THAT THE PETROLEUM PRODUCTS SOLD TO THESE INTERNATIONAL CARRIERS SHALL BE STORED IN A BONDED STORAGE TANK AND MAY BE DISPOSED OF ONLY IN ACCORDANCE WITH THE RULES AND REGULATIONS TO BE PRESCRIBED BY THE SECRETARY OF FINANCE UPON THE RECOMMENDATION OF THE COMMISSIONER;

(2) EXEMPT ENTITIES OR AGENCIES COVERED BY TAX TREATIES, CONVENTIONS AND OTHER INTERNATIONAL AGREEMENTS FOR THEIR USE OR CONSUMPTION.

PROVIDED, HOWEVER, THAT THE COUNTRY OF SAID FOREIGN INTERNATIONAL CARRIER OR EXEMPT ENTITIES OR AGENCIES EXEMPTS FROM SIMILAR TAXES PETROLEUM PRODUCTS SOLD TO PHILIPPINE CARRIERS, ENTITIES OR AGENCIES.

SECTION 66. Section 134 of this Code is hereby renumbered as Section 138 and amended to read as follows:

"Sec. [134] 138. *Removal of [s]Spirits [u]Under [b]Bond FOR RECTIFICATION.* - Spirits requiring rectification may be removed from the place of production to [some other] ANOTHER establishment for purpose of rectification without the prepayment of the excise tax[:]; *Provided*, That the distiller removing such spirits and the rectifier receiving them shall file with the

Commissioner their joint bond conditioned upon the payment by the rectifier of the excise tax due on the [finished product;] RECTIFIED ALCOHOL: *Provided, further*, That in cases where alcohol has already been rectified either by original and continuous distillation or by redistillation [is further rectified], no loss for rectification and handling shall be allowed and the rectifier thereof shall pay the [specific] EXCISE tax due on such losses[:]. *PROVIDED, FINALLY, THAT WHERE A RECTIFIER MAKES USE OF SPIRITS UPON WHICH THE EXCISE TAX HAS NOT BEEN PAID, HE SHALL BE LIABLE FOR THE PAYMENT OF THE TAX OTHERWISE DUE THEREON.*"

SECTION 67. Section 135 of this Code is hereby renumbered as Section 139 and amended as follows:

"SEC. [135] 139. *Removal of [f]Fermented [l]Liquors to [b]Bonded [w]Warehouse.* - Any brewer may remove or transport from his brewery or other place of manufacture to a bonded warehouse used by him exclusively for the storage or sale in bulk of fermented liquors of his own manufacture, any quantities of such fermented liquors, not less than one thousand liters at one removal, without [payment] PREPAYMENT of the tax thereon under a permit which shall be granted by the Commissioner. Such permit shall be affixed to every package so removed and shall be cancelled or destroyed in such manner as the Commissioner may prescribe. Thereafter, the manufacturer of such fermented liquors shall pay the tax in the same manner and under the same penalty and liability as when paid at the brewery."

SECTION 68. Section 143 of the Code is renumbered as Section 147 and the second paragraph thereof is amended to read as follows:

"SEC. [143] 147. *Inspection [f]Fee.* - x x x

The inspection fee on LEAF TOBACCO, SCRAP, cigars, cigarettes and other tobacco products AS DEFINED IN SECTION 148 OF THIS CODE shall be paid by the WHOLESALER, manufacturer, producer, [or] owner OR OPERATOR OF REDRYING PLANT, AS THE CASE MAY BE, [within ten (10) days after the end of each month while the inspection fee on leaf tobacco, scrap and other manufactured tobacco shall be paid immediately before removal from the establishment of the wholesaler, manufacturer, or redrying plant] IMMEDIATELY BEFORE REMOVAL THEREOF FROM THE ESTABLISHMENT OF THE WHOLESALER, MANUFACTURER, OWNER, OR

OPERATOR OF THE REDRYING PLANT. In case of imported leaf tobacco and products thereof, the inspection fee shall be paid by the importer before removal from customs custody."

SECTION 69. Section 145 of this Code is hereby renumbered as Section 149 and paragraph (1) thereof is amended as follows:

"SEC. [145] 149. *Manufactured [o] Oils and [o] Other [f] Fuels.* - x x x

(1) Lubricating oils and greases including but not limited to base stock for lube oils and greases, high vacuum distillates, aromatic extracts and other similar preparations, and additives for lubricating oils and greases whether such additives are petroleum based or not, per liter AND KILOGRAM, RESPECTIVELY, of volume capacity OR WEIGHT, four pesos and fifty centavos (P4.50): *Provided, however,* That the [specific] EXCISE taxes paid on the purchased feedstock (bunker) used in the manufacture of exciseable articles and forming part thereof shall be credited against the [specific] EXCISE tax due therefrom: *Provided, further,* That lubricating oils and greases produced from basestocks and additives on which the [specific] EXCISE tax has already been paid shall no longer be subject to [specific] EXCISE tax: *PROVIDED, FINALLY,* THAT LOCALLY PRODUCED OR IMPORTED OILS PREVIOUSLY TAXED AS SUCH BUT ARE SUBSEQUENTLY REPROCESSED, REREFINED OR RECYCLED SHALL LIKEWISE BE SUBJECT TO THE TAX IMPOSED UNDER THIS SECTION."

SECTION 70. Sections 146, 147 and 148 of the Code are hereby repealed.

SECTION 71. Section 149 of the Code is hereby renumbered as Section 150 and amended to read as follows:

"SEC. [149] 150. *Automobiles.* - x x x

"x x x"

AUTOMOBILES ACQUIRED FOR USE BY PERSONS OR ENTITIES OPERATING WITHIN THE FREE PORT ZONE SHALL BE EXEMPT FROM EXCISE TAX: *PROVIDED,* THAT UTILITY VEHICLES OF REGISTERED ZONE ENTERPRISES, WHICH ARE INDISPENSABLE IN THE CONDUCT AND OPERATIONS OF THEIR

BUSINESS, SUCH AS DELIVERY TRUCKS AND CARGO VANS WITH GROSS VEHICLE WEIGHT ABOVE THREE (3) METRIC TONS MAY BE ALLOWED UNRESTRICTED USE OUTSIDE THE FREE PORT ZONE: *PROVIDED, FURTHER,* THAT TOURIST-ORIENTED ENTERPRISES, SUCH AS TOURIST BUSES AND CARS WITH YELLOW PLATES, COLOR CODED, AND UTILIZED EXCLUSIVELY FOR THE PURPOSE OF TRANSPORTING TOURISTS IN TOURISM RELATED ACTIVITIES, AND SERVICE VEHICLES OF FREE PORT REGISTERED ENTERPRISES AND EXECUTIVES, SUCH AS COMPANY SERVICE CARS AND EXPATRIATES' AND INVESTORS' AUTOMOBILES BROUGHT IN THE NAME OR UPON THE REQUEST OF SUCH ENTERPRISES, AND PERSONALLY-OWNED VEHICLES OF RESIDENTS, INCLUDING THE LEASEHOLDERS OF RESIDENCES INSIDE THE FREE PORT ZONE, MAY BE USED OUTSIDE THE FREE PORT ZONE FOR SUCH PERIODS AS MAY BE PRESCRIBED BY THE DEPARTMENTS OF FINANCE AND TRADE AND INDUSTRY, THE BUREAU OF CUSTOMS AND THE FREE PORT AUTHORITIES CONCERNED, WHICH IN NO CASE SHALL EXCEED FOURTEEN (14) DAYS PER MONTH.

IN CASE SUCH VEHICLES ARE USED FOR MORE THAN AN AGGREGATE PERIOD OF FOURTEEN (14) DAYS PER MONTH OUTSIDE OF THE FREE PORT ZONE, THE OWNER OR IMPORTER SHALL PAY THE CORRESPONDING EXCISE TAX DUE ON SUCH VEHICLE.

THE SECRETARIES OF FINANCE AND TRADE, TOGETHER WITH THE COMMISSIONER OF CUSTOMS AND THE ADMINISTRATORS OF THE FREE PORTS CONCERNED SHALL PROMULGATE RULES AND REGULATIONS FOR THE PROPER IDENTIFICATION AND CONTROL OF SAID AUTOMOBILES.

SECTION 72. Section 150 of the Code is hereby renumbered as Section 151 and amended to read as follows:

"SEC. [150] 151. *Non-essential [g] Goods.* - x x x

"([a]) x x x

"([b]B) [Perfumes and toilet waters;] *TOILET PREPARATIONS* -

THE TERM "TOILET PREPARATIONS" SHALL INCLUDE PERFUMES, ESSENCES, EXTRACTS, LOTIONS, TOILET WATERS, COSMETICS, HAIR RESTORATIVES, HAIR DYES AND ANY SIMILAR SUBSTANCE, ARTICLES OR PREPARATIONS BY WHATSOEVER NAME KNOWN OR DISTINGUISHED WHICH ARE USED OR APPLIED OR INTENDED TO BE USED OR APPLIED FOR TOILET PURPOSES. ANY ARTICLE ADVERTISED OR HELD OUT TO BE SUITABLE FOR TOILET PURPOSES WILL BE SUBJECT TO TAX AS TOILET PREPARATIONS, REGARDLESS OF THE NAME BY WHICH IT MAY BE KNOWN OR DISTINGUISHED.

"(c) x x x"

SECTION 73. Section 151 of the Code is hereby renumbered as Section 152, with paragraph (c) thereof and paragraph (a)(4) amended to read as follows:

"SEC. [151]152. *Mineral Products.* - ([a]A) x x x

"(4) On indigenous petroleum, NATURAL GAS AND LIQUEFIED NATURAL GAS, a tax of [fifteen] THREE percent [(15%)](3%) of the fair international market price thereof, on the first taxable sale, BARTER, EXCHANGE OR SUCH SIMILAR TRANSACTION, such tax to be paid by the buyer or purchaser within FIFTEEN (15) days from the date of actual or constructive delivery to the said buyer or purchaser. IN CASE SAID PRODUCTS ARE EXPORTED, THE TAX SHALL BE PAID BY THE SELLER/EXPORTER. The phrase 'first taxable sale, barter, exchange or similar transaction' means the transfer of indigenous petroleum in its original state to a first taxable transferee. The fair international market price shall be determined in consultation with an appropriate government agency.

"x x x"

["(c) *Time, manner and place of payment of excise tax on mineral and mineral products.* - Unless otherwise provided, the excise tax on mineral and mineral products shall be due and payable upon the removal of the minerals or mineral products or quarry resources from the locality where mined or upon removal from customs custody in the case of importations.

"Any person liable to pay the excise tax on locally produced or extracted mineral, mineral products or

quarry resources shall, before removal of such products, file in duplicate a return setting forth the quantity and the actual market value of the minerals or mineral products to be removed and pay the excise taxes due thereon to the Collection Agent, or the Treasurer of the city or municipality of the place where the mine is located except as hereinbelow provided.

"However, the output of the mine may be removed from such locality without the prepayment of such excise taxes if the lessee, owner, or operator of the mining claim shall file a bond in the form and amount and with such sureties as the Commissioner may require, conditioned upon the payment of such excise taxes. It shall be the duty of every lessee, owner or operator to make a true and complete return in duplicate setting forth the quantity and the actual market value of the minerals or mineral products, or quarry resources removed during such calendar quarter, of the balance, if any, in cases where payments are made upon removal, and pay the excise taxes due thereon within 20 days after the end of such quarter to the Collection Agent, or the Treasurer of the city or municipality of the place where the mine is located.

"In the case of indigenous petroleum, the tax due thereon shall be paid by the buyer or purchaser within 15 days from the date of actual or constructive delivery to the said buyer or purchaser.]"

SECTION 74. Section 157 of the Code is hereby renumbered as Section 158 and amended to read as follows:

"SEC. [157]158. *Removal of [a] Articles [a] After the [p] Payment of [t] Taxes.* - When the tax has been paid on articles or products subject to excise tax, the same shall not thereafter be stored or permitted to remain in the distillery, distillery warehouse, bonded warehouse, or other factory or place where produced. However, upon prior permit from the Commissioner, oil refineries and/or companies may store or deposit tax-paid petroleum products and commingle the same with its own [bonded] MANUFACTURED products NOT YET SUBJECTED TO EXCISE TAX. Imported petroleum products may be allowed to be withdrawn from customs without the prepayment of excise tax, which products may be commingled with the tax-paid or bonded products of the importer himself after securing a prior permit from the Commissioner [of Internal Revenue]: *Provided*, That withdrawals shall be taxed and accounted for on a "first-in, first-out" basis."

SECTION 75. Section 160 of the Code is hereby renumbered as Section 161 and amended to read as follows:

"SEC. [160] 161. *Manufacturers' and [i]Importers' [b]Bonded.* - Manufacturers and importers of articles subject to [specific] EXCISE tax shall [give]POST A bond [in an amount equal, as nearly as can be estimated, to twenty percent of the taxes payable by them during an average year.] SUBJECT TO THE FOLLOWING CONDITIONS:

"(1) IN CASE OF INITIAL BOND, THE AMOUNT SHALL BE EQUAL TO ONE HUNDRED THOUSAND PESOS (P100,000); *PROVIDED*, THAT IF AFTER SIX MONTHS OF OPERATION, THE AMOUNT OF INITIAL BOND IS LESS THAN THE AMOUNT OF THE TOTAL EXCISE TAX PAID DURING THE PERIOD, THE AMOUNT OF THE BOND SHALL BE ADJUSTED TO TWICE THE TAX ACTUALLY PAID FOR THE PERIOD.

"(2) BOND FOR THE SUCCEEDING YEARS OF OPERATION. - THE BONDS FOR THE SUCCEEDING YEARS OF OPERATION SHALL BE BASED ON THE ACTUAL TOTAL EXCISE TAX PAID DURING THE YEAR IMMEDIATELY PRECEDING THE YEAR OF OPERATION.

"Such bond shall be conditioned upon the faithful compliance, during the time such business is followed, with laws and regulations relating to such business and for the satisfaction of all fines and penalties imposed by this Code. [No such bond shall be required in an amount exceeding Five hundred thousand pesos nor be received in a sum less than Ten thousand pesos.]

SECTION 76. Section 174 of the Code is hereby renumbered as Section 175 and amended to read as follows:

"SEC. [174] 175. *Stamp [t]Tax on [b]Bonds, [d]Debentures, DEPOSIT SUBSTITUTE DEBT INSTRUMENTS and [c]Certificates of [i]Indebtedness.* — On all bonds, debentures, DEPOSIT SUBSTITUTE DEBT INSTRUMENTS, and certificates of indebtedness issued by any association, company, or corporation, there shall be collected a documentary stamp tax of One peso and fifty centavos (P1.50) on each Two hundred pesos, or fractional part thereof, of the face value of such documents."

SECTION 77. Section 175 of the Code is hereby renumbered as Section 176 and amended to read as follows:

"SEC. [175] 176. *Stamp [t]Tax on [o]Original [i]Issue of [certificates] SHARES of [s]Stock.* "On every original issue, whether on organization, reorganization or for any lawful purpose, of [certificates] SHARES of stock by any association, company, or corporation, there shall be collected a documentary stamp tax of Two pesos (P2.00) on each Two hundred pesos, or fractional part thereof, of the par value of such [certificates] SHARES OF STOCK[;]: [p] *Provided*, [t] That in the case of the original issue of SHARES OF stock without par value the amount of the documentary stamp tax herein prescribed shall be based upon the actual consideration [received by the association, company, or corporation] for the issuance of such SHARES OF stock: *PROVIDED, FURTHER*, THAT, [and] in the case of stock dividends, on the actual value represented by each share."

SECTION 78. Section 180 of the Code is hereby renumbered as Section 181 and amended to read as follows:

"SEC. [180] 181. *Stamp [t]Tax on [a]All [l]Loan [a]Agreements, [p]Promissory [n]Notes, [b]Bills of [e]Exchange, [d]Drafts, [i]Instruments and [s]Securities [i]Issued by the [g]Government of [a]Any of its [i]Instrumentalities, [c]Certificates of [d]Deposit [b]Bearing [i]Interest and [o]Others [n]Not [p]Payable on [s]Sight or [d]Demand.* - On all loan agreements, INCLUDING THOSE signed abroad, wherein the object of the contract is located or used in the Philippines, bills of exchange (between points within the Philippines), drafts, instruments and securities issued by the Government or any of its instrumentalities, [or] orders for the payment of any sum of money otherwise than at sight or on demand, [or] on all promissory notes, whether negotiable or non-negotiable, except bank notes issued for circulation, and on each renewal of any such note, there shall be collected a documentary stamp tax of [t]Thirty centavos (P0.30) on each Two hundred pesos, or fractional part thereof, of the face value of any such agreement, bill of exchange, draft, certificate of deposit, or note: *Provided*, That only one documentary stamp tax shall be imposed on either loan agreement, or promissory notes issued to secure such loan, whichever will yield a higher tax: *Provided, however*, That loan agreements or promissory notes the aggregate of which does not exceed Two hundred fifty thousand pesos (P250,000.00) executed by an individual for his purchase

on installment for his personal use or that of his family and not for business, resale, barter or hire of a house, lot, motor vehicle, appliance or furniture shall be exempt from the payment of the documentary stamp tax provided under this Section."

SECTION 79. The first paragraph of Section 196, now Section 197, of the Code is hereby amended to read as follows:

"SEC. [196] 197. *Stamp [t]Tax on [d]Deeds of [s]Sale and [c]Conveyances of [r]Real [p]Property.* - On all conveyances, deeds, instruments, or writings, other than grants, patents, or original certificates of adjudication issued by the Government, whereby any lands, tenements or other realty sold shall be granted, assigned, transferred, or otherwise conveyed to the purchaser, or purchasers, or to any other person or persons designated by such purchaser or purchasers, there shall be collected a documentary stamp tax at the RATES HEREIN BELOW PRESCRIBED, BASED ON THE CONSIDERATION CONTRACTED TO BE PAID FOR SUCH REALTY OR ON ITS FAIR MARKET VALUE DETERMINED IN ACCORDANCE WITH SECTION 6(E) OF THIS CODE, WHICHEVER IS HIGHER: *PROVIDED*, THAT WHEN ONE OF THE CONTRACTING PARTIES IS THE GOVERNMENT, THE TAX HEREIN IMPOSED SHALL BE BASED ON THE ACTUAL CONSIDERATION:

"x x x"

SECTION 80. Section 200 of the Code is hereby renumbered as Section 201 and the provision thereof deleted and replaced with the following:

"SEC. 201. *Payment of Documentary Stamp Tax.*"
 (A) *IN GENERAL.* -- THE PROVISIONS OF PRESIDENTIAL DECREE NO. 1045 NOTWITHSTANDING, ANY PERSON LIABLE TO PAY DOCUMENTARY STAMP TAX UPON ANY DOCUMENT SUBJECT TO TAX UNDER TITLE VII OF THIS CODE SHALL FILE A TAX RETURN AND PAY THE TAX IN ACCORDANCE WITH THE RULES AND REGULATIONS TO BE PRESCRIBED BY THE SECRETARY OF FINANCE, UPON RECOMMENDATION OF THE COMMISSIONER.

(B) *TIME FOR FILING AND PAYMENT OF THE TAX.* -- EXCEPT AS PROVIDED BY RULES AND REGULATIONS PROMULGATED BY THE

SECRETARY OF FINANCE, UPON RECOMMENDATION OF THE COMMISSIONER, THE TAX RETURN PRESCRIBED IN THIS SECTION SHALL BE FILED WITHIN TEN (10) DAYS AFTER THE CLOSE OF THE MONTH WHEN THE TAXABLE DOCUMENT WAS MADE, SIGNED, ISSUED, ACCEPTED OR TRANSFERRED, AND THE TAX THEREON SHALL BE PAID AT THE SAME TIME THE AFORESAID RETURN IS FILED.

(C) *WHERE TO FILE.* -- EXCEPT IN CASES WHERE THE COMMISSIONER OTHERWISE PERMITS, THE AFORESAID TAX RETURN SHALL BE FILED WITH AND THE TAX DUE SHALL BE PAID THROUGH THE AUTHORIZED AGENT BANK WITHIN THE TERRITORIAL JURISDICTION OF THE REVENUE DISTRICT OFFICE WHICH HAS JURISDICTION OVER THE RESIDENCE OR PRINCIPAL PLACE OF BUSINESS OF THE TAXPAYER. IN PLACES WHERE THERE IS NO AUTHORIZED AGENT BANK, THE RETURN SHALL BE FILED WITH THE REVENUE DISTRICT OFFICER, COLLECTION AGENT, OR DULY AUTHORIZED TREASURER OF THE CITY OR MUNICIPALITY IN WHICH THE TAXPAYER HAS HIS LEGAL RESIDENCE OR PRINCIPAL PLACE OF BUSINESS.

(D) *EXCEPTION.* -- IN LIEU OF THE FOREGOING PROVISIONS OF THIS SECTION, THE TAX MAY BE PAID EITHER THROUGH PURCHASE AND ACTUAL AFFIXTURE, OR BY IMPRINTING THE STAMPS THROUGH A DOCUMENTARY STAMP METERING MACHINE, ON THE TAXABLE DOCUMENT, IN THE MANNER AS MAY BE PRESCRIBED BY RULES AND REGULATIONS TO BE PROMULGATED BY THE SECRETARY OF FINANCE, UPON RECOMMENDATION OF THE COMMISSIONER.

SECTION 81. Section 204 of the Code is hereby renumbered as Section 205 and amended to read as follows:

"SEC. [204] 205. *Authority of the Commissioner to [c]Compromise, [a]Abate, and [r]Refund [] OR [c]Credit [t]Taxes.* - The Commissioner may -

"[(1)] (A) Compromise the payment of any internal revenue tax when -

"[(a)] (1) A reasonable doubt as to the validity of the

claim against the taxpayer exists; or

"[(b)] (2) The financial position of the taxpayer demonstrates a clear inability to pay the assessed tax[: *Provided, however,* That final assessments issued against large taxpayers as defined under Section [4]246 of this Code shall not be compromised for less than fifty percent (50%). Any such compromise involving said taxpayers lower than fifty percent (50%) shall be subject to the approval of the Secretary of Finance].

THE COMPROMISE SETTLEMENT OF ANY TAX LIABILITY SHALL BE SUBJECT TO THE FOLLOWING MINIMUM AMOUNTS:

FOR CASES OF FINANCIAL INCAPACITY, A MINIMUM COMPROMISE RATE EQUIVALENT TO TEN PERCENT (10%) OF THE BASIC ASSESSED TAX; AND

FOR OTHER CASES, A MINIMUM COMPROMISE RATE EQUIVALENT TO FORTY PERCENT (40%) OF THE BASIC ASSESSED TAX.

WHERE THE BASIC TAX INVOLVED EXCEEDS ONE MILLION PESOS (P1,000,000) OR WHERE THE SETTLEMENT OFFERED IS LESS THAN THE PRESCRIBED MINIMUM RATES, THE COMPROMISE SHALL BE SUBJECT TO THE APPROVAL OF THE EVALUATION BOARD WHICH SHALL BE COMPOSED OF THE COMMISSIONER AND THE FOUR (4) DEPUTY COMMISSIONERS OF INTERNAL REVENUE.

"[(2)] (B) Abate or cancel a tax liability, when -

"[(a)] (1) The tax or any portion thereof appears to be unjustly or excessively assessed; or

"[(b)] (2) The administration and collection costs involved do not justify the collection of the amount due.

"All criminal violations may be compromised except: (a) those already filed in court, and (b) those involving fraud.

"[The Commissioner of Internal Revenue may delegate his power to compromise internal revenue cases to the Deputy Commissioners and the Regional Directors, subject to such limitations and restrictions as may be imposed under rules and regulations to be promulgated for the purpose.]

"[(3)] (C) Credit or refund taxes erroneously or illegally received OR penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two years after the payment of the tax or penalty: *PROVIDED, HOWEVER,* THAT A RETURN FILED SHOWING AN OVERPAYMENT SHALL BE CONSIDERED AS A WRITTEN CLAIM FOR CREDIT OR REFUND.

A TAX CREDIT CERTIFICATE VALIDLY ISSUED UNDER THE PROVISIONS OF THIS CODE MAY BE APPLIED AGAINST ANY INTERNAL REVENUE TAX, EXCLUDING WITHHOLDING TAXES, FOR WHICH THE TAXPAYER IS DIRECTLY LIABLE. ANY REQUEST FOR CONVERSION INTO REFUND OF UNUTILIZED TAX CREDITS MAY BE ALLOWED, SUBJECT TO THE PROVISIONS OF SECTION 228 OF THIS CODE: *PROVIDED,* THAT THE ORIGINAL COPY OF THE TAX CREDIT CERTIFICATE SHOWING A CREDITABLE BALANCE IS SURRENDERED TO THE APPROPRIATE REVENUE OFFICER FOR VERIFICATION AND CANCELLATION: *PROVIDED, FURTHER,* THAT IN NO CASE SHALL A TAX REFUND BE GIVEN RESULTING FROM AVAILMENT OF INCENTIVES GRANTED PURSUANT TO SPECIAL LAWS FOR WHICH NO ACTUAL PAYMENT WAS MADE.

THE COMMISSIONER SHALL SUBMIT TO THE COMMITTEE ON WAYS AND MEANS OF BOTH THE HOUSE OF REPRESENTATIVES AND THE SENATE OF THE PHILIPPINES, EVERY SIX MONTHS, A REPORT ON THE EXERCISE OF HIS POWERS UNDER THIS SECTION, STATING THEREIN THE FOLLOWING FACTS AND INFORMATION, AMONG OTHERS: NAMES AND ADDRESSES OF TAXPAYERS WHOSE CASES HAVE BEEN THE SUBJECT OF ABATEMENT OR COMPROMISE; AMOUNT INVOLVED; AMOUNT COMPROMISED OR ABATED; AND REASONS FOR THE EXERCISE OF POWER: *PROVIDED,* THAT THE SAID REPORT SHALL BE PRESENTED TO THE OVERSIGHT COMMITTEE IN CONGRESS THAT SHALL BE CONSTITUTED TO DETERMINE THAT SAID POWERS ARE REASONABLY

EXERCISED AND THAT THE GOVERNMENT IS NOT UNDULY DEPRIVED OF REVENUES: *PROVIDED, FINALLY, THAT THE CONGRESSIONAL OVERSIGHT COMMITTEE SHALL BE COMPOSED OF THE CHAIRMEN OF THE COMMITTEE ON WAYS AND MEANS OF THE SENATE AND THE HOUSE OF REPRESENTATIVES AND FOUR ADDITIONAL MEMBERS, TWO FROM EACH HOUSE, TO BE DESIGNATED BY THE SENATE PRESIDENT AND THE SPEAKER OF THE HOUSE OF REPRESENTATIVES, RESPECTIVELY. THE CONGRESSIONAL OVERSIGHT COMMITTEE SHALL MONITOR AND ENSURE THE PROPER IMPLEMENTATION OF THE POWER VESTED UNDER THIS PROVISION.*"

SECTION 82. Section 213 on 'Levy on real estate' is hereby incorporated as Subsection (b) of Section 207, now Section 208, of the Code. Section 207, now Section 208, is further amended to read as follows:

"*SEC. [207] 208. SUMMARY REMEDIES. - (A) Distraint of [p] Personal [p] Property. - [The remedy by distraint shall proceed as follows:] Upon the failure of the person owing any delinquent tax or delinquent revenue to pay the same, at the time required, the REVENUE REGIONAL DIRECTOR, IF THE AMOUNT INVOLVED IS IN EXCESS OF ONE MILLION PESOS (P1,000,000.00), OR THE Revenue District Officer, IF THE AMOUNT INVOLVED IS ONE MILLION PESOS (P1,000,000.00) OR LESS, [if the amount involved does not exceed Five thousand pesos; the Revenue Regional Director, if the amount involved is more than Five thousand pesos but does not exceed Twenty thousand pesos; and the Commissioner, if the amount involved exceeds Twenty thousand pesos,] shall seize and distraint [not earlier than three months nor later than six months from receipt of demand,] any goods, chattels, or effects, and the personal property, including stocks and other securities, debts, credits, bank accounts, and interest in and rights to personal property, of such persons in sufficient quantity to satisfy the tax, or charge, together with any increment thereto incident to delinquency, and the expenses of the distraint and the cost of the subsequent sale.*

"A report on the distraint shall, within ten (10) days from receipt of the warrant, be submitted by the distraining officer to the Revenue District Officer, AND to the Revenue Regional Director [and to the Commissioner]: *PROVIDED, THAT THE REVENUE REGIONAL*

DIRECTOR OR THE REVENUE DISTRICT OFFICER, AS THE CASE MAY BE, SHALL, SUBJECT TO RULES AND REGULATIONS PROMULGATED BY THE SECRETARY OF FINANCE UPON RECOMMENDATION OF THE COMMISSIONER, HAVE THE POWER TO LIFT SUCH ORDER OF DISTRAINT: PROVIDED, FURTHER, THAT A CONSOLIDATED REPORT BY THE REVENUE REGIONAL DIRECTOR MAY BE REQUIRED BY THE COMMISSIONER AS OFTEN AS NECESSARY.

"[SEC. 213.] (B) *Levy on [r] Real [estate] PROPERTY. - After the expiration of the time required to pay the delinquent tax or delinquent revenue as prescribed in THIS Section [207], real property may be levied upon, before, simultaneously, or after the distraint of personal property belonging to the delinquent. To this end, any internal revenue officer designated by the REVENUE REGIONAL DIRECTOR OR THE Revenue District Officer[, or the Revenue Regional Director or the Commissioner], as the case may be, shall prepare a duly authenticated certificate showing the name of the taxpayer and the amounts of the tax and penalty due from him. Said certificate shall operate with the force of a legal execution throughout the Philippines.*

"Levy shall be effected by writing upon said certificate a description of the property which levy is made. At the same time, written notice of the levy shall be mailed to or served upon the Register of Deeds of the province or city where the property is located and upon the delinquent taxpayer, or, if he be absent from the Philippines, to his agent or the manager of the business in respect to which the liability arose, or, if there be none, to the occupant of the property in question.

"In case the levy on real property is not issued before or simultaneously with the warrant of distraint on personal property and the personal property of the taxpayer is not sufficient to satisfy his tax delinquency, the REVENUE REGIONAL DIRECTOR OR THE Revenue District Officer[, Regional Director or Commissioner], as the case may be, shall, within thirty (30) days after execution of the distraint, proceed with the levy on the taxpayer's real property.

"WITHIN TEN (10) DAYS AFTER RECEIPT OF THE WARRANT, [A] report on any levy shall[, within ten days after receipt of the warrant,] be submitted by the levying officer to the REVENUE REGIONAL DIRECTOR AND THE Revenue District Officer, [the Revenue Regional Director, and to the Commissioner]:

PROVIDED, HOWEVER, THAT A CONSOLIDATED REPORT BY THE REVENUE REGIONAL DIRECTOR MAY BE REQUIRED BY THE COMMISSIONER AS OFTEN AS NECESSARY: PROVIDED, FURTHER, THAT THE REGIONAL DIRECTOR OR REVENUE DISTRICT OFFICER, AS THE CASE MAY BE, SUBJECT TO RULES AND REGULATIONS PROMULGATED BY THE SECRETARY OF FINANCE, UPON RECOMMENDATION OF THE COMMISSIONER, SHALL HAVE THE AUTHORITY TO LIFT WARRANTS OF LEVY ISSUED IN ACCORDANCE WITH THE PROVISIONS HEREOF."

SECTION 83. The second paragraph of Section 214 of the Code is amended to read as follows:

"SEC. 214. *Advertisement and [s]Sale.* - x x x

"Within five (5) days after the sale, a return by the distraining or levying officer of the proceedings shall be entered upon the records of the REVENUE Collection [Agent] OFFICER, the Revenue District Officer, AND the Revenue Regional Director[, and the Commissioner]. The Collection [Agent] OFFICER, in consultation with the Revenue District Officer, shall then make out and deliver to the purchaser a certificate from his records, showing the proceedings of the sale, describing the property sold, stating the name of the purchaser and setting out the exact amount of all taxes, penalties and interest: *Provided, however,* That in case the proceeds of the sale exceeds the claim and cost of sale, the excess shall be turned over to the owner of the property."

SECTION 84. Subsections (c) and (d) of Section 223 of the Code are hereby amended to read as follows:

"SEC. 223. - *Exceptions as to [p]Period of [l]Limitation of [a]Assessment and [c]Collection of [t]Taxes.*"

"x x x

"(c) Any internal revenue tax which has been assessed within the period of limitation above-prescribed may be collected by distraint or levy or by a proceeding in court within [three] FIVE (5) years following the assessment of the tax.

"(d) Any internal revenue tax which has been assessed within the period agreed upon as provided in

paragraph (b) hereinabove may be collected by distraint or levy or by a proceeding in court within the period agreed upon in writing before the expiration of the [three] FIVE-year period. The period so agreed upon may be extended by subsequent written agreements made before the expiration of the period previously agreed upon."

SECTION 85. Section 229 of the Code is hereby amended to read as follows:

"SEC. 229. *Protesting of [a]Assessment.* - When the Commissioner [of Internal Revenue] or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: PROVIDED, HOWEVER, THAT A PREASSESSMENT NOTICE SHALL NOT BE REQUIRED IN THE FOLLOWING CASES:

(A) WHEN THE FINDING FOR ANY DEFICIENCY TAX IS THE RESULT OF MATHEMATICAL ERROR IN THE COMPUTATION OF THE TAX AS APPEARING ON THE FACE OF THE RETURN; OR

(B) WHEN A DISCREPANCY HAS BEEN DETERMINED BETWEEN THE TAX WITHHELD AND THE AMOUNT ACTUALLY REMITTED BY THE WITHHOLDING AGENT; OR

(C) WHEN A TAXPAYER WHO OPTED TO CLAIM A REFUND OR TAX CREDIT OF EXCESS CREDITABLE WITHHOLDING TAX FOR A TAXABLE PERIOD WAS DETERMINED TO HAVE CARRIED OVER AND AUTOMATICALLY APPLIED THE SAME AMOUNT CLAIMED AGAINST THE ESTIMATED TAX LIABILITIES FOR THE TAXABLE QUARTER OR QUARTERS OF THE SUCCEEDING TAXABLE YEAR; OR

(D) WHEN THE EXCISE TAX DUE ON EXCISEABLE ARTICLES HAS NOT BEEN PAID; OR

(E) WHEN AN ARTICLE LOCALLY PURCHASED OR IMPORTED BY AN EXEMPT PERSON, SUCH AS, BUT NOT LIMITED TO VEHICLES, CAPITAL EQUIPMENT, MACHINERIES AND SPARE PARTS, HAS BEEN SOLD, TRADED OR TRANSFERRED TO NON-EXEMPT PERSONS.

THE TAXPAYER SHALL BE INFORMED IN

WRITING OF THE LAW AND THE FACTS ON WHICH THE ASSESSMENT IS MADE; OTHERWISE THE ASSESSMENT SHALL BE VOID.

"Within a period to be prescribed by implementing RULES AND regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner OR HIS DULY AUTHORIZED REPRESENTATIVE shall issue an assessment based on his findings.

"Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation WITHIN THIRTY (30) DAYS FROM RECEIPT OF THE ASSESSMENT in such form and manner as may be prescribed by implementing RULES AND regulations. [within thirty (30) days from receipt of the assessment;] WITHIN SIXTY (60) DAYS FROM FILING OF THE PROTEST, ALL RELEVANT SUPPORTING DOCUMENTS SHALL HAVE BEEN SUBMITTED; otherwise, the assessment shall become final [and unappealable].

"If the protest is denied in whole or in part, OR IS NOT ACTED UPON WITHIN ONE HUNDRED EIGHTY (180) DAYS FROM SUBMISSION OF DOCUMENTS, the [individual, association or corporation] TAXPAYER adversely affected by the decision [on the protest] OR INACTION may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, OR FROM THE LAPSE OF THE 180-DAY PERIOD; otherwise, the decision shall become final, executory and demandable."

SECTION 86. Section 230 of the Code is hereby amended by deleting therefrom the paragraph on 'Forfeiture of Refund'.

SECTION 87. A new Section 231 is hereby inserted after Section 230 to read as follows:

SEC. 231. *FORFEITURE OF CASH REFUND AND OF TAX CREDIT.* --

(A) *FORFEITURE OF REFUND.* - A REFUND CHECK OR WARRANT ISSUED IN ACCORDANCE WITH THE PERTINENT PROVISIONS OF THIS CODE WHICH SHALL REMAIN UNCLAIMED OR UNCASHED WITHIN FIVE (5) YEARS FROM THE DATE THE SAID WARRANT OR CHECK WAS MAILED OR DELIVERED SHALL BE FORFEITED IN FAVOR OF THE GOVERNMENT AND THE

AMOUNT THEREOF SHALL REVERT TO THE GENERAL FUND.

(B) *FORFEITURE OF TAX CREDIT.* - A TAX CREDIT CERTIFICATE ISSUED IN ACCORDANCE WITH THE PERTINENT PROVISIONS OF THIS CODE WHICH SHALL REMAIN UNUTILIZED AFTER FIVE (5) YEARS FROM THE DATE OF ISSUE SHALL, UNLESS REVALIDATED, BE CONSIDERED INVALID, AND SHALL NOT BE ALLOWED AS PAYMENT FOR INTERNAL REVENUE TAX LIABILITIES OF THE TAXPAYER AND THE AMOUNT COVERED BY THE CERTIFICATE SHALL REVERT TO THE GENERAL FUND.

(C) *TRANSITORY PROVISION.* - FOR PURPOSES OF THE PRECEDING SUBSECTION, A TAX CREDIT CERTIFICATE ISSUED BY THE COMMISSIONER OR HIS DULY AUTHORIZED REPRESENTATIVE PRIOR TO JANUARY 1, 1998 WHICH REMAINS UNUTILIZED OR HAS A CREDITABLE BALANCE AS OF SAID DATE, SHALL BE PRESENTED FOR REVALIDATION WITH THE COMMISSIONER OR HIS DULY AUTHORIZED REPRESENTATIVE ON OR BEFORE JUNE 30, 1998.

SECTION 88. Section 232 of the Code is hereby renumbered as Section 233 and is amended to read as follows:

"SEC. [232] 233. *KEEPING OF BOOKS OF ACCOUNTS AND PENALTIES FOR VIOLATIONS BY A CERTIFIED PUBLIC ACCOUNTANT OR FINANCIAL OFFICER.* -- (A) *Corporations, [c]Companies, [p]Partnerships, or [p]Persons [r]Required to [k]Keep [b]Books of [a]Accounts.* - All corporations, companies, partnerships, or persons required by law to pay internal revenue taxes shall keep a journal and a ledger or their equivalents: *Provided, however,* That those whose quarterly sales, earnings, receipts, or output do not exceed [Five] FIFTY thousand pesos (P50,000) shall keep and use simplified set of bookkeeping records duly authorized by the Secretary of Finance wherein all transactions and results of operations are shown and from which all taxes due the [g]Government may readily and accurately be ascertained and determined any time of the year[; and]: *Provided, further,* That [in the case of] corporations, companies, partnerships, or persons whose gross quarterly sales, earnings, receipts or output exceed

[Twenty-five] ONE HUNDRED FIFTY thousand pesos (P150,000), shall have their books of accounts audited and examined yearly by [I] independent Certified Public Accountants and their income tax returns accompanied with A DULY ACCOMPLISHED ACCOUNT INFORMATION FORM (AIF) WHICH SHALL CONTAIN, AMONG OTHERS, INFORMATION LIFTED FROM certified balance sheets, profit and loss statements, schedules listing income producing properties and the corresponding income therefrom and other relevant statements.

"(B) x x x

"(C) *Penal [p] Provision.* - Any FINANCIAL OFFICER OR [c] Certified [p] Public [a] Accountant employed to examine and audit books of taxpayers under subsection (A) of this Section, or any person under his direction who willfully falsifies any report or statement bearing on any examination or audit, or renders a report, including exhibits, statements, schedules or other forms of accountancy work which has not been verified by him personally or under his supervision or by a member of his firm or by a member of his staff in accordance with sound auditing practices, or certifie[d]S financial statements of a business enterprise containing an essential misstatement of facts or omission in respect to the transactions, taxable income, deduction and exemption of his client or who, not being an [I] independent Certified Public Accountant according to subsection (B) of this Section, examines and audits books of taxpayers, or any person who offers to sign and certify financial statement without audit, or any person who offers any taxpayer to use wrong accounting/ bookkeeping records, or in any way commits an act or omission in violation of the provision of this Section shall be punished by a fine of not [exceeding Five] LESS THAN FIFTY thousand pesos (P50,000.00) BUT NOT MORE THAN ONE HUNDRED THOUSAND PESOS (P100,000.00) and imprisonment of not less than two (2) years BUT NOT MORE THAN SIX (6) YEARS. If the offender is a [c] Certified [p] Public [a] Accountant, upon conviction, his certificate as a [c] Certified [p] Public [a] Accountant shall automatically be revoked or cancelled. In the case of foreigners, conviction under this Code shall constitute a ground for deportation."

SECTION 89. Section 236 of the Code on 'Supplying of Taxpayer Account Number' is hereby deleted.

SECTION 90. The provisions of Section 237 of the Code are hereby deleted and replaced with the following:

SEC. 237. *REGISTRATION REQUIREMENTS.*
- (A) EVERY PERSON SUBJECT TO ANY INTERNAL REVENUE TAX SHALL REGISTER ONCE WITH THE APPROPRIATE REVENUE DISTRICT OFFICER:

1. WITHIN TEN (10) DAYS FROM DATE OF EMPLOYMENT; OR

2. ON OR BEFORE THE COMMENCEMENT OF BUSINESS; OR

3. BEFORE PAYMENT OF ANY TAX DUE; OR

4. UPON FILING OF A RETURN, STATEMENT OR DECLARATION AS REQUIRED IN THIS CODE.

THE REGISTRATION SHALL CONTAIN THE TAXPAYER'S NAME, STYLE, PLACE OF RESIDENCE, BUSINESS, AND SUCH OTHER INFORMATION AS MAY BE REQUIRED BY THE COMMISSIONER IN THE FORM PRESCRIBED THEREFOR.

A PERSON MAINTAINING A HEAD OFFICE, BRANCH OR FACILITY SHALL REGISTER WITH THE REVENUE DISTRICT OFFICER HAVING JURISDICTION OVER THE HEAD OFFICE, BRANCH OF FACILITY. FOR PURPOSES OF THIS SECTION, THE TERM 'FACILITY' MAY INCLUDE BUT NOT BE LIMITED TO SALES OUTLETS, PLACES OF PRODUCTION, WAREHOUSES OR STORAGE PLACES.

(b) *ANNUAL REGISTRATION FEE.* - AN ANNUAL REGISTRATION FEE IN THE AMOUNT OF FIVE HUNDRED PESOS (P500) FOR EVERY SEPARATE OR DISTINCT ESTABLISHMENT OR PLACE OF BUSINESS INCLUDING FACILITY TYPES WHERE SALES TRANSACTIONS OCCUR SHALL BE PAID UPON REGISTRATION AND EVERY YEAR THEREAFTER ON OR BEFORE THE LAST DAY OF JANUARY: *PROVIDED, HOWEVER,* THAT COOPERATIVES, INDIVIDUALS EARNING PURELY COMPENSATION INCOME, WHETHER LOCALLY OR ABROAD, AND OVERSEAS WORKERS ARE NOT LIABLE TO THE REGISTRATION FEE HEREIN IMPOSED:

THE REGISTRATION FEE SHALL BE PAID TO AN AUTHORIZED AGENT BANK LOCATED WITHIN THE REVENUE DISTRICT, OR TO THE

REVENUE COLLECTION OFFICER, OR DULY AUTHORIZED TREASURER OF THE CITY OR MUNICIPALITY WHERE EACH PLACE OF BUSINESS OR BRANCH IS REGISTERED.

(C) *REGISTRATION OF EACH TYPE OF INTERNAL REVENUE TAX.* - EVERY PERSON WHO IS REQUIRED TO REGISTER WITH THE BUREAU OF INTERNAL REVENUE UNDER SUBSECTION (A) HEREOF SHALL REGISTER EACH TYPE OF INTERNAL REVENUE TAX FOR WHICH HE IS OBLIGATED, FILE A RETURN AND PAY SUCH TAXES, AND SHALL UPDATE SUCH REGISTRATION OF ANY CHANGES IN ACCORDANCE WITH SUBSECTION (E) HEREOF.

(D) *TRANSFER OF REGISTRATION.* - IN CASE A REGISTERED PERSON DECIDES TO TRANSFER HIS PLACE OF BUSINESS OR HIS HEAD OFFICE OR BRANCHES, IT SHALL BE HIS DUTY TO UPDATE HIS REGISTRATION STATUS BY FILING AN APPLICATION FOR REGISTRATION INFORMATION UPDATE IN THE FORM PRESCRIBED THEREFOR.

(E) *OTHER UPDATES.* - ANY PERSON REGISTERED IN ACCORDANCE WITH THIS SECTION SHALL, WHENEVER APPLICABLE, UPDATE HIS REGISTRATION INFORMATION WITH THE REVENUE DISTRICT OFFICE WHERE HE IS REGISTERED, SPECIFYING THEREIN ANY CHANGE IN TAX TYPE AND OTHER TAXPAYER DETAILS.

(F) *CANCELLATION OF REGISTRATION.* - THE REGISTRATION OF ANY PERSON WHO CEASES TO BE LIABLE TO A TAX TYPE SHALL BE CANCELLED UPON FILING WITH THE REVENUE DISTRICT OFFICE WHERE HE IS REGISTERED AN APPLICATION FOR REGISTRATION INFORMATION UPDATE IN A FORM PRESCRIBED THEREFOR.

(G) *PERSONS COMMENCING BUSINESS.* - ANY PERSON WHO EXPECTS TO REALIZE GROSS SALES OR RECEIPTS SUBJECT TO VALUE-ADDED TAX IN EXCESS OF THE AMOUNT PRESCRIBED UNDER SECTION 108(T) OF THIS CODE, FOR THE NEXT 12-MONTH PERIOD FROM THE COMMENCEMENT OF THE BUSINESS SHALL REGISTER WITH THE REVENUE DISTRICT OFFICE WHICH HAS

JURISDICTION OVER THE HEAD OFFICE OR BRANCH AND SHALL PAY THE ANNUAL REGISTRATION FEE PRESCRIBED IN THE PARAGRAPH (A) HEREOF.

(H) *PERSONS BECOMING LIABLE TO THE VALUE-ADDED TAX.* - ANY PERSON WHOSE GROSS SALES OR RECEIPTS IN ANY 12-MONTH PERIOD EXCEEDS THE AMOUNT PRESCRIBED UNDER SECTION 108(T) OF THIS CODE, FOR EXEMPTION FROM THE VALUE-ADDED TAX SHALL REGISTER IN ACCORDANCE WITH SUBPARAGRAPH (A) HEREOF AND PAY THE ANNUAL REGISTRATION FEE PRESCRIBED THEREIN WITHIN TEN (10) DAYS AFTER THE END OF THE LAST MONTH OF THAT PERIOD AND SHALL BE LIABLE TO THE VALUE-ADDED TAX COMMENCING FROM THE FIRST DAY OF THE MONTH FOLLOWING HIS REGISTRATION.

(I) *OPTIONAL REGISTRATION OF EXEMPT PERSON.* - ANY PERSON WHOSE TRANSACTIONS ARE EXEMPT FROM VALUE-ADDED TAX UNDER SECTION 108(T) OF THIS CODE, OR ANY PERSON WHOSE TRANSACTIONS ARE EXEMPT FROM THE VALUE-ADDED TAX UNDER SECTION 108(A), (B), (C) AND (D) OF THIS CODE, WHO OPTS TO REGISTER AS A VAT TAXPAYER WITH RESPECT TO HIS EXPORT SALES ONLY, MAY UPDATE HIS REGISTRATION INFORMATION IN ACCORDANCE WITH SUB-PARAGRAPH (E) HEREOF, NOT LATER THAN TEN (10) DAYS BEFORE THE BEGINNING OF THE TAXABLE QUARTER AND SHALL PAY THE ANNUAL REGISTRATION FEE PRESCRIBED IN SUBSECTION (B) OF THIS SECTION.

IN ANY CASE, THE COMMISSIONER MAY, FOR ADMINISTRATIVE REASONS, DENY ANY APPLICATION FOR REGISTRATION INCLUDING UPDATES PRESCRIBED UNDER SUBSECTION (E) HEREOF.

FOR PURPOSES OF TITLE IV OF THIS CODE, ANY PERSON WHO HAS REGISTERED VALUE-ADDED TAX AS A TAX TYPE IN ACCORDANCE WITH THE PROVISIONS OF SUBSECTION (C) HEREOF SHALL BE REFERRED TO AS VAT-REGISTERED PERSON WHO SHALL BE ASSIGNED ONLY ONE TAXPAYER IDENTIFICATION NUMBER.

(J) *SUPPLYING OF TAXPAYER IDENTIFICATION NUMBER (TIN).* -- ANY PERSON REQUIRED UNDER THE AUTHORITY OF THIS CODE TO MAKE, RENDER, OR FILE A RETURN, STATEMENT, OR OTHER DOCUMENT SHALL BE SUPPLIED WITH OR ASSIGNED A TAXPAYER IDENTIFICATION NUMBER (TIN) WHICH HE SHALL INDICATE IN SUCH RETURN STATEMENT OR DOCUMENT FILED WITH THE BUREAU OF INTERNAL REVENUE FOR HIS PROPER IDENTIFICATION FOR TAX PURPOSES, AND WHICH HE SHALL INDICATE IN CERTAIN DOCUMENTS SUCH AS BUT NOT LIMITED TO THE FOLLOWING:

(1) SUGAR QUEDANS, REFINED SUGAR RELEASE ORDER OR SIMILAR INSTRUMENTS;

(2) DOMESTIC BILLS OF LADING;

(3) DOCUMENTS TO BE REGISTERED WITH THE REGISTER OF DEEDS OR ASSESSORS OFFICE;

(4) REGISTRATION CERTIFICATE OF TRANSPORTATION EQUIPMENT BY LAND, SEA OR AIR;

(5) DOCUMENTS TO BE REGISTERED WITH THE SECURITIES AND EXCHANGE COMMISSION;

(6) BUILDING CONSTRUCTION PERMITS;

(7) APPLICATION FOR LOAN WITH BANKS, FINANCIAL INSTITUTIONS, OR OTHER FINANCIAL INTERMEDIARIES;

(8) APPLICATION FOR MAYOR'S PERMIT;

(9) APPLICATION FOR BUSINESS LICENSE WITH THE DEPARTMENT OF TRADE AND INDUSTRY; AND

(10) SUCH OTHER DOCUMENTS WHICH MAY HEREAFTER BE REQUIRED UNDER REVENUE REGULATIONS TO BE PROMULGATED BY THE SECRETARY OF FINANCE, UPON RECOMMENDATION OF THE COMMISSIONER.

IN CASES WHERE A REGISTERED TAXPAYER DIES, THE ADMINISTRATOR OR

EXECUTOR SHALL REGISTER THE ESTATE OF THE DECEDENT IN ACCORDANCE WITH SUBSECTION (A) HEREOF AND A NEW TAXPAYER IDENTIFICATION NUMBER (TIN) SHALL BE SUPPLIED IN ACCORDANCE WITH THE PROVISIONS OF THIS SECTION.

IN THE CASE OF A NON-RESIDENT DECEDENT, THE EXECUTOR OR ADMINISTRATOR OF THE ESTATE SHALL REGISTER THE ESTATE WITH THE REVENUE DISTRICT OFFICER WHERE HE IS REGISTERED: *PROVIDED, HOWEVER,* THAT IN CASE SUCH EXECUTOR OR ADMINISTRATOR IS NOT REGISTERED, REGISTRATION OF THE ESTATE SHALL BE MADE WITH AND THE TAXPAYER IDENTIFICATION NUMBER (TIN) SUPPLIED BY THE REVENUE DISTRICT OFFICE HAVING JURISDICTION OVER HIS LEGAL RESIDENCE.

ONLY ONE TAXPAYER IDENTIFICATION NUMBER SHALL BE GIVEN TO A PERSON REQUIRED TO HAVE ONE AND ANY PERSON WHO SHALL SECURE MORE THAN ONE TAXPAYER IDENTIFICATION NUMBER SHALL BE CRIMINALLY LIABLE UNDER THE PROVISIONS OF SECTION 276 ON VIOLATION OF OTHER PROVISIONS OF THIS CODE OR REGULATIONS IN GENERAL.

SECTION 91. Section 239 of the Code is hereby amended to read as follows:

"SEC. 239. *Printing of [r]Receipts or [s]Sales or [c]Commercial [i]Invoices.* - All persons who [print receipts or sales or commercial invoices] ARE ENGAGED IN BUSINESS shall [for every job order,] secure from the Bureau of Internal Revenue an authority to print [said] receipts or SALES OR COMMERCIAL invoices before [printing] A PRINTER CAN PRINT the same.

"No authority to print receipts or sales or commercial invoices shall be granted unless the receipts or invoices to be printed are serially numbered and shall show, among other things, the name, business style, taxpayer identification number and business address of the person or entity to use the same, AND SUCH OTHER INFORMATION THAT MAY BE REQUIRED BY RULES AND REGULATIONS TO BE PROMULGATED BY THE SECRETARY OF

FINANCE UPON RECOMMENDATION OF THE COMMISSIONER.

ALL PERSONS WHO PRINT RECEIPTS OR SALES OR COMMERCIAL INVOICES SHALL MAINTAIN A LOGBOOK/REGISTER OF TAXPAYERS WHO AVAILED OF THEIR PRINTING SERVICES, CONTAINING THE FOLLOWING INFORMATION: (1) NAMES, TAXPAYER IDENTIFICATION NUMBERS OF THE PERSONS OR ENTITIES FOR WHOM THE RECEIPTS OR SALES OR COMMERCIAL INVOICES WERE PRINTED, AND, (2) NUMBER OF BOOKLETS, NUMBER OF SETS PER BOOKLET, NUMBER OF COPIES PER SET AND THE SERIAL NUMBERS OF THE RECEIPTS OR INVOICES IN EACH BOOKLET.

"[Within twenty (20) days from the end of every calendar quarter, the printer shall submit to the Bureau of Internal Revenue a report containing the following information:]

"[(1) Names, addresses, taxpayer identification numbers of the persons or entities for whom the receipts or sales or commercial invoices were printed during the preceding quarter, and]

"[(2) Quantity of receipts or invoices printed and the serial numbers of the receipts or invoices in each booklet.]"

SECTION 92. Subsections (a) and (b) of Section 248, now Section 249, of the Code are hereby amended to read as follows:

"SEC. [248]249. *Civil Penalties.* - [(a)A] There shall be imposed, in addition to the tax required to be paid, a penalty equivalent to twenty-five percent (25%) of the amount due, in the following cases:

"(1) Failure to file any return AND PAY THE TAX DUE THEREON AS required under the provisions of this Code or regulations on the date prescribed; or

"(2) UNLESS OTHERWISE AUTHORIZED BY THE COMMISSIONER, [F] filing a return with an internal revenue officer other than those with whom the return is required to be filed; or

"(3) Failure to pay the DEFICIENCY tax within the

time prescribed for its payment IN THE NOTICE OF ASSESSMENT; or

"(4) Failure to pay the full OR PART OF THE amount of tax shown on any return required to file filed under the provisions of this Code or RULES AND regulations, or the full amount of tax due for which no return is required to be filed, on or before the date prescribed for its payment.

"[(b)B] In case of willful neglect to file the return within the period prescribed by this Code of BY RULES AND regulations, or in case a false or fraudulent return is willfully made, the penalty to be imposed shall be fifty percent (50%) of the tax or of the deficiency tax, in case any payment has been made on the basis of such return before the discovery of the falsity or fraud: *PROVIDED, THAT, A SUBSTANTIAL UNDERDECLARATION OF TAXABLE SALES, RECEIPTS OR INCOME, OR A SUBSTANTIAL OVERSTATEMENT OF DEDUCTIONS, AS DETERMINED BY THE COMMISSIONER PURSUANT TO THE RULES AND REGULATIONS TO BE PROMULGATED BY THE SECRETARY OF FINANCE, SHALL CONSTITUTE PRIMA FACIE EVIDENCE OR A FALSE OR FRAUDULENT RETURN: PROVIDED, FURTHER, THAT FAILURE TO REPORT SALES, RECEIPTS, OR INCOME IN AN AMOUNT EXCEEDING THIRTY PERCENT (30%) OF THAT DECLARED PER RETURN, AND A CLAIM OF DEDUCTIONS IN AN AMOUNT EXCEEDING THIRTY PERCENT (30%) OF ACTUAL DEDUCTIONS, SHALL RENDER THE TAXPAYER LIABLE FOR SUBSTANTIAL UNDERDECLARATION OF SALES, RECEIPTS OR INCOME OR FOR OVERSTATEMENT OF DEDUCTIONS, AS MENTIONED HEREIN.*"

SECTION 93. Section 251 of the Code is hereby renumbered as Section 252 and is amended to read as follows:

"SEC. [251]252. *Failure of a [w] Withholding [a] Agent to [c] Collect and [r] Remit [t] Tax.* - Any person required to [collect], WITHHOLD, account for, and remit any tax imposed by this Code or who willfully fails to [collect] WITHHOLD such tax, or account for and remit such tax, or [willfully assists] AIDS OR ABETS in any manner to evade any such tax or the payment thereof, shall, in addition to other penalties provided for under this Chapter, be liable UPON CONVICTION to a penalty equal to the total amount of the tax not [collected]

WITHHELD, or not accounted for and remitted."

SECTION 94. Section 256 of the Code is renumbered as Section 258 and is amended by adding a new paragraph (8) to subsection (b) thereof, which shall read as follows:

"SEC. [256] 258. *Penal Liability for [m] Making [f] False [e] Entries, [r] Records or [r] Reports, OR USING FALSIFIED OR FAKE ACCOUNTABLE FORMS.* - ([a]A) x x x

"([b]B) Any person who:

x x x

"(7) Fails to keep the books of accounts or records mentioned in Section [232] 233 in a native language, English, or Spanish, or to make a true and complete translation as required in Section [234] 235 of this Code, or whose books of accounts or records kept in a native language, English, or Spanish, and found to be a material variance with books or records kept by him in another language[, shall, upon conviction for each act or omission, be punished by a fine of not less than Thirty thousand pesos but not more than Fifty thousand pesos and suffer imprisonment of not less than two years but not more than six years]; OR

(8) WILLFULLY ATTEMPTS IN ANY MANNER TO EVADE OR DEFEAT ANY TAX IMPOSED UNDER THIS CODE, OR KNOWINGLY USES FAKE OR FALSIFIED REVENUE OFFICIAL RECEIPTS, LETTERS OF AUTHORITY, CERTIFICATES AUTHORIZING REGISTRATION, TAX CREDIT CERTIFICATES, TAX DEBIT MEMORANDA AND OTHER ACCOUNTABLE FORMS SHALL, UPON CONVICTION FOR EACH ACT OR OMISSION, BE PUNISHED BY A FINE OF NOT LESS THAN FIFTY THOUSAND PESOS (P50,000) BUT NOT MORE THAN ONE HUNDRED THOUSAND PESOS (P100,000) AND SUFFER IMPRISONMENT OF NOT LESS THAN FOUR (4) YEARS BUT NOT MORE THAN TEN (10) YEARS."

SECTION 95. Section 268 (*Violations Committed by Government Enforcement Officers*) of the Code is hereby renumbered as Section 270 and is amended by adding a second paragraph thereto to read as follows:

PROVIDED, THAT THE PROVISIONS OF THE FOREGOING PARAGRAPH NOTWITHSTANDING,

ANY INTERNAL REVENUE OFFICER FOR WHICH A *PRIMA FACIE* CASE OF GRAVE MISCONDUCT HAS BEEN ESTABLISHED SHALL, AFTER DUE NOTICE AND HEARING OF THE ADMINISTRATIVE CASE AND SUBJECT TO CIVIL SERVICE LAWS, BE DISMISSED FROM THE REVENUE SERVICE: *PROVIDED, FURTHER,* THAT THE TERM "*GRAVE MISCONDUCT*", AS DEFINED IN THE CIVIL SERVICE LAW, SHALL INCLUDE THE ISSUANCE OF FAKE LETTERS OF AUTHORITY AND RECEIPTS, FORGERY OF SIGNATURE, USURPATION OF AUTHORITY, AND HABITUAL ISSUANCE OF UNREASONABLE ASSESSMENTS.

SECTION 96. Section 269 of the Code is hereby renumbered as Section 271 and further amended to read as follows:

"SEC. [269] 271. *Unlawful [d] Divulgence of [t] Trade [s] Secrets.* - Except as provided in Section [64] 76 of this Code and Section 26 of Republic Act No. 6388, any officer or employee of the Bureau of Internal Revenue who divulges to any person or makes known in any other manner than may be provided by law information regarding the business, income, or estate of any taxpayer, the secrets, operation, style or work, or apparatus of any manufacturer or producer, or confidential information regarding the business of any taxpayer, knowledge of which was acquired by him in the discharge of his official duties, shall, upon conviction for each act or omission, be fined in a sum of not less than [Five] FIFTY thousand pesos (P50,000) but not more than [Ten] ONE HUNDRED thousand pesos (P100,000), or imprisoned for a term of not less than [six months] TWO (2) YEARS but not more than five years, or both."

SECTION 97. Section 281 of the Code is hereby renumbered as Section 283. Paragraphs (1) and (2) thereof are hereby amended to read as follows:

"SEC. [281.] 283. *Informer's [r] Reward to [p] Persons [i] Instrumental in the [d] Discovery of [v] Violations of the National Internal Revenue Code and in the [d] Discovery and [s] Seizure of [s] Smuggled [g] Goods.* -

"(1) *For [v] Violations of the National Internal Revenue Code.* - Any person, except an internal revenue official or employee, or other public official OR EMPLOYEE, or his relative within the sixth degree of consanguinity, who voluntarily gives definite and

sworn information, not yet in the possession of the Bureau of Internal Revenue, leading to the discovery of frauds upon the internal revenue laws or violations thereof, thereby resulting in the recovery of revenues, surcharges and fees and/or the conviction of the guilty party and/or the imposition of any fine or penalty, shall be rewarded in a sum equivalent to [fifteen] TEN percentum (10%) of the revenues, surcharges or fees recovered and/or fine or penalty imposed and collected OR ONE MILLION PESOS (P1,000,000.00) PER CASE, WHICHEVER IS LOWER. The same amount of reward shall also be given to an informer where the offender has offered to compromise the violation of law committed by him and his offer has been accepted by the Commissioner [and in such a case, the fifteen percentum reward fixed herein be based on the amount agreed upon in the compromise] and collected from the offender: *Provided*, That no revenue, surcharges or fees be actually recovered or collected, such person shall not be entitled to a reward: *Provided, further*, That the information mentioned herein shall not refer to a case already pending or previously investigated or examined by the Commissioner or any of his deputies, agents or examiners, or the Secretary of Finance or any of his deputies or agents: *Provided, finally*, That the reward provided herein shall be paid under RULES AND REGULATIONS issued by the [Commissioner of Internal Revenue with the approval of the] Secretary of Finance, UPON RECOMMENDATION OF THE COMMISSIONER.

"(2) For [d]Discovery and [s]Seizure of [s]Smuggled [g]Goods. - To encourage the public and law-enforcement personnel] to extend full cooperation in eradicating smuggling, a cash reward equivalent to [fifteen] TEN percent[um] (10%) of the fair market value of the smuggled goods.

THE CASH REWARDS OF INFORMERS SHALL BE SUBJECT TO INCOME TAX, COLLECTED AS FINAL WITHHOLDING TAX, AT THE RATE OF TEN PERCENT (10%)."

SECTION 98. The Bureau of Internal Revenue is hereby directed to codify the National Internal Revenue Code and renumber and re-style accordingly all the Sections and all references thereto which are affected by the insertions and deletions as provided in this Act.

SECTION 99. The Secretary of Finance shall, upon the recommendation of the Commissioner of Internal Revenue, promulgate and publish the necessary

rules and regulations for the effective implementation of this Act.

SECTION 100. *Repealing Clause.* - The provisions of the National Internal Revenue Code, as amended, and all other laws, including charters of government-owned or -controlled corporations, decrees, order or regulations or parts thereof, that are inconsistent with this Act are hereby repealed or amended accordingly.

SECTION 101. *Effectivity.* - This Act shall take effect on January 1, 1998.

Senator Tatad. Mr. President, for the sponsorship, I ask that the distinguished chairman of the Committee on Ways and Means be recognized.

The President. The distinguished chairman of the Committees on Ways and Means; and Government Corporations and Public Enterprises, the dashing senator from Cagayan, Sen. Juan Ponce Enrile, is hereby recognized.

SPONSORSHIP SPEECH OF SENATOR ENRILE

Senator Enrile. Thank you for that, Mr. President. I accept the compliment.

Mr. President, distinguished gentlemen and ladies of the Senate:

I rise today, Mr. President, to present to the Senate the proposed Tax Reform Act of 1997, which introduces major changes in our country's income tax system and completes the tax reforms envisioned by the Comprehensive Tax Reform Program or the CTRP.

As this Chamber is well aware, we, in the Senate Ways and Means Committee, have been working double time these past months, foregoing our vacation, to craft this important piece of legislation.

We have reviewed House Bill No. 9077, the original bill embodying this reform which the House of Representatives submitted to the Senate during the previous session of Congress, just about the time when we were going on adjournment. We have conducted numerous hearings on the measure and studied the proposals of various sectors and groups, as well as those emanating from this Chamber and from the Executive.

At this juncture, the Senate President relinquished the Chair to Sen. Orlando S. Mercado.

Now, Mr. President, it is my honor and privilege to present Committee Report No. 454 on House Bill No. 9077, which amends the original measure by substitution.

I would like to take this moment, Mr. President, to indicate and establish in the record the fact that a team from the Bureau of Internal Revenue, headed by Assistant Revenue Commissioner Atty. Sixto Esquivias IV and Regional Director Antonio Ortega of Makati, RDO Edwin R. Abella, RDO Gerardo Florendo and Assistant Division Chief Luis Alberto, along with Undersecretary Milwida Guevarra of the Department of Finance, assisted in crafting the provisions now embodied in the Senate version of House Bill No. 9077.

That this proposed tax measure, Tax Reform Act, has been long awaited by our people we know only too well, Mr. President. This legislation will complete the tax policy component of the broad structure of economic reforms designed to raise the economy to full competitiveness and productivity. To the measures earlier passed by Congress—the excise tax on beer and cigarettes and the excise tax on petroleum—we add this third and final leg of the CTRP—the reform of income taxation, estate tax, donor's tax, excise tax, and tax administration, including remedies and penalties. And we propose that the Bureau of Internal Revenue codify these changes as "The National Internal Revenue Code of 1997."

Rationale for Tax Reform Act

Mr. President, the rationale for the reform of the income tax system is succinctly and clearly stated in the declaration of policy of this proposed Act.

We seek through this legislation:

1) to promote sustainable economic growth through the rationalization of the Philippine internal revenue tax system and tax administration;

2) to provide equitable relief to a greater number of taxpayers in order to improve levels of disposable income and increase economic activity in the land;

3) to create a robust environment for the business community so that it can compete more effectively in the regional as well as global community of nations; and

4) to ensure that the government will be able to provide for the needs of our people and the nation.

Our present Internal Revenue Code, Mr. President, dates back to Commonwealth Act No. 466, which was enacted in 1939. Perhaps, some of the members of this Chamber were not yet born

at that time. Since that time, the Internal Revenue Code has undergone various amendments—but these changes were done on a patchwork basis. None of these amendments compares with this proposed legislation, which I daresay to this Chamber, has been rendered urgent and necessary by changes both in our country and the world.

We need this reform now because the world has changed dramatically during these final decades of the century—when innovations have literally transformed the conduct of trade and finance, and competition has intensified among the nations.

And we need this reform now because it is vital to our bid to become a tiger economy in our own right and to compete more effectively in the global economy.

Mr. President, I believe I speak for everyone in this Chamber when I say that there has been a long-felt need for reforms in our tax system. For years, it has handcuffed, instead of helped, our efforts for national modernization. This is mainly because it is complicated and difficult to administer, and because it leaves too much room for tax evasion by taxpayers and for graft by tax collectors and administrators.

We can develop up to a point through public domestic and foreign borrowings, Mr. President, but in the long run it is the efficient and equitable collection of taxes by the government that must anchor our development aspirations.

Under the Tax Reform Act of 1997, the tax system we will put in place will have these essential characteristics:

- It is responsive to changes in the economy that have risen;
- It is proactive in providing for situations or conditions which may arise in the years to come; and
- It is equitable in providing relief to a greater number of taxpayers by improving their levels of disposable income.

Mr. President, let me therefore discuss how these objectives are served by the specific provisions and reforms in the Tax Reform Act.

Sustaining Growth

With respect, first, to the paramount objective of promoting sustainable economic growth, the tax system will address the pressing needs of local industry in the following ways:

- The corporate income tax rate will be reduced progressively until the end of the century—from the present maximum

level of 35% this year to 30% by the year 2000.

- Companies that adopt the fiscal year method of accounting period are given due consideration.
- Inter-corporate dividends remain exempt from income tax.
- The donor's tax rate will be significantly reduced in order to unlock idle and nonproductive assets and to channel the proceeds from donations into productive ventures.

Side by side with this reform covering local enterprises, the new tax system strives to sustain the program of attracting foreign investment into the country through the following:

- Nonresident foreign corporations will be subject to a reduced rate of 20% on their gross income derived from sources within the Philippines.
- Income from sources outside the Philippines of resident aliens will no longer be subject to income taxation in our country.
- Dividends derived by a resident foreign corporation from a domestic corporation will remain exempted from income tax.
- Net operating loss carry-over or NOLCO deduction for firms incurring operating losses for the last three years is allowed.
- Net capital gains from the sale of shares of stock not traded in the stock exchange will now be subject to reduced rates.

In deliberating on these reforms, Mr. President, we set before ourselves the task of coming up with changes that will truly help the economy. Too often, tax reform proposals in our country have been governed by platitudes and lack of realism. When they were not succumbing to the populist temptation of penalizing business enterprises, they were unheeding of the real and growing needs of government in our growing economy.

By giving corporate taxpayers this new income tax framework to follow, we believe we have a system that encourages, and does not deter, the vigor of business enterprise in our country. By lifting the present policy of taxing income not earned in the country, we provide foreign investors the incentive to locate more of their financial resources in our land.

I will only add, Mr. President, that these policies have been the practice of many countries in the world that have successfully developed in recent years.

Improving Citizen Welfare

As important as sustaining economic growth, Mr. President, the new income tax system strives to enhance the welfare of the citizenry, through the increase of personal reliefs from taxation and the promotion of urban renewal.

Specifically, the proposed Tax Reform Act provides the following:

- Additional tax relief will be granted to individual taxpayers in the form of upgraded personal exemption of P25,000 per taxpayer and P6,500 allowance per dependent without any distinction whether the taxpayer is single, married, or a head of a family.
- A standard deduction in the determination of the gross estate will be granted.
- In the computation of the gross estate, the ceiling for funeral expenses has been increased to P200,000, and a standard deduction for medical expenses incurred within one year prior to the demise of the deceased amounting to P500,000 is granted.

With respect to the promotion of urban renewal and housing development, two provisions are specifically targeted to citizens who intend to acquire or build a better home for themselves, but are unable to do so because of the high taxes imposed on the sale of real estate.

First, the proceeds from the sale of the principal residence which shall be used to acquire or build a home will be allowed a deferral on the tax liability of the home owner.

And, second, a special deduction allowance corresponding to the amount of interest expense on loans incurred to acquire or build the first family home will be granted in full.

We see in these provisions, Mr. President, a powerful tool for spurring the national housing program and seeding the renewal of the inner cities of our urban centers.

New Guiding Principles of Taxation

Mr. President, it goes without saying that for the new tax system to work, we must ensure better tax administration. The Internal Revenue System must provide for the efficient and timely collection of revenue in order to ensure a steady flow of revenues to government coffers.

One part of the challenge has to do with identifying those who

should be taxed. The other has to do with tax administration.

Accordingly, we are revising the guiding principles of taxation in our country, as follows:

First, citizens and domestic corporations are taxable on income from sources within and without the Philippines.

Second, citizens residing or working outside the Philippines are taxable on income from sources within the Philippines--only for income from sources within the Philippines.

Third, resident aliens, and resident and nonresident foreign corporations are taxable on income derived from sources within the Philippines.

Following these principles, tax administration and enforcement provisions are strengthened and reviewed in order to achieve uniformity in its implementation and understanding on the part of the taxpayer.

I would like to add, Mr. President, that, equally, a nonresident alien deriving income from the Philippines will be taxable for those income.

With respect to individual taxpayers, the following provisions will apply:

The tax base will include individuals with compensation, business and professional service income.

At this juncture, the Presiding Officer, Sen. Orlando S. Mercado, relinquished the Chair to the Senate President.

Lower rates ranging from 5% to 30% will be applied on their taxable income.

A tax at various rates on the grossed-up monetary value of certain fringe benefits given by an employer to an employee except those given to rank and file will be taxable to the employer. Rank-and-file employees are exempted from the tax, whether or not it is given under a collective bargaining agreement.

There has been much concern about the House proposal that seeks to free a great number of our citizenry from income taxation. This will contract the tax base, Mr. President, in addition to depleting the revenues of government. I believe and I recommend a more prudent and fairer approach. That is to increase the personal exemptions of taxpayers and allowances per dependent and then to apply a graduated, moderate income tax rate system ranging from 5% to 30%.

We should not follow blindly the policy of sparing as many of our people as possible from paying taxes. We should rather strive for an equitable sharing of the tax burden among our people while we ensure that truly low-income families are spared. True citizenship is enhanced in this manner.

With respect to corporate taxpayers, the Tax Reform Act effects substantive revision not only of tax rates, but of the very definition of key concepts integral to tax administration. Thus:

1. The definition of "Corporation" has been expanded in order to include joint ventures and consortia with operating contracts with the government; mutual fund companies; and the regional operating headquarters of multinational companies.

2. The definition of "Shares of Stock" has been expanded to include units of participation in partnerships (except general professional partnerships), joint accounts, joint stock companies, joint ventures and associations, including those in recreation or amusement clubs.

3. The tax on dividends derived by individuals from domestic corporations shall be gradually phased-in. It shall be 4% in 1998, 8% in 1999, and 10% in the year 2000 and thereafter.

4. The sale or disposition of capital assets of land and/or buildings not actually used in business by a corporation shall be subject to a capital gains tax of 5%.

With respect to corporate tax rates, the maximum tax rate will be reduced gradually from 35% at present to 30% by the year 2000 under the following schedule :

-- 35% for taxable year 1997;

-- 33% for the taxable year 1998;

-- 31.5% for the taxable year 1999; and

-- 30% for the taxable year 2000 and thereafter.

Mr. President, we are not unmindful of the practice of certain corporations of reporting constantly a loss in their operations to avoid the payment of taxes, and thus avoid sharing in the cost of government. In this regard, the Tax Reform Act introduces for the first time a new concept called the Minimum Corporate Income Tax (MCIT) so as to minimize tax evasion, tax avoidance, tax manipulation in this country and for administrative convenience. Under this scheme, a tax rate of three quarters of a percent or 0.75% based on net assets with carry-forward and creditability features will be applied to corporations that do not report any taxable income on the fourth year, beginning on the fourth year

of their business operation. This will go a long way in ensuring that corporations will pay their just share in supporting our public life and our economic advancement.

Improving Tax Administration

Mr. President, all these reforms of the Revenue Code will count for nothing, however, if we do not effect as well a rationalization and improvement in the tax collecting agency of the government, namely, the Bureau of Internal Revenue. The Tax Reform Act addresses the need for reform in the organization and function of the BIR in order to bring it up to speed with the requirements of national modernization.

First, we recognize the need for greater decentralization of powers and functions in order to improve tax collection and administration. In this regard, the proposed Act provides that certain powers of the Bureau of Internal Revenue commissioner may be delegated up to division chiefs, their equivalent, and higher ranking officers of the bureau except for the following powers:

1. The power to recommend the promulgation of regulations by the Secretary of Finance;
2. The power to issue rulings of first impression, and to reverse, revoke or modify any existing ruling of the Bureau of Internal Revenue;
3. Compromise and abatement powers under Section 205 (A) and (B) of the Internal Revenue Code except the power to extrajudicially settle criminal violations under Section 205 of the said Code;
4. The power of assignment or reassignment of revenue officers to establishments where articles subject to excise tax are produced and/or kept; and
5. The authority to inquire into bank deposits prescribed under Section 6(F)(4) of the proposed Code under certain exceptions.

Second, as a means to strengthen compliance by taxpayers with the Revenue Code, we provide a whole new set of compliance requirements. These include the following:

- A one-time registration fee and an annual fee of P500 shall be required of all taxpayers, except for cooperatives, OCWs and pure compensation earners.
- A 30% underdeclaration of sales receipts, or income, or overstatement of deductions shall be *prima facie* evidence of

fraud or fraudulent return.

- There will be a two-day payment facility for "sin" products.
- There will be a 15-day period within which to pay the excise tax due on minerals, mineral products and quarry resources.
- There will be a 15-day payment facility for excise tax on locally manufactured petroleum products and indigenous petroleum.
- Penalties are increased for those responsible in filing false or fraudulent returns, including those who certify and prepare questioned tax returns. Fine and imprisonment plus perpetual disqualification from public office will be imposed in the case of government officers and employees.

Third, and finally, to ensure compliance with the provisions of the new tax system, the Tax Reform Act will create the position of a fourth deputy commissioner in the Bureau of Internal Revenue for the legal and enforcement group. Focus on this aspect of the tax system is indispensable because, as we all know, there will be those who will try to avoid the payment of taxes or collude with taxpayers in their avoiding payment of the same.

Firmness and integrity in tax administration will make all the difference between success and failure in the new income tax system.

All these, Mr. President, constitute the major changes we propose in the National Internal Revenue Code, then the Tax Reform Act of 1997.

To summarize and conclude, this reform measure proposes:

- To rationalize our country's entire system of income taxation and tax administration so as to create a robust environment for the business community and to ensure adequate revenues for the government;
- To enlarge the income tax base by bringing all individual citizens and corporations who should be paying taxes within the ambit of government tax administration;
- To provide equitable relief, as much as possible, to a greater number of taxpayers in order to improve their levels of disposable income;
- To define clearly and explicitly the primary objective of the Bureau of Internal Revenue to assess and collect all national internal revenue taxes, fees and charges;

- To enforce all forfeitures, penalties and fines in connection with tax collection, including the execution of judgments in all cases decided in favor of the government by the Court of Tax Appeals and the ancillary courts; and
- To give effect to and administer the supervisory and police powers conferred to it by the Code and other laws.

Mr. President, our country has long sought a fiscal policy that would soundly keep in balance the level of taxation and public spending. For too long, we have followed a misguided policy of letting government spend far, far more than it earns. Oftentimes, we have been mired in sterile debates on the issue that only perpetuated our outmoded tax system. Meanwhile, many have gotten away with paying little taxes or none at all.

It is time, we believe, we cut through the blinders and misconceptions and come up with a policy that will truly serve the paramount interest of the nation. It is time we overhaul our income tax system and come up with a framework that makes taxation more equitable, tax administration more efficient, and government more equipped to spur the progress of the nation.

In the Tax Reform Act of 1997, we in the Senate Ways and Means Committee believe that we have come up with a system that will be:

- more equitable and efficient,
- broader in coverage,
- simple to comply with, and
- more revenue productive.

This measure provides a break for everyone—for taxpayers as well as for the government. It penalizes only those who evade or avoid a proper share of the tax burden.

In the long haul, Mr. President, I am confident that this measure—if passed by this Congress—will redound to the growth of the economy and the strength of the nation. And this finally is what we seek by this act of reform of our system of income taxation.

In closing then, Mr. President, I ask the Senate to accept the report of the Senate Ways and Means Committee and grant its seal of approval to this Senate version of House Bill No. 9077. When it is approved by this Chamber, we are confident that it will find concurrence in the House and we can thus give flesh to the Tax Reform Act of 1997.

Thank you, Mr. President. I shall be happy to take the

questions of my colleagues, if they have any.

Senator Tatad. Mr. President.

The President. The Majority Leader is recognized.

Senator Tatad. I would like to congratulate the distinguished chairman of the Committee on Ways and Means on this excellent sponsorship speech.

SUSPENSION OF CONSIDERATION OF H. NO. 9077

But to allow our colleagues to prepare for the interpellation, I move to suspend consideration of Committee Report No. 454 on House Bill No. 9077.

The President. Is there any objection? [Silence] There being none, the motion is approved.

SUSPENSION OF SESSION

Senator Tatad. Mr. President, I ask for a minute suspension of the session.

The President. Is there any objection? [Silence] There being none, the session is suspended for one minute.

It was 4:35 p.m.

RESUMPTION OF SESSION

At 4:50 p.m., the session was resumed.

The President. The session is resumed.

COMPOSITION OF THE SELECT COMMITTEE OF SEVEN

Before the Majority Leader makes the next motion, the Chair would like to announce the composition of the Select Committee to look into the charges in the matter of drugs in connection with the privilege speeches or questions of privilege delivered. The chairman will be Sen. Marcelo B. Fernan, former Chief Justice and chairman of the Committee on Justice and Human Rights; the members will be Sen. Franklin M. Drilon, former Secretary of Justice and chairman of the Blue Ribbon Committee; Sen. Miriam Defensor Santiago, former judge and former member of the Cabinet, chairperson of the Committee on Constitutional Amendments, Revision of Codes and Laws; Sen. Juan Ponce Enrile, former Secretary of Justice and former Secretary of National Defense; Sen. Juan M. Flavio, former Secretary of Health and chairman of the Dangerous Drugs Board; Sen. Neptali A. Gonzales, former Minister of Justice and Senate Minority Leader;

RECORD OF THE SENATE

MONDAY, AUGUST 4, 1997

RESUMPTION OF THE SESSION

At 10:31 a.m., the session was resumed with Senate President Ernesto M. Maceda presiding.

The President. The session is resumed. The Majority Leader is recognized.

BILL ON SECOND READING

S. No. 1728 - Indigenous Peoples' Right Act of 1996

(Continuation)

Senator Tatad. Mr. President, I move that we resume consideration of Senate Bill No. 1728 under Committee Report No. 236.

The President. Resumption of consideration of Senate Bill No. 1728 is now in order.

Senator Tatad. We are still in the period of individual amendments, Mr. President. I ask that the distinguished sponsor, Senator Flaviez, be recognized; and to propose some amendments, the distinguished gentleman from Isabela.

The President. The distinguished senator from the Cordilleras, sponsor, and the senator from Isabela to propose some amendments, are recognized.

MANIFESTATION OF SENATOR FLAVIER (Additional Authors)

Senator Flaviez. Mr. President, before recognizing Senator Alvarez, may I just manifest that the following are additional coauthors of the bill: Senator Maceda, Senator Angara, Senator Santiago, Senator Herrera, Senator Fernan, Senator Gonzales, and Senator Drilon.

The President. The manifestation is noted.

Senator Flaviez. Thank you, Mr. President.

The President. The gentleman from Isabela, Senator Alvarez, is recognized.

ALVAREZ AMENDMENTS

Senator Alvarez. With the permission of the Chair, Mr. President, my proposed amendments consist of about six numbers.

The first one is on page 4, line 22, Section 3, after the word

"traits", delete the word "and" and in lieu thereof, insert the word OR.

Senator Flaviez. The amendment is accepted, Mr. President.

The President. Is there any objection? [Silence] There being none, the amendment is approved.

Senator Alvarez. On page 9, lines 5 to 6, Section 15, after the phrase "right to", insert the word CONTROL(,).

In line 7, after the word "shall", insert the phrase HAVE THE RIGHT TO.

Senator Flaviez. The amendments are accepted, Mr. President.

The President. Is there any objection? [Silence] There being none, the amendment is approved.

Senator Alvarez. On page 3, line 10, insert a new section to read as follows:

SEC. 17. TRIBAL BARANGAYS. - THE ICCS/IPS LIVING IN CONTIGUOUS AREAS OR COMMUNITIES WHERE THEY FORM THE PREDOMINANT POPULATION BUT WHICH ARE LOCATED IN MUNICIPALITIES, PROVINCES OR CITIES WHERE THEY DO NOT CONSTITUTE THE MAJORITY POPULATION, MAY FORM OR CONSTITUTE A SEPARATE BARANGAY IN ACCORDANCE WITH THE LOCAL GOVERNMENT CODE PROVISION FOR THE CREATION OF TRIBAL BARANGAYS.

Senator Flaviez. The amendment is accepted, Mr. President.

The President. Is there any objection? [Silence] There being none, the amendment is approved.

Senator Alvarez. On page 11, line 39, Section 29, after the word "information", add the phrase AND INTERNATIONAL CULTURAL EDUCATION EXCHANGE.

The President. Deleting the first "and"?

Senator Alvarez. Page 11, line 39.

The President. Does the distinguished gentleman want to retain the phrase "education and public information and"?

Senator Alvarez. CULTURAL EDUCATION EXCHANGE, Mr. President.

right of the Ibanags or the Ilocanos or the Cebuanos or the Cordillera residents or the Muslims as in the other members of our society to self-determination, then we may just as well break up the country.

SUSPENSION OF SESSION

The President. The session is suspended for one minute, if there is no objection. *[There was none.]*

It was 10:53 a.m.

RESUMPTION OF SESSION

At 10:54 a.m., the session was resumed.

The President. The session is resumed.

Senator Fernan. Mr. President.

The President. The gentleman from Cebu is recognized.

FERNAN AMENDMENTS

Senator Fernan. Consistent with the Macapagal amendment, we would like to substitute the word "self-determination" with the words FOR CULTURAL INTEGRITY.

Senator Flavier. It is accepted, Mr. President.

The President. Is there any objection? *[Silence]* There being none, the amendment is approved.

Senator Fernan. On page 16, line 29, between the period (.) and the word "towards," insert the following:

IT SHALL UNDERTAKE WITHIN THE LIMITS OF AVAILABLE APPROPRIATIONS A SPECIAL PROGRAM WHICH MAY INCLUDE LANGUAGE AND VOCATIONAL TRAINING, PUBLIC HEALTH AND FAMILY ASSISTANCE PROGRAMS AND RELATED SUBJECTS.

Senator Flavier. It is accepted, Mr. President.

The President. Is there any objection? *[Silence]* There being none, the amendment is approved.

Senator Fernan. And finally, after that previous insertion, also add the following paragraph: IT SHALL ALSO IDENTIFY ICCS WITH POTENTIAL TRAINING IN THE HEALTH PROFESSION AND ENCOURAGE AND ASSIST THEM TO ENROLL IN SCHOOLS OF MEDICINE, NURSING, PHYS-

ICAL THERAPY AND OTHER ALLIED COURSES PERTAINING TO THE HEALTH PROFESSION.

Senator Flavier. It is accepted, Mr. President.

The President. Is there any objection? *[Silence]* There being none, the amendment is approved.

In view of those two amendments, would the sponsor consider changing the name of the office to OFFICE ON CULTURE, EDUCATION AND HEALTH on page 16, line 25 of the bill?

Senator Flavier. I would accept that, Mr. President.

The President. Would the gentleman propose it?

Senator Flavier. Yes, I would, Mr. President.

The President. Is there any objection? *[Silence]* There being none, the amendment is approved.

Senator Tatad. Mr. President.

The President. The Majority Leader is recognized.

SUSPENSION OF CONSIDERATION OF S. NO. 1728

Senator Tatad. Mr. President, the distinguished senator from Pangasinan, Senator Shahani, has sent words that she would like to propose an amendment but she is not in the hall right now. That is the only remaining reservation as far as amendments to this measure are concerned.

So, I move to suspend consideration of Senate Bill No. 1728.

The President. Is there any objection? *[Silence]* There being none, the motion is approved.

BILL ON SECOND READING
H. No. 9077 - Tax Reform Act of 1997
(Continuation)

Senator Tatad. Mr. President, I move that we resume consideration of House Bill No. 9077 as reported out under Committee Report No. 454.

The President. Is there any objection? *[Silence]* There being none, resumption of consideration of House Bill No. 9077 is now in order.

Senator Tatad. We are now in the period of interpellations.

I ask that the distinguished sponsor, the Chairman of the Committee on Ways and Means, Senator Enrile, be recognized. Likewise, the distinguished Minority Leader, Senator Gonzales, for the first interpellations.

The President. The Chair would like to commend the Secretariat for improving satisfactorily the lighting of this hall.

Senators Enrile and Gonzales are recognized to debate on this measure.

Senator Gonzales. Thank you Mr. President. Will the distinguished and respected sponsor of this measure yield for some questions?

Senator Enrile. Gladly, Mr. President.

Senator Gonzales. Just to start the interpellations, may I interpellate on a few limited matters without prejudice to further interpellations later.

It would appear that the Bureau of Internal Revenue shall have a chief to be known as the Commissioner of Internal Revenue and four assistant chiefs to be known as deputy commissioners. So the Bureau itself is hierarchical and not collegial in structure. Is that correct, Mr. President?

Senator Enrile. That is correct, Mr. President. In fact, we will notice that on page 2, Section 3 of the bill, we have restored the power of the Finance Department to supervise and control the bureau. I find it rather awkward that the Secretary of Finance, who is responsible for the fiscal policies of the country and in seeing to it that the government has enough revenues to support its government function, has no supervision or control over the two bureaus that are in charge of raising revenues for the government.

Traditionally, it has been a part of our political structure of government for Cabinet secretaries to have supervision and control over the bureaus under them. But, unfortunately, because of the influence of the incumbent bureaucrats then, during the time of the Marcos administration, the power of supervision and control of the department heads—the Secretary of Finance over the Bureau of Internal Revenue and, later on, over the Bureau of Customs—has been removed. I think it is about time that we should restore this in order to infuse and restore some bureaucratic discipline in our system of government.

In the case of the bureau itself, we will have a commissioner who will be the head of the Bureau with the primary, original and exclusive jurisdiction to interpret internal revenue laws, with

four deputy commissioners with assigned functions, the regional directors and then the revenue district officers. That will be the official, formal and territorial hierarchical division or structure of the Bureau of Internal Revenue.

Senator Gonzales. I would like to thank the gentleman for his answer, Mr. President. I notice that many of the powers vested by this Code upon the commissioner are quasi-judicial in character, of far-reaching application and even significance. For example, the power to interpret tax laws and to decide tax cases, the power to compromise, the power to order the examination of bank records, the Bank Secrecy Law to the contrary notwithstanding and others.

In public administration, probably, a hierarchical structure is to be recommended when the functions are largely administrative. That is obviously in order to give direction and control and, therefore, foster administrative efficiency. But when functions are quasi-judicial in nature, it is preferable to have it as a collegial body. May I have the gentleman's kind comments on this view?

Senator Enrile. Actually, I am not quite in agreement with the proposition that the function of the Internal Revenue Commissioner is quasi-judicial in nature. He is the highest internal revenue tax enforcer of the country, and he protects the interests of the government. The courts are open to any taxpayer to question the exercise of power by the Internal Revenue Commissioner.

In the case of the power to compromise tax liabilities, there is a provision which, in effect, establishes a collegial group up to a certain level to decide that matter.

With respect to the opening of bank deposits, that is not a blanket authority granted to the commissioner to pry into the bank deposits of any taxpayer. There must be a return filed by a taxpayer and that return must be audited. And in the course of the audit, there must be discovered evidence of fraud or fraudulent effort to cheat the government of its revenues, but the presence of that evidence is not enough. The evidence must be clear, direct, and substantial to allow the commissioner to authorize the examination of the bank account of the taxpayer.

The purpose of this, Mr. President, is to prevent tax evaders from hiding behind statutes passed by Congress to precisely violate the very duty that they should have in supporting the government that protects them and allows them to operate in its realm. So, these things have been sufficiently considered.

Now, as far as the taxpayer is concerned, if there is any reason to believe that the Commissioner of Internal Revenue has

abused his or her power or acts arbitrarily, the courts are open to the taxpayer to question the acts and exercise of power by the Commissioner of Internal Revenue.

Senator Gonzales. Probably we look at these things quite differently and from different points of view because, certainly, I consider the power to decide tax cases, the power to compromise tax cases and assessments, yes, order an examination of bank deposits, in fact, under the Bank Secrecy Law, it is only the court that can order the examination of bank deposits—as quasi-legislative in nature.

At any rate, the gentleman has given his reasons and therefore, I may turn to another point.

Senator Enrile. May I just put in the *Record*, Mr. President, that it has always been a tradition in our country, ever since we established our government and started collecting revenues, that the Commissioner of Internal Revenue acts by himself or herself in enforcing tax laws. It has never been raised as an issue, whether political or otherwise, that the function of the commissioner in raising revenue for the government is quasi-judicial in nature.

On the other hand, if we are going to tie the hands of the government through the Internal Revenue Commissioner in collecting taxes by requiring the Bureau of Internal Revenue to be the one to go to court to get permission to open the bank accounts of persons shown to be really tax evaders, then we are, in effect, impairing the existence and the viability of our government.

The lifeblood of our government is revenue coming from the tax-paying public. We should not abet or even indicate that we are abetting tax evasion in this country. We should reverse the process and let the burden of showing that the action of the commissioner is abusive or arbitrary, rather than letting the commissioner go to court first and get the permission to inquire into the bank deposit of a proven tax evader. As a practical matter, Mr. President, if we follow the logic now being proposed, then by the time the court will act, considering the judicial process in this country, all bank accounts of tax evaders shall have been closed.

Senator Gonzales. I will go to that particular point, Mr. President, because I am not yet at the point where we have to examine the proposed provision here giving the commissioner the power to order the examination of bank accounts. We are merely putting certain thoughts concerning the administrative structure of the Bureau of Internal Revenue and admittedly, this might be a novel idea because heretofore, as the distinguished author had suggested, the structure had been hierarchical and

probably, that could be one of the reasons there had been charges of abuse, especially in deciding tax cases as well as in entering into compromises. But then, there is nothing wrong about quasi-judicial power being granted by law to an administrative agency because it is not strictly judicial. Quasi-judicial power is administrative in nature.

Well, probably, I find comfort in that there is a system of judicial review from the decision of the commissioner, a right of appeal from his decision to the Secretary of Finance, and later to the Court of Tax Appeals.

Senator Enrile. Well, provided, Mr. President, with the permission of the distinguished gentleman, with two approaches to prevent abuse and that is, first, the decision of the commissioner will be reviewed, reversed or revised or in any way turned down by the Secretary of Finance by its power of supervision and control. Second, in an adversarial situation between the taxpayer and the commissioner, for after all, their positions are adversarial in the sense that one is collecting and the other one is required to pay, the affected taxpayer can go to court to ask for a review of the decision of the commissioner.

The President. Correct.

Senator Gonzales. Now, this power to decide disputed assessments, refunds of revenue taxes, fees and other charges and also imposition of penalties in relation thereto, that power is also vested in the commissioner but subject to the exclusive appellate jurisdiction of the Court of Tax Appeals.

My question, Mr. President, is: Need one, before he goes to the Court of Appeals, exhaust administrative remedies by appealing the decision of the commissioner to the Secretary of Finance who exercises control and supervision over this?

Senator Enrile. Yes, Mr. President, that is the meaning of supervision and control.

Senator Gonzales. That is right, Mr. President, because while in other cases, there is a provision of appeal to the Secretary of Finance; however, under Section 4, it specifically provides in line 6 to 7 that insofar as appeal from a decision of disputed assessments and refunds of internal revenue taxes, et cetera, the appeal shall be subject to the exclusive appellate jurisdiction of the Court of Tax Appeals.

In short, there is no provision to the effect that one must first go to the secretary.

Senator Enrile. Well, Mr. President, the commissioner will issue a ruling with respect to the tax obligation of a taxpayer

and that truly is subject to the administrative review of the Secretary of Finance.

For after all, the tax liability of a taxpayer involves an interpretation and application of the provisions of the Bureau of Internal Revenue Code and that is covered by Section 4, the opening paragraph.

Senator Gonzales. So that, therefore, the real intendment is that there is a process of administrative exhaustion.

Senator Enrile. After all, if the Secretary of Finance will sustain the position of the commissioner then, it is that decision which was sustained by the Secretary of Finance that will be open to review by the Court of Tax Appeals.

Senator Gonzales. Probably, in the period of amendments the matter can be clarified by the appropriate amendments.

Under the new Section 6 now appearing on page 6, it would appear that any return or statement or declaration filed in any office can still be amended or withdrawn or modified for as long as: 1) the same is done within three years from the date of such filing, and 2)...

Senator Enrile. Provided that in the meantime, there has been no service of notice to audit.

Senator Gonzales. Precisely. That is within what I stated. That no notice for auditor investigation of such return has been actually served upon the taxpayer.

Now, Mr. President, can the power to compromise be exercised by the Commissioner at any time or within the three-year period as herein provided and therefore, the compromise may require the filing of an amended return even if a notice has already been served upon the taxpayer?

Senator Enrile. Provided he complies with the provisions of Sec. 205. This provision of Sec. 205—there is a special provision dealing with compromises of tax liability.

Senator Gonzales. What in effect, Mr. President, I am saying is that, notwithstanding the express provisions of the third paragraph of the new Sec. 6 under this bill, the power of compromise may still be exercised by the commissioner even beyond the three-year period and even if a notice has already been actually served upon the taxpayer.

Senator Enrile. Mr. President, I doubt whether within the first three years there can be a compromise that can be arrived at between the commissioner and the taxpayer, considering the

fact that this section that had been cited assumed that there has been no audit yet, and if there is no audit there can be no deficiency assessment. Since there is no assessment, there is nothing to compromise because we operate on the basis of voluntary compliance. The return is presumed to reflect the correct tax liability of the taxpayer and on the basis of that return he has paid or he will pay his tax liability.

Now, he is given a chance to amend his return in the event that there was some error on his part in either underdeclaring his income or overdeclaring his deduction, in which case it is true, so it affects the actual amount of the tax liability.

Now, within that period of three years, it is assumed and presumed that there has been no assessment yet, no deficiency. The only thing due to the government is what the taxpayer has actually declared in his return.

Now, if there is already an assessment issued by the commissioner within that three-year period because a notice of audit has been served and a deficiency assessment has been issued, then a compromise on the tax is possible.

Senator Gonzales. Mr. President, I ask this question because my little knowledge and experience in practice tells me that compromises are entered into even after a case has already been filed and it is pending before the Court of Tax Appeals.

My point is: Is there any time limit within which the power to compromise any tax liability or assessment is to be made?

Senator Enrile. I was told by the people who have been enforcing our tax laws that we cannot compromise a case pending before the Court of Tax Appeals. Common sense will tell us that at that point, the commissioner has lost jurisdiction over the case. It is now within the jurisdiction of the Court of Tax Appeals; and second, when a fraud is asserted against the taxpayer.

Senator Gonzales. Yes, Mr. President, but it is not really the compromise agreement that renders it effective but the compromise agreement is always submitted to the court for approval. So, in effect, it is not really just a private matter between the government and the taxpayer.

Senator Enrile. I understand that has never been done and is not being done. Once a case is pending in the Court of Tax Appeals, it goes through *motu proprio*.

Senator Gonzales. All right. So let it be that way.

Senator Enrile. I understand that is a legal prohibition.

Senator Gonzales. There is a legal prohibition against that. Well, without accepting it, I just would want to go on.

Now, another power to be exercised by the commissioner is this very troublesome provision concerning the authority of the commissioner to inquire into the bank deposits or accounts.

We are aware that probably the backbone of any financial system is confidence and stability in its operation. Therefore reliance on financial policies dictates that any possible source of instability be eliminated. A perception of abuse of the above provision, any semblance of a violation of trust, even if incorrect, will have dire consequences.

Now, one of the backbones of our financial system is Republic Act No. 1405, otherwise known as the Bank Secrecy Law. And a policy statement of the highest order has been made. It says:

All deposits of whatever nature with banks or banking institutions in the Philippines including investment in bonds issued by the government of the Philippines, its political subdivisions and instrumentalities are "hereby considered as of an absolutely confidential nature and may not be examined, inquired, or looked into by any person, government official, bureau or office except in four cases:

1. Upon written permission of the depositor;
2. In case of impeachment;
3. Upon order of a competent court in cases of bribery or dereliction of duty of public officials; and
4. In the cases where the money deposited or invested is the subject matter of the litigation.

Apparently, Mr. President, this is not only a policy statement but also an implementation of the provision of Section 2, Article III of the Bill of Rights of the Constitution, which provides:

The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the

persons or things to be seized.

Mr. President, whether it be an order, memorandum, circular or instruction of the bureau, it has the character of a warrant for as long as it orders the search and examination of certain bank accounts.

Senator Enrile. I admire the erudition and the scholarly presentation of the distinguished gentleman of this issue, but I would like to call attention to the fact that the very provision of the Constitution cited says, "all searches are allowed if they are reasonable." Only unreasonable searches are disallowed under the Bill of Rights. That is first.

Second, in the proposal we are making, Mr. President, we have seen to it that we respect that provision precisely, and we require that there must be a clear, direct and substantial evidence of fraud or criminal violation against the internal revenue laws of the country before the commissioner can perform the function.

Third, the policy that has been cited under Republic Act No. 1405 is an old policy and it requires a reexamination, apart from the fact that Congress has already reexamined that and eroded that policy because in the very Internal Revenue Code that we are writing, there are already three instances where the policy has been changed. That is in the case of the determination of the amount of the estate left by a decedent.

And fourth, in the case of a tax compromise proposed by a taxpayer on the basis of financial inability to pay, the law allows the commissioner to examine the bank account of the taxpayer.

As far as the reexamination of the policy is concerned, it has been reexamined and eroded. The only new thing that we are proposing now is the opening of the bank account of a tax evader proven by clear, direct and substantial evidence gathered in the course of a tax audit. I do not think that this Congress would put itself on record as abetting tax evaders in this country.

Senator Gonzales. Mr. President, there can be no unreasonable search or seizure or illegal search and seizure where permission is given by a person. Certainly, if there is written permission, or, let us say, one has applied for a reduction of his tax liability on account of his inability to pay, that is actually an implied permission to examine his bank account.

But we are talking of a situation which is involuntary. There is no permission granted here. But if the gentleman will note, under this bank secrecy law, in compliance with the requirement that the determination of a probable cause shall be made by the judge after personally examining the complainant and the

witnesses he may produce, that is actually reproduced here in Section 2 of Republic Act No. 1402, when it says, "upon order of a competent court in cases of bribery or dereliction of duty of public officials or in cases where the money deposited or invested in this is the subject matter of the litigation."

Mr. President, there is always a court order, not merely an order of the Bureau of Internal Revenue Commissioner.

Senator Enrile. Mr. President, that is the general rule. We can create exceptions in order to protect the interest of the state, because otherwise we will be in a very awkward situation whereby in applying that general rule, we are actually protecting criminals. I think there is no one in this hall who would want to be on record to just do that. I think that if we are going to expect our tax collectors—the Bureau of Internal Revenue—to perform their job, then we must endeavor to provide them with the tools to perform their job consistent with our constitutional tradition and with such sufficient safeguards in order to prevent abuse of power. I think the proposal that we are making is a reasonable proposal which safeguards the interest of the taxpayer.

Mr. President, I am also a taxpayer. I also have bank accounts. But I am not afraid to open my bank accounts to anybody because I know that I am not evading taxes.

Senator Gonzales. Mr. President, it is not a question of protecting a tax evader, et cetera; it is a question that the policy has already been declared by the state. It is now the touchstone of our financial system. The moment that we change it, we erode the degree of confidence that had been already ingrained by this policy, if not the strict provision of the Constitution and law upon the people.

However, we are still governed by men and not by angels, and that the possibility of abuse or a misuse of this particular power is ever present, Mr. President. After all, it is the Commissioner himself who orders the examination, who will determine whether there is a clear, direct and substantial evidence of fraud. *Siya rin ang nagde-determine noon.*

Senator Enrile. But, Mr. President, the taxpayer, if the evidence is flimsy, can go to court and get an injunction. It is so simple to get a TRO now in this country, especially if he has billions coming from some illegal activities.

The President. With the permission of the gentlemen on the floor, the lady senator from Iloilo may intervene.

Senator Santiago. Thank you, Mr. President. On this particular point under debate, I would like to refer to Article III,

Section 2, which has been in part quoted by Senator Gonzales. It provides:

The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge xxx

My point of information is this. There are two schools of thought on how Article III, Section 2 should be interpreted. The first school of thought is exemplified by the distinguished sponsor who was previously quoted as saying that the right of the people to be secure against unreasonable searches is adequately protected for as long as the search is reasonable.

In other words, his advocacy is that as long as the search can be shown by government emissaries or agents to be reasonable, then the Constitution has been complied with. My point of information is that this is only one school of thought.

The other school of thought is that Section 2 must be read in its entirety, and that the provision on unreasonable searches must be read in conjunction with the clause "and no search warrant."

In other words, the second school of thought has it that for any search to be reasonable, there should always be a warrant. That warrant is a basic fact of constitutional life. Therefore, if there is to be any exception to the provision for a warrant of search or a warrant of arrest, that provision must be extremely narrowly drawn and must be very strictly construed. That is all, Mr. President.

SUSPENSION OF SESSION

Senator Gonzales. With the kind permission of the distinguished sponsor, may I request for a suspension of the session for a few minutes.

The President. Is there any objection? [Silence] There being none, the session is suspended for a few minutes.

It was 11:35 a.m.

RESUMPTION OF SESSION

At 11:42 a.m., the session was resumed.

The President. The session is resumed. Senator Gonzales is recognized.

Senator Gonzales. This power to order the examination of the bank deposits and accounts of a taxpayer can be delegated under the provisions of Section 7, page 9 of this bill.

Mr. President, delegation of power is a tremendous power. It can only be delegated if there are definite and ascertainable standards. When and under what conditions and circumstances may this power be delegated by the commissioner?

Senator Enrile. Mr. President, my understanding of "undue delegation of power" here is that it deals with the grant of delegation by Congress to a government functionary, and there must be certain standards.

But nonetheless, we are providing here that "the Commissioner may delegate the powers vested in him or in her under the pertinent provisions of the Code to any or such subordinate officials with the rank equivalent to a division chief or higher, subject to such limitations and restrictions as may be imposed under rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner."

This is in line with the power of supervision and control that we are vesting in the Secretary, except the following powers. One of these powers that could not be delegated by the commissioner is the power to inquire into bank deposits prescribed under Sections 6 and 4 of the Internal Revenue Code.

Mr. President, the commissioner herself cannot just inquire into the bank deposits of any taxpayer. There must be an examination of a tax return. And in the course of that examination, the examiner has established the presence of a clear, direct and substantial evidence of fraud or criminal violation.

I think it would be rather unusual and awkward for a government in a situation like that to become powerless to protect itself, if that situation is already a clear evidence of violation of the Code.

At that point, if I may say so, it would be rather imprudent for us to help that taxpayer and prevent the government from pursuing the case and prosecuting him simply because we have adopted a general policy for the banking system, which is now being foisted to defeat the very purpose of government in collecting the correct revenues from its people.

Senator Gonzales. Now, by way of comment, may I be allowed to put into the *Record* that although this is not strictly legislative power—as I have said, it is a quasi-judicial power—and therefore, it is still within the purview of the maxim *potestas delegata non potest deligare*. A delegated power cannot be delegated. It can be delegated only if there is a clear, definite and

ascertainable standard, and I see nothing in the law which serves as a criterion or guide or standard for the commissioner to delegate this tremendous power to an assistant.

The only thing that I see here, which I do not consider a standard at all, is to a subordinate official with the rank equivalent to a division chief or higher, but that is hardly no standard at all.

Senator Enrile. Incidentally, Mr. President, with the permission of the distinguished gentleman, this cannot be delegated. The power of the commissioner that can be delegated is administrative in nature, implementing powers, like examining the tax record of an individual; examining the books and requiring the presentation of information or documents. But the power to recommend the promulgation of rules and regulations by the Secretary of Finance or the power to issue rulings of first impression or to reverse, revoke or modify an existing ruling of the bureau or the power to compromise or abate any tax or fines or surcharge or charges or other such things under Section 205(a) and (b) of the Code or any tax liability, cannot be delegated.

The power to assign and reassign internal revenue officers to establishments where articles subject to tax are produced or kept could not be delegated. Especially, the power to inquire into bank deposits.

Senator Gonzales. No, Mr. President, there is under par. (e), Section 6.

Senator Enrile. Yes, that power cannot be delegated.

Senator Gonzales. Section 7, Mr. President, is Authority of the Commissioner to Delegate Power, and under par. (e), it says, "The power to inquire into bank deposits prescribed under Section 6, par. (f), Subsection 4 of this Code.

Senator Enrile. It cannot be delegated, Mr. President.

Senator Gonzales. It can be delegated, Mr. President.

Senator Enrile. It cannot be, Mr. President.

Senator Gonzales. It is included in the enumeration, Mr. President.

Senator Enrile. Under Section 15, lines 15, 16 and 17 on page 9. "Provided, however, that the following powers of the Commissioner shall not be delegated:"

Senator Gonzales. I stand corrected, Mr. President. I missed these two lines.

Now, there is no intention to coddle and protect those who would violate our tax law. In fact, we are supporting any aggressive action on the part of our Internal Revenue authorities to collect taxes due to the government. But then, we have also to balance it with certain rights granted by law and the Constitution to individuals. The end would not always justify the means.

That is why we say, Mr. President, that there are certain provisions set by the Constitution itself intended for the protection of rights. If necessary, that will prevent the commissioner from applying with the courts and then ask for a temporary freeze order until the order is issued by the court. So, there is no danger that the accounts can be withdrawn in the meantime that the matter is pending before the courts or probably, an *ex parte* proceedings can be authorized under the law or the rules.

Senator Enrile. Mr. President, my simple answer to that is this: Today, with the use of the electronics, if the taxpayer will learn that a case is going to be filed in court, maybe the next minute, the deposit is withdrawn.

Senator Gonzales. Then the time interval will always be there, Mr. President.

Senator Enrile. What then is the utility of a power granted to the commissioner to apply to the court? Why can we not reverse the situation and let the commissioner exercise the power and the taxpayer to go to court?

Senator Gonzales. Because the gentleman asked me a personal question between efficiency and rights, I would always opt in favor of the latter.

Senator Enrile. Not at the expense of the society, Mr. President. That is why we jail criminals, including tax evaders, because we have to protect society.

Senator Gonzales. Mr. President, when the Bill of Rights set certain provisions, there are limitations upon the powers of government itself.

Senator Enrile. That is correct. I agree with that.

Senator Gonzales. In fact, that is the nature of a democratic government. A republican government is a limited government; that the Constitution is both a grant and a limitation of the powers of government.

Senator Enrile. I agree with that, Mr. President. That is why the courts are open to the taxpayer that is guaranteed to him by the Bill of Rights. We cannot say that there is a denial of due

process because we are precisely crafting a law defining the limits of the exercise of this power. The limitations are such that even in this case, the power sought to be vested to the commissioner are not arbitrary or whimsical or capricious powers, but powers based on substantial evidence of the existence of a fraud against the government or a criminal violation.

Senator Gonzales. By way of information, Mr. President, may the gentleman tell us whether the IRS of the Federal Government of the United States is given this power?

Senator Enrile. Yes, Mr. President. In fact, we copied the Bill of Rights from them, including the power of the limitation on search and seizures and yet they do not have a *maxi cricilo*. The commissioner can get any information he wants from the banking system of the United States.

Senator Gonzales. Mr. President, we will have to look into that, because considering the nature of the American constitutional system, there must have been judicial interpretations of that authority, if any.

Senator Enrile. In fact, I think, one of the few countries in the world having this—Europe does not have this kind of a law—is the case of Switzerland, for a reason, not for tax purposes. But in the case of the United States where we copied this sacrosanct limitation on unreasonable searches and seizures, they do not protect tax evaders. In fact, they send them to jail.

Senator Gonzales. My understanding, Mr. President, is that the effectiveness of the IRS is really upon its own administrative strength and not by reason of laws of this nature.

Senator Enrile. Mr. President, just as a matter of a riposte to that statement, there are as many scoundrels in the IRS as there are in our tax bureaus.

Senator Gonzales. Mr. President, may I also go into the power to enter into compromises. I understand this can be found on page—

Senator Enrile. Page 156, Mr. President.

Senator Gonzales. —page 156. May I repeat this because I did not get a very clear and positive answer when I first raised this issue.

Is there any time limit or period during which this power of the Commissioner to compromise, abate, refund or credit taxes may be exercised?

Senator Enrile. I am not aware of any time limitation,

Mr. President. This is exercisable by the commissioner only under certain conditions after the deficiency tax assessment has been issued.

Senator Gonzales. Even after a case is already pending in court, Mr. President?

Senator Enrile. No, Mr. President. If the tax assessment is based on fraud, or when the case is already filed in court, the commissioner of the Bureau of Internal Revenue loses jurisdiction over the case.

In the case of a tax fraud case, even while the commissioner has jurisdiction, the law prohibits any compromise.

Senator Gonzales. Mr. President, there are certain guidelines here. I understand that compromise in the payment of internal revenue taxes may be done: first, when there is reasonable doubt as to the validity of the claim against the taxpayer; second, when the financial position of the taxpayer demonstrates a clear inability to pay the assessed tax. However, there are certain limits to that power.

For example, it says, for cases of financial incapacity, a minimum compromise rate equivalent to ten percent of the basic assessed tax and, for other cases, a minimum compromise rate equivalent to 40 percent of the basic assessed tax.

Mr. President, I am just thinking of a situation where there is an inflation of the assessment.

There had been a number of news reports and even statements made by no less than the Senate President before this Body questioning the compromises that had been entered into by the Commissioner of the Bureau of Internal Revenue. Apparently, how do we rein in the discretion exercised by the Commissioner as far as this power is concerned?

Senator Enrile. Mr. President, we inserted a provision in the proposed Code giving an oversight power to the Congress over compromises entered into by the commissioner. She or he will report to the Congress every six months—through the Ways and Means Committee of both Chambers—tax cases that have been compromised by the Bureau, stating the reasons the compromises had been entered into.

Senator Gonzales. Is there an automatic review by the Secretary of Finance of compromises entered into or granted by the Commissioner of the BIR?

Senator Enrile. No, Mr. President, there is none. That is a prerogative of the commissioner as the implementing

authority of our tax code.

Senator Gonzales. So that under the law, the whole interest of the people, and that is the government, is supposed to be represented and protected by the BIR commissioner.

Senator Enrile. That is the assumption, Mr. President. That is why we established certain levels here. In the case of compromises based on financial incapacity, the compromised amount must not be less than ten percent of the basic tax, assessed tax.

Now, in other cases, it shall not be less than 40 percent. If the compromised amount is less than these percentages, then it must be decided not just by the commissioner but by a collegial party.

Senator Gonzales. As I have said, I merely intended to start the period of interpellations and I was supposed to interpellate only on limited points. Therefore, may I request that my interpellation be suspended without prejudice to taking the floor again when we come to the very substantial provision of this bill.

Thank you, Mr. President.

Senator Tatad. Mr. President.

The President. The Majority Leader is recognized.

Senator Tatad. Mr. President, we take note of the request of the Minority Leader. A list of those who have made reservations to interpellate are Senators Roco, Santiago and Alvarez as of now.

SUSPENSION OF CONSIDERATION OF H. NO. 9077

I move to suspend consideration of House Bill No. 9077 under Committee Report No. 454.

The President. Is there any objection? *[Silence]* There being none, the motion is approved.

MOTION OF SENATOR TATAD (Additional Number of Members in the Select Committee of Seven)

Senator Tatad. Mr. President, in relation to the Select Committee of Seven created to investigate allegations on the drug issue, I move that we expand said committee to nine.

The President. Is there any objection? *[Silence]* There being none, the motion is approved.

official policy-making bodies. I therefore propose the following amendment:

On page 13, line 32, after the words "at least," delete the word "TWO" and replace it with the word THREE.

Senator Flavier. Mr. President, for the information of the good senator, an amendment to this effect was made through the Maceda amendment in which the word "one" was increased to TWO and which was duly approved. I would take an open mind but I would like to consult Senator Maceda about his view because in this amendment, the word "one" was increased to "two" and the good lady is proposing to amend it to THREE.

Would the Senate President have any objection to that proposal because the Maceda amendment already increased the number from "one" to TWO and the good lady senator wants to increase it from "one" to THREE.

The President. The wordings say "at least two". If the lady senator from Pangasinan should become president, she can appoint seven women to....[Laughter]

Senator Shahani. I do not think I would take that risk, Mr. President.

The President. I leave it up to the sponsor.

Senator Flavier. I am happy with "two," Mr. President, because it is a good start. TWO is a big improvement. Anyway, the phrase says "at least two." So that the President can, in fact, appoint more than that.

Senator Tatad. Mr. President.

The President. The Majority Leader is recognized.

TATAD AMENDMENT

Senator Tatad. In relation to the third amendment, in line 32(A), I believe the words "a woman" should be replaced with the word WOMEN.

Senator Flavier. It is accepted, Mr. President.

The President. Is there any objection? [Silence] There being none, the amendment is approved.

Next amendment, please.

Senator Shahani. That is all, Mr. President.

The President. The Majority Leader is recognized.

Senator Tatad. I move to close the period of individual amendments.

The President. Is there any objection? [Silence] There being none, the motion is approved.

APPROVAL OF S. NO. 1728 ON SECOND READING

Senator Tatad. Mr. President, I move that we vote on Second Reading on Senate Bill No. 1728, as amended.

The President. Is there any objection? [Silence] There being none, we shall now vote on Second Reading on Senate Bill No. 1728, as amended.

As many as are in favor of the bill say *aye*.

Several Members. *Aye*.

The President. As many as are against the bill, say *nay*. [Silence]

Senate Bill No. 1728, as amended, a landmark bill, is approved on Second Reading. [Applause]

BILL ON SECOND READING H. No. 9077 - Tax Reform Act of 1997 (Continuation)

Senator Tatad. Mr. President, I now move that we resume consideration of House Bill No. 9077 as reported out under Committee Report No. 454. This is the Tax Reform Act of 1997. We are still in the period of interpellations.

I ask that the distinguished sponsor, the chairman of the Committee on Ways and Means, Sen. Juan Ponce Enrile, be recognized, and to interpellate, the distinguished senator from Iloilo, Sen. Miriam Defensor Santiago.

The President. Resumption of consideration of House Bill No. 9077 is now in order.

The distinguished chairman of the Committee on Ways and Means, former Secretary of Finance and Harvard graduate on Taxation is recognized as well as the distinguished senator from Iloilo, Sen. Miriam Defensor Santiago, the distinguished former Secretary of Agrarian Reform and graduate of Michigan.

Senator Enrile. I thank the Chair for that, but I do not need any more commercials. [Laughter]

Senator Santiago. In my case, I did not hear the Senate

President the first time remarking on my credentials and I will appreciate it if he will repeat it. *[Laughter]*

The President. The distinguished senator from Iloilo, the former Secretary of Agrarian Reform and graduate of the University of Michigan and one of the outstanding graduates of the University of the Philippines is recognized.

Senator Romulo. Mr. President, may I also add Oxford somewhere there.

The President. It is so noted.

Senator Santiago. Mr. President, this is a voluminous line of questioning. With the permission and authority of the Chair and the distinguished sponsor, I would like to make some general remarks as a preface.

The rationale given for the adoption of the proposed amendments are most noble. They are as follows:

1. To promote sustainable economic growth through the rationalization of the Philippine internal revenue tax system and tax administration;

2. To provide equitable relief to a greater number of taxpayers in order to improve levels of disposable income and to increase economic activity;

3. To create a vast environment for the business community so that it can compete more effectively in the regional as well as global community of nations; and

4. To ensure that government will be able to provide for the needs of our people and the nation.

I certainly will not argue against these objectives. But then, again, we cannot gauge the wisdom of a piece of legislation by its declared objectives. The true measure of the wisdom and propriety of a piece of legislation lies in the manner that it proposes to achieve its declared objectives.

If evaluated on the basis of these criteria, a substantial number of the proposed amended provisions as proposed in Committee Report No. 454 would be subject to question.

I observe that several new provisions and proposed amendments under the committee report seem to be biased in favor of the upper class without any substantial benefit to the State. I refer specifically to the following provisions:

1. The reduction of the tax rates on net capital gains from

the sale of shares of stock outside of the stock exchange from 10% to 20%, if the gain is in excess of P100,000, to 5% or 10%;

2. The reduction of estate tax rates from a maximum tax rate of 35% to only 20%;

3. The reduction of donor's tax rates, the maximum having been reduced from 20% to 15%;

4. The exemption of all income from outside of the Philippines of all individuals who are working abroad, including citizens of the Philippines;

5. The exemption of all income from abroad of nonresident citizens of the Philippines;

6. The exemption of all income from abroad of all resident aliens; and

7. The imposition of tax on dividend income of all individuals from domestic corporations while exempting the dividend income of all corporations other than nonresident foreign corporations from domestic corporations dividend income.

I will now go to my specific questions on interpellation. First, I would like to join in what in effect was the observation of Senator Gonzales this morning. There are certain administrative provisions as distinguished from the taxation provisions proper which appear to be positioning our government on the so-called "slippery slope."

In other words, if we are willing to grant these powers or these privileges to the Bureau of Internal Revenue commissioner or to the Bureau of Internal Revenue, what will prevent other government agencies and other commissioner-level public officials from requesting or demanding the same privileges?

Let me then go to these specific privileges which, in my mind, might suffer from constitutional infirmity. Please allow me to refer once more to page 4, lines 1 to 8.

On page 4, lines 1 to 8 of our bill, we have noted early this morning that the power to decide disputed assessments and refunds is vested in the Commissioner of Internal Revenue. I accept that this is a valid grant of power.

However, if I recall correctly, the commissioner of the Bureau of Customs, which was a position previously occupied by the distinguished sponsor, has a limitation on a similar power. Thus, parallel to the limitation on the power of the commissioner of the Bureau of Customs. I raise the question whether it would

not be preferable to include a provision explicitly providing for automatic review by the Secretary of Finance of a decision of the commissioner of the Bureau of Internal Revenue, for example, in cases where the amounts might exceed P1 million.

I know that under the present structure, any decision of the commissioner of the Bureau of Internal Revenue which is adverse to the government, that is to say, any decision granting a request for tax refund or abandoning a disputed tax assessment would be subjected to review by the Secretary of Finance. Because as the distinguished sponsor correctly pointed out this morning, there is a specific provision in the instant bill which underlines the power of the Secretary of Finance to control and supervise the commissioner of the Bureau of Internal Revenue.

However, my question is, whether it would not be clearer and less subject to confusion if we inserted a provision for the explicit automatic review by the Secretary of Finance in order to safeguard the interest of the government, at the same time, we do not want to swamp the Secretary of Finance with the task of reviewing all the decisions of the commissioner of the Bureau of Internal Revenue adverse to the government in tax refund and tax assessment cases.

In the light of this eventuality, I propose that only cases involving amounts exceeding P1 million should require such automatic review by explicit provision; provided, that this amount shall be based on cumulative amount of refunds granted and/or tax assessments waived in favor of a taxpayer during any three-year period. This is to discourage any attempt to split claims for refund to less than P1 million at any one time to circumvent the need for the automatic review by the Secretary of Finance.

In conclusion on this particular question, I recommend to the considered judgment of the distinguished sponsor that there should be an explicit provision in the bill providing for automatic review by the Secretary of Finance in respect to certain cases.

Senator Enrile. Mr. President, may I know the question of the distinguished lady senator?

Senator Santiago. Should the decision of the Commissioner of Internal Revenue not be explicitly subject to automatic review by the Secretary of Finance, provided, that the amount exceeds P1 million, and provided further, that the amount shall be based on the cumulative amount of refunds granted and/or tax assessments waived in favor of a taxpayer during any three-year period?

Senator Enrile. Mr. President, I respect the opinion of the distinguished lady senator from Iloilo. But I hasten to add that

I cannot go along with that proposition for the simple reason that the Secretary of Finance traditionally has been a policy-making authority, and we cannot convert him into another layer of authority in the collection process of internal revenue taxes because government should not tarry and wait for this another layer of authority to decide tax matters.

Apart from that, Mr. President, if there is any dispute with respect to assessments or refunds, then the affected party, the taxpayer, can very well avail of the administrative review powers of the Secretary of Finance. We should not make it an automatic condition for the implementation of tax revenues for the Secretary himself *motu proprio* to do a review of every action of the commissioner. We may just as well remove the commissioner and make the Secretary of Finance both the Secretary of Finance and the Commissioner of Internal Revenue.

Senator Santiago. Mr. President, on revenue matters, my instinct always is to defer to the considered judgment of the distinguished sponsor, considering his expertise on this topic. But may I just follow up a point that I made while raising this first question.

Is it true that a similar power vested in the Commissioner of Customs is subjected by law to certain limitations?

Senator Enrile. I could no longer remember the provisions of the Tariff Code on this. All I can remember is that the Commissioner of Customs acts through Collectors of Customs, and these collectors of Customs are, in fact, almost autonomous from the Commissioner of Customs, subject only to the review powers of the Commissioner precisely because of the urgency of collecting revenues for the government.

Apropos to this is the fact that even low level officials of the Bureau of Internal Revenue are authorized by this Congress under existing laws to arrest and make seizure on the enforcement of tax laws.

I would like to recall to the distinguished lady senator that there are several powers of government that are inherent in its character as a sovereign ruler of a republic, like the Philippines—police power, the power of eminent domain and the power to tax.

Senator Santiago. In any event, I shall defer pursuit of this point until I have had enough time to look up our Customs Code to determine whether there are limitations on similar powers vested in the Customs Commissioner. If so, I will bring it to the attention of the distinguished gentleman so that we can adopt the same limitations in the case of the Commissioner of Internal Revenue.

For the moment, please allow me to proceed to the second question.

On this particular question, I have very strong doubts on the constitutionality of the provisions concerned. I am referring to pages 4 and 5, line 11.

Senator Enrile. This is the power of the commissioner to obtain information and to summon, examine, and take testimony of persons.

Senator Santiago. That is correct.

Senator Enrile. These are existing provisions, Mr. President. We did not invent these; these have been in the statute books for so long, beyond my memory even. Therefore, until the theory is tested in a proper case, the presumption of validity exists in favor of these provisions.

Senator Santiago. For the information of our colleague, I am referring to Section 5, paragraph (2) which authorizes the Commissioner of Internal Revenue, and I quote:

To obtain on a regular basis from any person other than the person whose internal revenue tax liability is subject to audit or investigation or from any office or officer of the national and local governments, government agencies and instrumentalities any information, such as but not limited to costs and volume of production, receipts of sales and gross income of taxpayers, and the names, addresses and financial statements of registered partnerships and their members.

My question is: What does this provision mean? It is endlessly intriguing for a constitutional law student. Does this provision give the Commissioner of Internal Revenue plenary power to obtain information from all sources, including the power to inquire into bank accounts of individuals?

Senator Enrile. Mr. President, just to clarify this and to answer the distinguished lady senator from Iloilo, may I read into the *Record* Section 7 of the existing Internal Revenue Code:

Power of the Commissioner to obtain information, examine, summon and take testimony.—For the purpose of ascertaining the correctness of any return, making a return where none has been made, determining the liability of any person for any internal revenue tax, or collecting any such liability, the Commissioner is authorized:

1. To examine any book, paper, record or other data

which may be relevant or material to such inquiry;

2. To obtain information from any office or officer of the national and local governments, government agencies or its instrumentalities, including the Central Bank of the Philippines and government-owned or controlled corporations;
3. To summon the person liable for tax or required to file a return or any officer or employee of such person or any person having possession, custody, or care of the books of the accounts and other accounting records containing entries relating to the business of the person liable for tax, or any other person, to appear before the Commissioner or his duly authorized representative at the time and place specified in the summons and to produce such books, papers, records or other data, and to give testimony; [Cost and volume of production would be included in that]
4. To take such testimony of the person concerned under oath or as may be relevant or material to such inquiry; and
5. To cause revenue officers and employees to make a canvass from time to time of any revenue district or region and inquire after and concerning all persons therein who may be liable to pay any internal revenue tax, and all persons owning or having the care, management or possession of any object with respect to which a tax is imposed.

So, this is not a new provision. We simply clarified it to include costs and volume of production receipts or sales and gross incomes of taxpayers to emphasize the obvious.

Senator Santiago. I have never been impressed by the argument that just because a provision is already contained by existing statute, it will no longer bear re-examination or closer investigation or evaluative analysis.

Also, for purposes of the people who will implement these amended provisions of the Internal Revenue Code—assuming that we are able to pass it during this Congress, I would like to place on record the answer of the gentleman to the question.

Would it be the distinguished gentleman's position therefore that this provision, namely, Section 5, paragraph 2, does not give the Commissioner of Internal Revenue plenary power to obtain information from all sources, but is subject to the limitations set out in that provision?

Senator Enrile. Of course, that is the obvious answer, Mr. President. Apart from that, any member of this Chamber has a remedy. At the proper time, he or she can propose amendments which this representation may either accept or reject.

Senator Santiago. Let me pursue this point further. It appears from the phraseology of this provision that information may be obtained from any private person whether in his personal or official capacity, and that the information that the Commissioner of Internal Revenue is authorized to obtain is either unlimited or unqualified.

Would that be a fair statement or will the gentleman wish to qualify?

Senator Enrile. Mr. President, first of all, I would like to state into the record that the wording of this provision says, "(2) To obtain information ON A REGULAR BASIS FROM ANY PERSON OTHER THAN THE PERSON WHOSE INTERNAL REVENUE TAX LIABILITY IS SUBJECT TO AUDIT OR INVESTIGATION. ANY INFORMATION SUCH AS, BUT NOT LIMITED TO, COSTS AND VOLUME OF PRODUCTION...."

For purposes of investigating the tax liability of a taxpayer, the commissioner can get information from the Securities and Exchange Commission, from the banks, from the Register of Deeds and from other government corporations where the taxpayer may have transacted business.

Senator Santiago. In other words, I would like to clarify. Under Section 5, paragraph 2, that phrase "ANY INFORMATION SUCH AS, BUT NOT LIMITED TO" intends to apply the rule of *ejusdem generis* in statutory construction. Is that the correct view?

Senator Enrile. *Ejusdem generis*, Mr. President?

Senator Santiago. Yes.

Senator Enrile. I cannot answer that question. That is for the courts to decide later on if they will apply the principle of *ejusdem generis*.

Senator Santiago. Let me just place on record therefore, my view as a lawyer, that since the phrase utilized is "SUCH AS, BUT NOT LIMITED TO," that it appears that the principle of *ejusdem generis* is necessarily and automatically adopted by this provision as a limitation on the power. This, of course, is only a personal opinion.

I will continue on this point further. It is my understanding

from the phraseology of this provision that for the Commissioner of Internal Revenue to be able to exercise his or her authority under this provision, it is not necessary that there should be a criminal case for tax evasion against the taxpayer.

In other words, the question is: Would it be enough that the taxpayer is under the ordinary audit and investigation by the BIR in order to trigger these broad powers of the commissioner to obtain information?

Senator Enrile. Mr. President, the very provision, the proposed Section 5, which used to be Section 7, carries the answer to the question of the distinguished lady.

It says, "In ascertaining the correctness of any return, OR IN making a return where none has been made, OR IN determining the liability of any person for any internal revenue tax, or IN collecting any such liability, OR IN EVALUATING TAX COMPLIANCE, OR IN IMPROVING THE EFFICIENCY OF INTERNAL REVENUE TAX COLLECTION, the Commissioner is authorized: ..."

These are the premises, these are the bases, the grounds where the commissioner will exercise the power.

Senator Santiago. Then let me obtain a categorical answer please.

Would it be fair to say that under this provision, it is not necessary that a criminal case for tax evasion should have been filed against the taxpayer? It is enough that audit and investigation by the BIR has been initiated.

Senator Enrile. And I gave a categorical answer, Mr. President. No, there is no need for a criminal case to be filed against the taxpayer. This is to determine the correct tax that is due from the taxpayers—whether the deficiency is only P0.01 or P100 million, *pareho lang. Ang sinasabi ng batas, ito ba ang totoong buwis nitong taong ito?*

Senator Santiago. Thank you.

Still on this point. We are still discussing Section 5, paragraph 2 on pages 4 to 5.

I have noted earlier that this is an expansive grant of the authority to gather information. Would this provision not render superfluous another provision of the bill? This other provision is Section 6, paragraph (F), paragraph 4 which is contained on page 7 of the Committee Report.

Senator Enrile. No, Mr. President, because there is a

special law. In fact, there is a pending bill in this Chamber containing the same prohibition where we cannot inquire into the bank deposit of a person unless a court order is issued. Precisely because of this particular law, the revenue of government has been impaired because many taxpayers are known to have underdeclared their income. There is no way by which their present bank accounts could be checked, even if there is evidence that they have defrauded the government because of the existence of a Bank Secrecy Law in our country.

Senator Santiago. Mr. President, my concern here is the harmonious relationship between two provisions of the same bill. The first provision is Section 5, paragraph 2 which gives broad authority to the Commissioner of Internal Revenue to gather information.

The other provision is Section 6, paragraph (F), paragraph 4 which gives the same commissioner the authority to inquire into bank deposits of taxpayers.

I raised this question of compatibility because under Section 6, there has to be what the law calls "clear, direct and substantial evidence of fraud" against the revenue of the government or other criminal violation. On the other hand, under Section 6, to gather information regarding the bank deposits of a taxpayer, the Commissioner of Internal Revenue does not even have to present clear, direct and substantial evidence. She can simply depend upon the other section—Section 5, paragraph 2, where she has plenary authority to gather information.

In other words, because under Section 5, the Commissioner of Internal Revenue has plenary authority to gather information, the tendency therefore, even with respect to inquiries into bank deposits, will be to invoke not Section 6 which limits the power to clear, direct and substantial evidence, but to short-circuit Section 6 by simply invoking Section 5 under which her authority is plenary, and she is no longer circumscribed by the clear, direct and substantial requirement.

Senator Enrile. Mr. President, may I know if the distinguished lady senator would care to delete the limitation of a "clear, direct and substantial evidence" provided in subsection (F), paragraph 4 of Section 6?

Senator Santiago. No, that is not the thrust. The thrust of this line of questioning is this: If the grant of authority under Section 5 is to be retained, then the exercise of that authority should be limited. It should be limited to instances where there is reasonable basis to believe that the taxpayer under investigation or under examination is guilty of tax evasion.

Furthermore, the Commissioner of Internal Revenue must

only be allowed to obtain information not from any person—as is currently the phraseology—but from any office or officer of the national and local governments, government agencies and instrumentalities.

My position is, if we give the commissioner the authority to obtain information from any person, including the spouse, the associates and the partners, that power would be too intrusive on human rights and might conceivably be declared unjustifiable.

Senator Enrile. Mr. President, this representation does not see any conflict between these two provisions. In fact, there is no known case or instance where the now proposed Section 5 has ever been used or was ever effective to be used in obtaining information regarding the bank deposit of any taxpayer. That is why there is a need to provide in Section 6 that power to the commissioner under certain circumscribed and restricted conditions.

Senator Santiago. I will now go to my next question, Mr. President. This time, I will refer to page 20, lines 10 to 13.

In these provisions, the bill proposes to adopt fundamental changes in the principles of income taxation in the Philippines, specifically by: 1) totally exempting from tax the income from abroad of all citizens of the Philippines who are either nonresidents or who are Philippine residents but working abroad; and 2) totally exempting from tax the income from abroad of resident aliens. My concern is the constitutional provision that the rule of taxation shall be uniform and equitable.

I would like to know if there has been any determination made on whether or not the income of overseas contract workers abroad are being taxed abroad in order that we can properly determine whether we want to exempt their compensation income from abroad.

For example, it is my understanding that the compensation income of those working in the Middle East are not subject to tax in those countries. If that is correct, then it would be possible that the OCWs concerned would not be paying taxes to any government or country. If that is correct, would that situation, per se, not be a violation of the equal protection of the laws?

Senator Enrile. Mr. President, I will say emphatically that there is no violation of the equal protection clause. There is a valid distinction based on residence or place of work. There is a more fundamental reason why we are making this distinction because, in the case of our compatriots who are living abroad or those working abroad, they are enjoying the police power protection of the state where they work, apart from the fact that

they use the public roads, public health services and the other benefits granted by their host government which we do not do in the case of our compatriots who are living or working abroad. That is the purpose we have done this.

By the way, this is not a new system. The only other country that continues to adopt our present system which we are trying to modify is the United States of America. We are now trying to recast our system.

In terms of revenue, Mr. President, the amount being raised from this sector is quite miniscule compared to the total revenue of government. Yet, it causes a lot of problems, both in terms of tax administration and in terms of the convenience of our compatriots abroad.

Sometimes, our citizens who are working or living abroad would not be given an extension of their passports if they do not file any income tax return in the Philippines, even if they are not required to pay any income tax here. The amount of taxes they paid abroad is much, much more than what would be due to the Philippine Government where they reported those income because of the system of tax credit in our present Tax Code.

Senator Santiago. Mr. President, I will impose on the indulgence and patience not only of the distinguished sponsor but also of my colleagues so that I can explain why I am raising this point of unequal protection of the laws between Filipinos working here and Filipinos working abroad.

I can conceive of at least one situation where the present provision might result in an inequity. Those who work outside the country receive relatively better compensation packages and have greater capacity to pay taxes as compared to those who are left to labor in the Philippines. Those who receive meager compensation in the Philippines have to bear the full burden of taxation while those who receive so much more are liberated without sufficient basis from the burden of taxation.

I note that as far as income taxation is concerned, the jurisdictional nexus which gives a country the right to collect taxes is not limited to the situs of the income but it includes the place of residence as well as the fact of nationality of the income earner. The fact that a citizen earns his income abroad does not justify his exemption from Philippine taxes, as it cannot be denied that the Philippines has the duty to protect its citizens regardless of their residence or their place of work.

Citizens who work abroad equally receive protection and enjoy the benefits of the existence and the projects of the Philippine government. I, therefore, find it difficult to see how there can be a substantial distinction between income earned

abroad from income earned in the Philippines by a citizen of the Philippines that will be germane to the purpose of raising revenue for the government. In my view, there is even no case of double taxation to justify the exemption from Philippine taxes of compensation income from abroad.

Under existing law, taxes paid abroad on income from foreign source are allowed as deduction from taxable income for purposes of computing the income tax due on income from abroad. Moreover, the tax rates applied are already very reasonable as the maximum rate is only three percent compared to 30 percent, if the compensation income is earned within the Philippines.

If the objective is to fully protect the income of the citizens from taxation by two states or by two governments or more, I think the solution would be to treat the full amount of taxes shown to have been actually paid abroad as tax credit against income taxes due in the Philippines.

I submit that this could be a better arrangement than the present arrangement under which such taxes paid are merely used as a tax deduction. For example, the personal exemption of US\$2,000 and US\$4,000 may be increased to US\$6,000 and US\$12,000, respectively.

Senator Enrile. Is the lady senator through?

Senator Santiago. Yes, Mr. President.

Senator Enrile. Mr. President, I hope that someone will raise the issue of unconstitutionality regarding this provision when we enact it, if we will enact it, and let them argue that there is a deprivation of equal protection.

My opinion, as a humble two-bit lawyer, is that, first, such a case will not prosper. But at any rate, that is debatable issue. Second, with respect to the question of revenue, the amount of revenue to be lost here is quite miniscule. But there is an underlying policy involved here. This is a policy decision that we will have to make and that is, if we want our compatriots who have succeeded and made fortunes abroad to come back here and invest their money here, after those funds have been taxed by other sovereigns, then we ought to adopt a system like this. This is not, as I said, a new concept of income taxation. This is used by the British system. They are much older than we are in applying the equal protection clause and the due process clause. They used territorial basis to determine the taxability of income.

I think, in the case of our overseas workers, there is a compelling reason why we ought to give them this concession, and that is, while our workers here are living in their homes with

their families and are being protected by government, our overseas workers are away from home and suffering from loneliness only because they want to survive and only because they could not find work here.

This is a small amount of revenue to be lost from government if at all to compensate these people from the sufferings, rigors, inconveniences and difficulties they encounter abroad in earning a living.

Senator Santiago. Just one more point on this particular question, Mr. President.

I would like to place clearly on record that the questions I am raising against this tax exemption should not in any way be taken as a lack of esteem or regard for the efforts and invaluable contributions of the OCWs. I know that they sacrifice much to sustain this country beyond simply sustaining themselves.

But as a legislator, it is my duty to examine all major policy implications. And I have a niggling worry about this particular policy of granting more privileges in favor of OCWs.

It seems to me that the present provisions of the bill could be construed such that the major policy implications could be that of encouraging Filipinos to go abroad and serve foreign masters instead of encouraging Filipinos outside to come back. Or for Filipinos who are already here to remain in the Philippines to contribute to the progress of our country.

Mr. President, my question is: Would this provision not give an incentive or a premium to employment abroad since it virtually implies that domestic employment is less preferred or is not encouraged? Furthermore, would this provision not recognize that it has become a dire necessity for our country to export people in order to sustain our government? Should the government not be giving incentives for the export of Philippine products rather than Philippine labor?

What I am afraid of is, if we adopt this taxing policy in this particular provision, we might suffer the worst brain drain scenario we have seen yet.

Senator Enrile. Has the distinguished senator finished?

Senator Santiago. Yes, Mr. President.

Senator Enrile. Mr. President, we cannot close our eyes to the present reality of our people working abroad because they could not find work here. I am sure that with a few exception, perhaps, if these people have a choice, if they can find work in the Philippines, they would rather stay in the Philippines even

if they would get a lower pay because they would be with their loved ones. But they are compelled by necessity to go out of the country and seek work abroad under untried, sometimes difficult conditions.

Many of them, in fact, have been victims of human oppressions in other lands, but they have to suffer these because of lack of work in our land. Of course, it is our function and duty to try to work out an economy that would provide work for our unemployed.

That is precisely the very purpose of this tax reform. Hopefully, we could rationalize our income tax system in such a way that we will expand the economic pies, so to speak, and expand the tax base so that government will have enough money to establish conditions; in order that the economy would progress and grow to provide employment for our people who are now seeking work abroad.

Until that time, we will have to accept the reality that we have people abroad who must be handled in this fashion, and that I assume full responsibility for this policy.

This is my own handiwork. It is not the recommendation of anybody. This is a product of my experience in government. And as a professional, I am translating that experience into a real statute, so that the people who are now suffering abroad would, at least, be alleviated from that suffering through this provision, where their earnings abroad will no longer be subjected to the income tax laws of the country with the concomitant requirement that they must file their income tax returns here.

Senator Santiago. Thank you, Mr. President. I have previously given notice that my interpellation will take a long time. I have divided my interpellation into those that concern policy issues and those that concern revenue computations per se. I have finished with my policy questions.

With the permission of the President, I would now like to suspend my interpellation so that, I hope, my colleagues will raise similar policy issues. Thereafter, I would like to reserve my right to continue my interpellation, that time on internal revenue computations.

The President. We take note of the reservation with the suggestion that, maybe, the senator from Iloilo would be ready by Tuesday and Wednesday for possible resumption. We are going to give as much time as possible to this bill in the next two weeks and almost on a daily basis.

Senator Tatad. Mr. President, I ask that the distinguished gentleman from Iloilo be recognized.

The President. The other senator from Iloilo is recognized, the former Secretary of Labor, former Secretary of Justice, another outstanding UP graduate, and a former great leader of the Sigma Rho fraternity.

Senator Drilon. Thank you very much, Mr. President. Since the Chair has indicated that we would like to finish the interpellation of this bill as soon as we can, I will no longer comment on those statements. We will proceed directly with a request for some clarification from the distinguished sponsor.

Senator Enrile. By all means, Mr. President. In fact, I encourage all our colleagues here to raise all kinds of questions because this is essential for the future implementors of this revenue measure.

Senator Drilon. In order that the issues previously raised by the other senators can be focused upon, Mr. President, I would like to manifest that I am just limiting, in the meantime, my interpellation on the constitutional issues raised by Senators Gonzales and Santiago.

First, I would like to pursue the points raised by my colleague from Iloilo, Senator Defensor Santiago, on Section 7 of the present Code which is sought to be amended on pages 4 and 5 of the proposed bill. I notice that paragraph 2 of the existing Section 7 is proposed to be amended, but paragraph 3 is sought to be retained in its entirety. My reading of paragraph 3, Section 7 of the present law and paragraph 2, Section 5 of the proposed law would be the same.

If we will note, Mr. President, paragraph 3, Section 7, of the present law gives the Commissioner the power to "summon the person liable for tax or required to file a return or any officer or employee of such person or any person having possession, custody or care of the books of accounts and other accounting records containing entries relating to the business of the person liable for tax or any other person to appear before the Commissioner or its duly authorized representative at the time and place specified in the summons and produce such books, papers, records or other data, and to give testimony.

Mr. President, may I know what power the proposed amendment will grant to the commissioner in addition to those already found in the present paragraph 3 of Section 7?

Senator Enrile. This is with respect to third party information, Mr. President, other than the taxpayer himself.

Senator Drilon. I would like to think that paragraph 3, Section 7 of the present law also authorizes the commissioner to summon such third party as long as the third party has possession

of the books of accounts containing entries relating to the business of the person liable to tax.

Senator Enrile. Paragraph 3 of the present Section 7?

Senator Drilon. That is correct, Mr. President.

Senator Enrile. Mr. President, this is to summon the person liable for tax or required to file a return.

Senator Drilon. Or?

Senator Enrile. Or any officer or employee of such person or any person having possession, custody or care of the books of accounts and other accounting records containing entries relating to the business of the person liable for tax or any other person to appear before the commissioner.

Senator Drilon. So, it obviously also covers third parties.

Senator Enrile. Well, we just want to make sure that there will be no question about the power of the Commissioner to summon third parties.

For instance, someone sold his property to someone and there is nondeclaration of the consideration. Now, I do not see any specific provision in the present Section 7 which would authorize the Commissioner to summon the buyer in order to establish the correct consideration for the property.

In addition, let us say that a taxpayer has transacted business with A or B or anyone else and he made a profit, but I do not see any specific provision in Section 7 which authorizes the Commissioner to summon A or B to shed light on the transaction with the taxpayer.

Senator Drilon. With all due respect, Mr. President, I would like to think that under the present paragraph 3, such instances would be covered because the provision is broad enough, as presently worded, to include any person having possession, custody or care of books of accounts and other accounting records containing entries relating to the business of the person liable for tax.

I guess that the point we are driving at, Mr. President, if the good gentleman can consider it, is that paragraph 3 already covers the authority of the commissioner to summon and subpoena third parties, except that the inquiry is specific.

On the other hand, the proposed amendment would grant the Commissioner such broad authority. In fact, it specifically provides that the commissioner shall have authority to obtain

information from any person other than the taxpayer for any information such as but not limited to the books that are being sought to be examined.

I would like to suggest that the commissioner now has sufficient authority under paragraph 3 of Section 7.

Senator Enrile. Mr. President, sufficiency is a matter of opinion. The opinion of the humble sponsor is that the powers granted to the commissioner under the present Section 7 is not enough, and that is the purpose this new provision has been inserted.

If the opinion of the distinguished senator from Iloilo is that there is enough authority granted to the commissioner, then, I say that there is no harm in clarifying the matter.

Senator Drilon. Well, except, Mr. President, that the way it is worded now, with all due respect, may be interpreted as granting the commissioner the power to issue general warrants because it is so broad that there is no more limitation as the same would be contained in paragraph 3 of the present Section 7.

Senator Enrile. Actually, Mr. President, there is no general warrant here. The commissioner can issue a subpoena under this and the taxpayer, if he feels that there is an administrative power, can go to court.

Senator Drilon. Yes, Mr. President. There is no dispute that the commissioner can issue a subpoena, but in the present provision, the power to issue subpoena is very specific and must be related to the examination of specific document related to the specific tax liability.

The authority is circumscribed very specifically under paragraph 3 of the present Section 7, and we are expressing our concern that the proposed amendment is so broad that it can be precisely questioned as transgressing our constitutional provision on unreasonable searches.

Senator Enrile. Mr. President, this representation is willing to risk that possibility, although I do not see that possibility and I do not see any invalidity of this provision. Modesty aside, I also studied Constitutional Law and I think I can very well say that this is defensible, more than defensible constitutionally.

Senator Drilon. Mr. President, we have also expressed our opinion here. We defer, of course, to the better judgment of the good sponsor. We are just pointing out certain matters which can possibly be raised later on when this issue comes up before our courts.

Senator Enrile. At any rate, Mr. President, this provision has the presumption of validity, and until it is overturned by the Supreme Court, it stands valid and if it is overturned in a proper case by the Supreme Court, then, so be it. But we must endeavor to give the Bureau of Internal Revenue and its commissioner the power to enforce our tax laws so that they can no longer say "Well, we want to collect taxes and impose the internal revenue laws but you do not give us the power and you have no right to criticize us, if you are not willing to give us the power."

Senator Drilon. Very well-said, Mr. President, except that recently, I came across an incident where the Secretary of Finance issued an exemption for tariff and customs duties in Iloilo to the tune of P339.5 million on the theory that these are raw sugar when in truth and in fact, the polarization is beyond the limit allowed by the Tariff and Customs Code. But that is entirely a separate matter. I just wanted to place that on record.

Senator Enrile. But in those cases, Mr. President, the remedy is not to deny our tax authorities the tools to perform their jobs but to indict the erring public official. Even if he is the Secretary of Finance, we should institute the necessary proceedings against him in order to make sure that our public servants will shape up.

Senator Drilon. Yes, as we said, that is completely a separate matter and we will act accordingly, taking into account the advice of the gentleman from Cagayan when we make our appropriate report.

In any case, we wish to proceed to page 7 on the power of the Commissioner to examine bank accounts, previously touched by Senator Santiago and Senator Gonzales.

Now, there is no dispute that this, in effect, would grant the commissioner the authority to issue search warrants for the bank accounts under the circumstances enumerated on page 7, particularly lines 15 to 21. Is that correct?

Senator Enrile. The commissioner under this provision will not issue a search warrant. He will examine the ledger of the bank befitting its role as tax collector and determine whether the person or the taxpayer involved has any bank deposits not justified by the amounts that he returned for tax purposes. And this is only after, by the way, a clear, direct, and substantial evidence of fraud.

The commissioner cannot capriciously or whimsically go to the bank and say, "I want to check the bank accounts of Juan Ponce Enrile to find out whether indeed he has a bank account far beyond what he has reported in his income tax return."

Because at that point, there ought to be already a basis to charge the person with fraud.

Senator Drilon. If there is a basis to charge the taxpayer with fraud, is it indeed more proper remedy that such criminal case of fraud be filed and the authority to open the bank account to be sought in the court pursuant to Republic Act No. 1405?

Senator Enrile. Mr. President, the checking of the bank account is to cleanse the case against a tax evader in order to send him to jail like Al Capone.

Senator Drilon. Mr. President, if there is already a clear, direct and substantial evidence of tax fraud, then presumably, the taxpayer can be convicted, and therefore, I could not see what the examination of the bank account could do as far as establishing a clear, direct and substantial evidence is concerned.

Senator Enrile. That is also in line with the power of the commissioner to collect the correct tax against the taxpayer and issue the assessment against the taxpayer so that government can get its due income or revenue from that taxpayer.

Senator Drilon. How would the sponsor reconcile this proposal with the provisions of Article III, Section 2 of the Constitution which says that: "no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge." In this particular case, this authority is being transferred to the commissioner.

Senator Enrile. This is not a search warrant. We are investing the commissioner the power—similar to the power we have invested on the commissioner—to look into the bank account of a deceased person. These are *en pari materia, pari passu*.

Senator Drilon. In the case of a deceased person, it is to determine the amount of his gross estate.

Senator Enrile. Yes, the same.

Senator Drilon. But in this particular case, the authority is to examine the bank account of a particular taxpayer.

Senator Enrile. To determine his correct tax liability because there is already clear, direct and substantial evidence of fraud committed. Meaning that, either the taxpayer underdeclared his income or overdeclared his deduction.

Senator Drilon. Is it the position of the good sponsor that this is not granting the authority to issue the search warrant although limited in character to the commissioner to examine

the bank accounts of a taxpayer?

Senator Enrile. No, Mr. President. And this is no different from another case where the taxpayer goes to the bureau and seeks a compromise on the ground of financial inability to discharge his income tax obligation, in which case the commissioner in that case—and we have so authorized the commissioner—may look into the bank account of the taxpayer. And in that case, there is not even any evidence of fraud or criminal violation and yet we authorize the commissioner to look into the bank records of the taxpayer to precisely determine the correct tax liability of the taxpayer, whether he can or cannot pay the tax due.

Senator Drilon. With all due respect, Mr. President. In that particular instance, it is the taxpayer who is seeking a reduction of his tax liability by reason of financial incapacity to pay his tax liability. The commissioner has every right to require him to produce his bank accounts or to look into the bank account to see whether, in fact, he does not have that financial capacity to pay the taxes due.

In this particular case, Mr. President, under Section 4, there is a finding, administratively at that, that there is a clear, direct and substantial evidence of fraud. If that is so, then the commissioner should file a criminal case, ask that the bank account be opened under Republic Act No. 1405 because then at that point, the examination of the bank account is so authorized.

We are raising this issue because the provision clothes the Internal Revenue Commissioner with such broad authority that will again raise questions on the validity of this provision. We are one with the good sponsor that we should arm our commissioner with all the powers within the bounds of the Constitution to enable him to collect more taxes for the government.

But let me point out a basic difference between the old Constitution—the 1973 Constitution—and the 1987 Constitution as far as searches and seizures are concerned.

The 1973 Constitution, under Section 3, Article IV, provides that:

The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall not be violated, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined by the judge or such other responsible officer as may be authorized by law.

Mr. President, the phrase "such other responsible officer as

may be authorized by law" was deleted in our 1987 Constitution and replaced with the phrase "except upon probable cause to be determined personally by the judge after examination under oath or affirmation."

This really shows the intent of our framers to limit such authority to inquire and to search on the personal effects of a citizen only upon personal examination by a judge, and not by any other officer although authorized by law. This is the basic reason we are pointing out to the good sponsor the provisions of the Constitution on unreasonable search and seizures, Mr. President.

Senator Enrile. Mr. President, it is the humble opinion of this representation that there is no constitutional invalidity to this provision. And so, therefore, I cannot accept that proposition that it violates the Constitution.

But nonetheless, I would encourage all the constitutionalists in the country to file a petition to attack the constitutionality of this provision, and it is my position that I think they will fail. And so, I would insist on this provision.

Senator Drilon. Yes, Mr. President. I hear clearly the good sponsor. I would just like to state, as a continuation of my previous statement, that in fact the Supreme Court in the case of *Salazar v. Achacoso*, decided on March 14, 1990, expressly ruled that the previous authority granted to the Secretary of Labor in being able to search the premises and examine the books of those suspected of engaging in illegal recruitment can no longer stand scrutiny when tested against the provision of the 1987 Constitution, noting that this authority of the Secretary of Labor was granted under the 1973 Constitution.

Therefore, we are submitting for the consideration of the good sponsor that he may want to take a good look at this decision of the Supreme Court in making a final judgment as to whether or not the proposed grant of authority to the Commissioner of Internal Revenue could stand examination.

Senator Enrile. We have taken that into account,

Mr. President. Personally, this representation has taken that into account. But I drew a distinction between the power of the Secretary of Labor and that of the Finance Secretary and the Commissioner of Internal Revenue, for after all, the power involved here as I said in the course of my answer previously, represents one of the three important powers of the government—the power to tax, the power of eminent domain, and the police power of the State.

Senator Drilon. Mr. President, as we have previously manifested, we limit our interpellation at this point on the matters previously touched by our colleagues on the questions raised by Senator Gonzales and Senator Santiago.

We reserve the right to continue our interpellation on the other points in the proposed bill.

Thank you, Mr. President.

Senator Enrile. Thank you, Mr. President.

The President. The Majority Leader is recognized.

SUSPENSION OF CONSIDERATION OF H. NO. 9077

Senator Tatad. Mr. President, I move that we suspend consideration of House Bill No. 9077.

The President. Is there any objection? *[Silence]* There being none, the motion is approved.

SUSPENSION OF SESSION

Senator Tatad. Mr. President, I move that we suspend the session until 10:30 tomorrow morning.

The President. The session is suspended until 10:30 tomorrow morning, if there is no objection. *[There was none.]*

It was 6:02 p.m.

RECORD OF THE SENATE

TUESDAY, AUGUST 5, 1997

RESUMPTION OF THE SESSION

At 10:41 a.m., the session was resumed with Senate President Ernesto M. Maceda presiding.

The President. The session is resumed. The Majority Leader is recognized.

BILL ON SECOND READING H. No. 9077—Tax Reform Act of 1997 (Continuation)

Senator Tatad. Mr. President, I move that we resume consideration of House Bill No. 9077 as reported out under Committee Report No. 454.

The President. Is there any objection? *[Silence]* There being none, resumption of consideration of House Bill No. 9077 is now in order.

Senator Tatad. We are still in the period of interpellations. We have a list of senators who have reserved to interpellate. The next on our list is the gentleman from Isabela.

To allow us to recall him on the floor, I ask for a few minutes' suspension of the session.

The President. Does the Minority Leader have further interpellations at this time?

Senator Tatad. The Minority Leader has reserved to interpellate at a later time, Mr. President.

The President. How about the gentleman from Cebu and Bohol on the CTRP?

Senator Herrera. Mr. President, I feel that if I have to interpellate, it will be later on, after some points that will not be taken up in which I have concern. Then I will raise these points during the period of interpellations.

However, let me just put into the *Record* that I am in full accord with the committee report. Anyway, I am the vice chairman, and that is my sentiment on the matter, Mr. President. But as I said, if in the course of interpellations by the other senators, there will be points which I feel should be clarified, I may raise them during the period of interpellations.

Senator Tatad. Mr. President, in the meantime, I ask that the distinguished gentleman from the Cordilleras be recognized.

The President. The distinguished senator from Benguet is recognized.

Senator Flavio. Mr. President, will my guru and tutor in Taxation 505 allow me to ask a few clarificatory questions, in the interest of the public and for my continuing education?

Senator Enrile. Very gladly, Mr. President, especially considering that the distinguished gentleman will be one of those possible presidents who will enforce this law.

Senator Flavio. In the year 2020, Mr. President.

Senator Enrile. That is in the year 2004.

Senator Flavio. Mr. President, I have two areas of interest which I just want clarified for the purpose of explaining to the public. One is the area of tax deductibility for an individual's dependents.

Can the gentleman clarify, Mr. President—especially through a comparison—the rates that have been passed in the House? Many of the questions I receive allude to a disparity between our rates and the rates of the House. A specific answer will be very useful and informative.

Senator Enrile. Actually, Mr. President, we feel that the House version is too much.

There are two measures used in determining the income thresholds in the Philippines: one is the poverty income threshold, and the other is the threshold family income.

The level of poverty income threshold in the Philippines which will involve a sum of money to cover food, clothing, housing, utilities, education, housekeeping and medical care is P63,194.00 per annum.

For a threshold family income which is the level of income that will give a family a minimum basic comfort and humane existence for the worker and his family, and which would involve food, clothing, housing, rental, utilities, transportation, education, housekeeping, personal care, health care, recreation, expenses for individuals, socials and professionals like books and development, this will amount to about P73,783.00.

The income threshold that we adopted for a family in this particular proposal, Mr. President, is P76,000.00.

Incidentally, we have increased in magnitudes the present levels of personal exemption by 36 percent, which is equal to the increase in average price increases in 1997, compared to that of

1992. So, we feel that this figure we are proposing is a very equitable proposal.

Senator Flavier. I thank the gentleman for that information, Mr. President.

Can the gentleman give us a breakdown of the total deductible figure? I understand that this is P136,000 in the Senate version and P198,000 in the House version.

Senator Enrile. Mr. President, all taxpayers will be entitled to a deduction—personal exemption of P25,000.00.

Under the proposal of the House as well as the Senate, there is an exclusion income of about P30,000.00 but not exceeding it which will cover all benefits that a worker would receive by way of 13th month pay untaxable income, bonuses, fringe benefits, productivity bonuses, et cetera. So, I am assuming that that P30,000 will be, at least, earned by most of the low-income taxpayers of the country.

If we add that to the P25,000, that is about P55,000, plus the exemption for both husband and wife, if they are both working. If they have four dependents, that will be P6,500 times four, and that gives them another P26,000. So, if we add up the whole thing, the maximum level of free income to the family is P136,000.

Senator Flavier. In the House version, Mr. President, I understand it reaches up to P198,000 or thereabouts. Can the gentleman explain the disparity?

Senator Enrile. I think the House wants to give a family tax exemption of P146,000, both personal and additional exemptions for dependents. If we add the P60,000 potential free income for both working husband and wife, that will already be P206,000; plus some other benefits like union dues, Medicare, SSS and GSIS contributions, that will come up to a hefty sum. This will erode the income of government and this will also affect the operations of the government in rendering and extending social services.

Senator Flavier. Thank you for that reply, Mr. President. My second interest relates to the provisions on housing which, I feel, is a very important provision and it will be important for our Social Reform Agenda, touching upon the housing concerns of the country.

Senator Enrile. It is good that the senator from the Cordilleras pointed this out. That is not included in the benefit that would be given to the low-income group who would be borrowing money to put up or acquire a home for themselves.

Senator Flavier. Mr. President, my questions are of two parts. One seeks a clarification of a very interesting concept.

When one has a house that he no longer needs, since it is already too big for him, or because his children are already married or he wants to sell it with the purpose of building or buying a new house, will this not be subject to immediate tax?

Can the distinguished gentleman explain that because I would like to know when the tax will accrue to the government. Will it come later or is this completely waived?

Senator Enrile. If he will never sell his new house, the tax will not be due. But if he sells his house and does not use the proceeds anymore to buy another house, the tax incidence will come. That means that he will be subject to 5 percent tax on the gross.

Senator Flavier. Suppose I sell my property for, say, P2 million and then I build a house for P1.5 million. The P1.5 million is not taxed, but the difference is immediately taxable, is that correct?

Senator Enrile. I will put it this way, Mr. President. Let us say that a long time ago, the gentleman bought a house and lot—or just a house—for P1 million and that house is now worth P10 million. If the gentleman sells that house under the present law without the new proposal, it will be subject to a 5 percent tax on the gross. So, he will have to pay P500,000 to the government out of the P10 million.

With the new proposal, the gentleman will be saving that P500,000 because he will not be required to pay that amount to the government if he invests the P10 million in acquiring or building a new house for his family within 18 calendar months.

However, if he only uses, let us say, P8 million out of the P10 million for building his new house, then the government will tax the amount that he did not use by multiplying it by 5 percent. And that is what he will just pay to the government.

Senator Flavier. Thank you, Mr. President, for that direct answer to my question.

The second part of that concern, Mr. President, is regarding young couples wanting to build their first house. Is it my understanding that we are now going to extend to them tax deductibility for the interest on that home they are going to build?

Senator Enrile. That is not only a benefit granted to a new couple starting life on this planet, but to all taxpayers,

Mr. President. If a taxpayer, even retired public servants or retired employees—has no house and he wants to borrow money to build a house—because he does not have enough savings to buy a new house, and he pays the interest, today, that interest is not deductible from his gross income. But with the proposal we are making, the interest he pays to service the loan that he borrowed to build a new home or to acquire a new home will be fully deductible from gross income. In effect, the government will be sharing in paying the tax, the interest burden, incurred by the taxpayer.

Senator Flavier. In other words, Mr. President, the operative phrase will be “first house.”

Senator Enrile. Yes, first house.

Senator Flavier. Thank you, Mr. President. One final small question. On Section 62 of the Senate Committee Report 454, on page 136, lines 9 to 12, it states, and I would like to quote, “excise tax on alcohol and tobacco products shall be paid by the manufacturer or producer within two days after removal of said products from the place of production.”

Mr. President, we would like to clarify whether the term “alcohol products” in this provision includes distilled spirits, wines and fermented liquor.

Senator Enrile. That is correct, Mr. President. The reason is to realize that it is very inconvenient, sometimes impractical, for manufacturers to be required to pay their tax immediately upon removal. So we are giving them 48 hours to comply with that.

By the way, this is an administrative provision to implement the Tax Code. I consulted the Bureau of Internal Revenue on this. Just like the existing provision on oil companies and producers of mineral products, where they are given not just 48 hours but 15 days and 20 days, respectively, we are giving the producers of sin products 48 hours to discharge their obligation.

Senator Flavier. Thank you, Mr. President. One final point I just want to explore. I received a request from the National Book Development Board for a reconsideration of the final tax on royalties—to reduce it from 20 percent to 10 percent. Would the gentleman give me his reaction so that during the period of amendments, we may be able to consider it?

Senator Enrile. Mr. President, this has been a long tradition. I think a final tax of 20 percent is mild enough, that is, P.20 for every peso.

Senator Flavier. I see. Thank you very much, Mr. President.

Senator Tatad. Mr. President.

The President. The Majority Leader is recognized.

SUSPENSION OF CONSIDERATION OF H. NO. 9077

Senator Tatad. Mr. President, I move that we suspend consideration of House Bill No. 9077 as reported out under Committee Report No. 454.

The President. Is there any objection? *[Silence]* There being none, the motion is approved.

Senator Tatad. Mr. President, on a question of personal and collective privilege, I ask that the distinguished Senate President Pro Tempore, Senator Ople, be recognized.

The President. The distinguished Senate President Pro Tempore is recognized.

QUESTION OF PRIVILEGE OF SENATOR OPLE (A Creeping Coup d'Etat)

Senator Ople. Mr. President, ladies and gentlemen of the Senate:

There is today sweeping the country a culture of paranoia which is dangerous for democracy and disastrous to civil society. This culture is being promoted in a purposeful way by military intelligence in cahoots with the Executive power to destroy independent political institutions such as the Senate and the Supreme Court, and immobilize the democratic opposition by innuendos and baseless accusations. The technique used is similar to those employed by Sen. Joseph McCarthy of the United States who gave his name to a whole code of practices intended to malign innocent people and institutions through what is known as guilt by association.

McCarthy's Ignoble End

I need not remind this Body, Mr. President, that McCarthy, in the end, outdid himself and was censured by the US Senate. He died in complete disgrace in 1954 and today his name is an inglorious epithet in all countries that value the rights and liberties of their citizens.

In McCarthy's time, the Cold War was at its height and the fear of communism had unleashed a tide of irrational passions in America. McCarthy, looking around for issues to exploit in his reelection campaign in 1954, decided to fix upon communism as the issue and he started attracting media coverage by the technique of naming names of American communist suspects in

from Cebu, Senator Osmeña.

The President. The gentleman from Iloilo and the gentleman from Cebu, the latest entrants to the vice-presidential derby, are recognized.

Senator Drilon. The Chair is referring to the gentleman from Cebu.

The President. I stand corrected. I recognize the gentleman from Cebu and the gentleman from Iloilo, who are both contenders for the vice-presidential nomination.

Senator Osmeña. Thank you, Mr. President. Will the distinguished vice presidentiable from Iloilo consider a few amendments?

Senator Drilon. I will consider, but I am not a vice presidentiable, Mr. President, for the record.

OSMEÑA AMENDMENTS

Senator Osmeña. On page 5, line 2, delete the words "reevaluation of the assets", and in lieu thereof, insert the word NETWORKTH.

Senator Drilon. We accept the amendment, Mr. President.

The President. Is there any objection? [Silence] There being none, the amendment is approved.

Senator Osmeña. On page 6, line 24, insert the word RESIDENTIAL after the word "except".

Senator Enrile. Mr. President.

The President. The gentleman from Cagayan is recognized.

Senator Enrile. First of all, Mr. President, may I ask for a reconsideration of the amendment just approved?

This revaluation was a product of my debate on this particular measure. When an entity like this invests its funds in real property or personal property and these assets increase in value, the liquidation value of the member ought to reflect the totality of the incremental value in the assets of the entity.

Senator Drilon. We have no objection to the request for reconsideration of the gentleman from Cagayan. We confirm that this amendment was introduced by the committee on the basis of the interpellation of Senator Enrile.

SUSPENSION OF SESSION

The President. Before we reconsider the matter, may we have a one-minute recess.

The session is suspended for one minute, if there is no objection. [There was none.]

It was 4:21 p.m.

RESUMPTION OF SESSION

At 4:29 p.m., the session was resumed.

The President. The session is resumed.

Senator Tatad. Mr. President, to allow the gentlemen on the floor to consult further on this particular point, I move that we suspend consideration of Senate Bill No. 1699.

Senator Enrile. Mr. President.

The President. The gentleman from Cagayan, Sen. Juan Ponce Enrile, is recognized.

Senator Enrile. Before we suspend, may I reserve the right to introduce amendments on page 5. These are substantial amendments with respect to Sections 5 and 6.

Senator Tatad. I withdraw the motion, Mr. President.

The President. The reservation is noted.

Senator Tatad. Mr. President.

The President. The Majority Leader is recognized.

SUSPENSION OF CONSIDERATION OF S. NO. 1699

Senator Tatad. I reiterate my motion, Mr. President.

The President. Is there any objection? [Silence] There being none, the motion is approved.

BILL ON SECOND READING

H. No. 9077—Tax Reform Act of 1997

(Continuation)

Senator Tatad. Mr. President, I move that we resume consideration of House Bill No. 9077 as reported out under Committee Report No. 454.

The President. Is there any objection? [Silence] There

being none, resumption of consideration of House Bill No. 9077 is now in order.

Senator Tatad. Mr. President, we are still in the period of interpellations. For the next interpellation, I ask that the distinguished senator from Pampanga, Pangasinan and Negros Occidental, Sen. Gloria Macapagal, be recognized. The sponsor is on the floor right now.

The President. The gentleman from Cagayan and the lady senator from Pampanga, Pangasinan and Negros Occidental are recognized for interpellations.

Senator Macapagal. Mr. President, will our distinguished colleague please answer a few questions?

Senator Enrile. Gladly, Mr. President, to the lady senator who might perhaps be the one to implement this law.

Senator Macapagal. Thank you, Mr. President. As I have said earlier, because this is a very controversial and difficult measure, we trust the judgment of the chairman of the Committee on Ways and Means on the controversial issues that are embodied in the measure. But, of course, since all of us will have to explain to the public the way we voted, the points for my questions are really with regard to helping me explain to the public how I vote on this.

Senator Enrile. Mr. President, I suggest that no one ought to apologize for asking questions with respect to this particular measure. This representation does not claim any exclusive knowledge or excellence or expertise in the field of taxation and fiscal policy.

In fact, I would encourage all the members of this Chamber to ask all the questions they want regarding theories, practical application, praxis, if we may call it, with respect to this subject matter so that we can be enlightened. Maybe, we have overlooked some issues here.

I would suggest that let us not kid ourselves and baby anybody here. Let all the questions be presented openly, publicly to be debated.

Senator Macapagal. Mr. President, my first question is with regard to personal income tax exemptions because this is the issue that has been most debated upon. Could this representation be enlightened on how the distinguished Chair was finally able to establish and arrive at the optimal amount of exemptions for personal income taxpayers?

Senator Enrile. Mr. President, according to the executive

department of the government, principally the Department of Finance, there are two measures being used to determine the threshold income in this country for purposes of helping our less capable members of the society. We have what they call the threshold family income and the poverty income threshold.

The poverty income threshold of the country is in the level of P63,194 for a family, and the threshold family income is P73,783. What is the difference between these two?

In the case of the first income threshold—poverty income threshold—this is the level of income that will meet the family's minimum food and nonfood requirements, like food, clothing, housing, utilities, education, housekeeping and medical care.

The threshold family income refers to that level of income that will give a family a minimum basic comfort and humane existence. This would include food, clothing, housing, utilities, transportation, education, housekeeping, personal care, health care, recreation, expenses for an individual social and professional development.

The threshold for family income is P73,783.00 per annum. On the other hand, the poverty income threshold is P63,194.00 per annum. The total free income available to a family under our proposal is P76,000.00.

Senator Macapagal. Of course, the Chair is aware of the House version, Mr. President. Since the procedure is to hear the House version and make the corresponding amendments, was the reason for the choice of the level in the House version presented to our committee in the Senate?

Senator Enrile. Yes, Mr. President. It is based more on the large erosion of revenue of the government if we apply the House version. In fact, the Senate version will equal the average increases of prices between that of 1992 and 1997, which is approximately 36 percent.

Senator Macapagal. Mr. President, what is the comparative revenue erosion of the two levels, the Senate version and the House version?

Senator Enrile. In the House version, if we can believe the Department of Finance, it is somewhere between P35 billion to P40 billion. In the case of this version of the Senate, it is revenue neutral.

Senator Macapagal. Mr. President, if we look at the whole Comprehensive Tax Reform Program, is it correct to conclude that the three components are the E-VAT, the excise tax, and now the income tax reform?

Senator Enrile. I was not in the Senate when this package was conceived, Mr. President. I did not take that into account when I dealt with segments of taxation. I dealt with the segments at my disposal at a given time.

I handled the case of the excise taxes on the so-called sin products, but I never related that to the overall revenue of the government. Now, I am handling the income revision of the Tax Code. Like before, I am dealing with it in isolation of the rest.

Senator Macapagal. Although in the first sentence of the sponsorship speech, it says, and I quote:

I rise today to present to the Senate the proposed Tax Reform Act of 1997 which introduces major changes in our country's income tax system and completes the tax reforms envisioned by the Comprehensive Tax Reform Program.

Senator Enrile. Yes, Mr. President, because this is supposed to be the last component of the tax reform. But if the Chamber wants to find out the totality of the entire package, I think that information would be available to the taxing powers of taxing bureaucratic institution of the Republic, and these are available here.

Senator Macapagal. Since the Undersecretary of Finance is in the technical assistance panel, could we have a review of the whole goal of the Comprehensive Tax Reform Program in terms of revenue increment? What was the revenue aim of the whole CTRP?

Senator Enrile. I think the answer to the question, Mr. President, is naturally to give, first, that degree of stability in the financial condition of the government. In addition, hopefully, to give the government enough savings annually in order to maintain financial vigor.

Senator Macapagal. What this representation was inquiring about is the targeted revenue increase of the CTRP.

Senator Enrile. I understand that the original targeted revenue, Mr. President, was P17 billion. I venture the prediction that, given the revision that we have undertaken, that level is not difficult to reach.

Senator Macapagal. So the whole CTRP, when fully implemented with all the adjustment periods already done, will bring us an increment of P70 billion.

Since there are really only three components of the package, would it be too difficult to ask how the P70 billion would be divided among the three components?

Senator Enrile. We can also give that, Mr. President. I will just have a little time to get the figures.

The E-VAT is supposed to give the government an additional revenue of P8 billion; the excise tax, which we approved, would give the government an additional revenue of P6 billion; and the balance, through this measure in time.

Senator Macapagal. Mr. President, is this P70 billion or P17 billion?

Senator Enrile. One-seven *po*. P17 billion.

Senator Macapagal. So it would be P8 billion for E-VAT, P6 billion for excise tax, and P3 billion for CTRP.

Senator Enrile. Yes, Mr. President. Yet, in this particular measure, we increase the free income of the low-income groups of the country; we reduce tax rates in general among a greater number of taxpayers because there is no tax system in the world where we can reduce the tax rate on every taxpayer in the realm. We lower the tax rates but we rearrange the whole thing. We plug loopholes, and we remove certain exemptions that hopefully and eventually would give the government additional income.

Senator Macapagal. Mr. President, the Chair said earlier that the change in personal income tax exemptions would be revenue neutral.

Senator Enrile. It will redound to the benefit of the taxpayers, Mr. President.

Senator Macapagal. But in terms of revenue, it will be neutral.

Senator Enrile. The totality will mean a revenue-neutral legislation. But in the area of personal income taxation, there is an erosion in the revenue intake of the government. But this is compensated by other sectors of the economy.

Senator Macapagal. So the net effect of this particular package is an increase of P3 billion?

Senator Enrile. That is the estimate. It could be less, it could be more.

Senator Macapagal. Of course, we understand that all of these are estimates. And there are two items in this third component—the personal income tax and the corporate income tax?

Senator Enrile. That is correct.

Senator Macapagal. So in the personal income tax component, there is going to be a revenue erosion?

Senator Enrile. There is a big revenue erosion, but that is compensated by the rearrangement of the corporate tax and the tax on the high-income individuals.

Senator Macapagal. So the revenue erosion is in the increase in exemption, but within the personal income tax system itself, there will be a compensation of the erosion coming from the exemption?

Senator Enrile. No, in fact, there is a reduction of the tax burden on everybody. If we project the application of the tax rates that we have adopted including the tranching, all levels of taxpayers from plus zero plus X amount after zero, all the way to the P3 million level of income, we will see a varying degree of reduction in tax burden.

In the lower income group, the relief is much bigger and it goes down as we go upper in the size and volume of taxable income and then it rises again.

Senator Macapagal. So, Mr. President, how much is the estimated revenue erosion from the personal income tax component?

Senator Enrile. It is almost P7 billion, Mr. President.

Senator Macapagal. So this means that in the corporate income tax component, there will be a revenue increase of P10 billion?

Senator Enrile. Just a minute, Mr. President, I will check the documents given to me so that I will not be...

That is correct, Mr. President, it is actually the additional income of government from the corporate sector based on the proposal that we have made, which is about P10.77 billion.

Senator Macapagal. Mr. President, could we have a breakdown of how this P10.77 billion would be arrived at? Certainly, the specific reforms have an estimated revenue increase. So that would be very interesting to ask for.

Senator Enrile. I will give it to the distinguished lady senator now, Mr. President. There is a reduction of the revenue of the government from corporate income taxation of P4.3 billion because of the gradual reduction of rates from 35 percent down to 30 percent by the year 2000 and that reduction is P4.3 billion.

Now, there is an increase arising from controls in deductions

by the Secretary of Finance because of these limitations on certain deductions and the magnitude of that would be P2.7 billion.

Senator Macapagal. Mr. President, could we examine the limitations on deductions?

Senator Enrile. The distinguished lady senator can read the text, Mr. President. These are all in the text. There is nothing that is not written in the text.

Senator Macapagal. Yes. Aside from the personal income tax exemptions, the other controversial part of this package of the Comprehensive Tax Reform Program is the limitations on deductions.

Senator Enrile. Like what, Mr. President?

Senator Macapagal. That is what I wanted to ask about. In the hearings of the Ways and Means Committee, did the different sectors come forward to give their concerns about the limitations and deductions?

Senator Enrile. That is correct, Mr. President. All of them were invited. Those who appeared were heard; they were allowed to submit position papers. Those who did not come and present their views, I could not wait for them.

Senator Macapagal. Yes. I think it is important if we will explain our vote to the public to address or to recount what were some of the objections or request, and then how did we respond to them, and why.

Senator Enrile. Mr. President, they can read the product of what we did.

Senator Macapagal. No, but what were their requests? What were the different objections and what were the arguments they gave?

Senator Enrile. I could no longer remember, Mr. President. But I can tell the distinguished lady senator that in the case of mining, for instance, I removed their double deductions. I am a businessman myself; I do not believe in granting double deductions.

In the case of petroleum and gas wells, they were originally granted double declining balance method. I removed that privilege because they would be deducting from their gross income more than the cost of the equipment that they have utilized to produce the profit which, in my opinion, is unwarranted.

Senator Macapagal. So, of the reforms in the mining,

petroleum and gas sector, how much will we be able to generate as incremental revenue?

Senator Enrile. We did not take that into account in our quantification of the incremental revenues.

Senator Macapagal. I see.

Senator Enrile. In the same way that we have not taken into account the incremental revenue when we decided to remove the tax exemption of interest income of FCDUs and OBUs.

Senator Macapagal. What I am trying to get at is how we arrived at the P10.77 billion increase in revenues. Surely, there must be some breakdown.

Senator Enrile. I beg the senator's pardon?

Senator Macapagal. What I am trying to arrive at is how we got to the P10.77 billion revenue increase.

Senator Enrile. That is why I am giving it to the lady senator, Mr. President. We have it.

Senator Macapagal. Yes.

Senator Enrile. Minimum corporate income tax at .75 of a percent is P1.3 billion additional income for the government. Fringe benefit tax to be collected by corporations is P2.4 billion. Disallowance of tax arbitrage is P2.71 billion. Income tax on all government corporations is P5.96 billion.

The government will lose P0.714 billion because of the rationalization of fiscal incentives.

Senator Macapagal. On the rationalization of incentives, will the government lose or gain?

Senator Enrile. We will lose P0.714 billion, Mr. President, because of accelerated depreciation and the NOLCO. Those are deductions.

Senator Macapagal. Yes. Of course, Mr. President, if we look at the accelerated depreciation and the NOLCO, I recall that the framework for that was that in return, there would be a shorter list in the investment priorities plan.

Senator Enrile. Incidentally, I forgot to include tax on dividends—the introduction of a tax on dividends. This will give an income to the government of P1.23 billion.

Senator Macapagal. Thank you, Mr. President. May I now go to some of these items.

On the Fringe Benefit Tax, this is also one of the areas that has been the subject of a lot of controversy because according to the income receivers, the fringe benefit is part of their compensation.

Senator Enrile. Precisely, Mr. President. They have to be taxed if that is a part of their compensation.

Senator Macapagal. Therefore, this will result in the reduction of their net income.

Senator Enrile. No. Actually, it will not mean a reduction of their net income because they enjoy the economic benefits of the fringe benefit.

For instance, if an executive is given a house with a rental value of P35,000 per month, in addition to a cash portion of his salary, I think it would be unfair for that particular executive or employee to just report the cash portion of his compensation. So we established a formula by which that fringe benefit would be reflected in the income taxation of the country and it is written in this law. I suggest that all members of the Senate read it and understand it.

Senator Macapagal. Mr. President, on the rationalization of tax incentives, I recall that the NOLCO and the accelerated depreciation were being proposed because that was supposed to be the universalization of incentives. Is there an expected corresponding reduction in the other fiscal incentives that are being given by the BOI now?

Senator Enrile. There are only three additional deductions that would matter. These are: accelerated depreciation like the declining balance method, the sum of the year's digit, and some other systems of accelerated depreciation that may be agreed upon between the taxpayer and the Secretary of Finance for the government; then we have the net operating loss carry-over which is moved forward over a period of three years.

From year one, if one incurs a loss, he can deduct his loss in year one over the next succeeding three years. In year two, if he incurs a loss, he can deduct the loss for the next succeeding three years, including the loss of the previous year and so on for three years. This is the aggregate. He can project it over a period of nine years. In fact, I think it is six years.

Then we have the deduction of the Fringe Benefit Tax, plus the fringe benefit. These are the three major components of the additional modification of the items on deductions.

Senator Macapagal. The Fringe Benefit Tax will tend to increase revenue, but the NOLCO and the accelerated depreci-

ation will tend to decrease the revenue.

Senator Enrile. Yes. But the total reduction of the revenue of government from accelerated depreciation and NOLCO is only P.714 billion.

Senator Macapagal. So the Fringe Benefit Tax is P2.4 billion?

Senator Enrile. It is P2.4 billion.

Senator Macapagal. So, on these three changes, there will be a net decrease on revenue?

Senator Enrile. Net increase, Mr. President. These are already increases taking into account all the three items of deductions that I have already mentioned.

Senator Macapagal. I see. Mr. President, I was going again to the NOLCO and the accelerated depreciation. My recollection is that these were supposed to be part of universalization of incentives. That is why it is called rationalization of incentives because we universalized it and then the list in the BOI became shorter.

Senator Enrile. But my understanding, Mr. President, is that the BOI law is still there and they will still enjoy the incentives there. But if we are going to introduce into this system the incentives that are now in the BOI law, then we will be giving a double source of deduction to businessmen which is quite unwarranted.

Senator Macapagal. So, how will it operate now?

Senator Enrile. For those who would want the incentives under the BOI law, they will have to take it under the BOI law. They cannot take it under this proposed Code.

Senator Macapagal. So, it is either/or, either the BOI or the amendment to the Internal Revenue Code.

Senator Enrile. That is correct, Mr. President. This applies generally to all taxpayers except those who would enjoy the incentives under the BOI law.

Senator Macapagal. For the moment, Mr. President, these are my questions. If there are still some aspects I would need some explanation about after I read the provisions more in detail, I will come back. Thank you.

Senator Enrile. I would encourage the members of the Senate to read this law because I would like to see where we

failed in our thinking about it.

Senator Tatad. Mr. President.

The President. The Majority Leader is recognized.

Senator Tatad. To resume her interpellation, I ask that the distinguished lady senator from Iloilo be recognized.

The President. The senator from Iloilo is recognized.

Senator Santiago. Thank you, Mr. President. I request the approval of the distinguished sponsor to continue my interpellation, this time on the revenue aspect of the bill.

Senator Enrile. Mr. President, I would like to make a little correction. This representation does not have to approve the interpellation of any member, that is the prerogative of any member in this Chamber.

Senator Santiago. Thank you very much, Mr. President. I am referring to page 22 of the bill and to Section 24 of the Code.

Senator Enrile. Yes, Mr. President.

Senator Santiago. Please allow me to explain the background to my question at length, after which, I shall indicate that the question is finished because the gentleman has his back turned to me. That way, we shall be clear on whether I have finished or not.

Senator Enrile. May I suggest, Mr. President, that the distinguished lady senator from Iloilo take the other podium.

Senator Santiago. It is not necessary. Besides, I have to stay here beside my copy of the Internal Revenue Code on my desk so that I can refer to it.

Senator Enrile. Then I will be the one to face the lady senator.

Senator Santiago. Thank you. I hope it is not imposing too much on the gentleman's sense of the aesthetic. I will proceed.

Senator Enrile. Not at all, it pleases me very much.

Senator Santiago. That will only be a continuation of what I understand to be the distinguished sponsor's traditional mindset, particularly when he was my boss as Secretary of Justice.

On Section 24. My view is that the lowering of the tax rates to a range between 5 percent to 30 percent is not significant.

The change in the rates, together with the increase in the personal exemption levels result—in the computation of my staff—in an average tax deduction of only P5,000 per annum at various levels of income. I believe there is a need to better protect the income of the lower-income group.

I would therefore inquire whether it would be possible to propose an adjustment in order that the exemption rate should amount to about P30,000 per person.

Please allow me to explain. At this level, the maximum total exemption for a family of six would be P86,000. That is to say, P60,000 plus P6,500 times four. This amount of P86,000, for a family of six, would sufficiently insulate from taxation the annual minimum wage of a working couple. My computation is: P185 minimum wage times 261 days times two—because we are considering the two spouses—that would equal to P96,570. I admit that even this level of exemption is not sufficient to protect the disposable income of an individual at the level required for a decent life. However, in view of the need to balance the need of government for financial support in order to pursue its infrastructure projects needed to sustain development, I suggest that there should be a more reasonable compromise in this regard.

In effect, my question is: Can we please study whether we can raise the exemption rate per person to about P30,000?

That is the end of the question on this point.

Senator Enrile. Mr. President, we have really considered all of these figures, in our computation because of our desire to precisely help the low-income group. But I would like to remind the Chamber that in studying the structure of the taxpaying public, if we graph it, it is like a pyramid.

Any slice at the base would reflect a bigger loss of revenue for the government than a big rate at the top because there are less taxpayers at the top compared to the taxpayers at the base. That is why we arrived at this figure of P25,000, taking into account the equity to be extended to the low-income group and also the middle-income group, as well as the revenue needs of the government.

Now, we should not only look at the exemptions both for personal and dependents in dealing with this. We must look at the provision on exclusion. There is a provision which excludes certain types of income given to the low-income group.

Fringe benefits, for instance, given to the low-income group will not be taxed. The 13th month pay of the low-income group will not be taxed. Bonus will not be taxed. Productivity

incentive pay would not be taxed up to a level of P30,000. If we add these to the P25,000, that will give us, at least, more than P30,000 per taxpayer.

Senator Santiago. Thank you. I will now move to Section 24, paragraph (E) of the Code. That would be on page 28 of the bill.

This provision lowers the tax rate on net capital gain on the sale of shares of stock outside of the stock exchange—

Senator Enrile. That is correct, Mr. President.

Senator Santiago. —from 10 percent or 20 percent to 5 percent or 10 percent. My question is: What is the justification for this move to reduce the tax rate on this type of transaction? Will this not prove to be another provision intended to benefit the affluent sector who have the financial resources and sophistication to engage in stock transactions?

While reduction of tax rate is generally welcome, I do not believe we should reduce the tax rate in this case, because it seems to me that their reduction will particularly benefit only those who are financially well-off and have the capacity to pay taxes. Necessarily, foregone revenues of the government from the reduction of tax rate in this instance will be offset by the imposition of new taxes or some other measures which may again hit, directly or indirectly, those who belong to the lower income brackets. That is the end of this particular question.

Senator Enrile. Mr. President, if we may recall, the Congress adopted a policy to encourage the dissemination of wealth in the country through what we call the initial public offering system, where we encourage successful business enterprises owned by families—which are called close family corporations—to have a portion of their stockholdings listed in the stock exchanges. As a consequence of this, we lower the rates on the sale of the shares of stock for that purpose.

It was a policy to encourage successful business enterprises to be listed in stock exchanges in order to disseminate a portion of these business enterprises in the hands of small investors. We ended up with a rate of 4 percent, 3 percent, and 1 percent under various levels or quantum of shares of stock of outstanding capitalization of a corporation that would be listed in the stock exchanges. Thereafter, every transaction would be subjected to a gross capital gain of half a percent.

This is the purpose of the statute. This provision, that is now the subject matter of the question, is also intended for that purpose in order to encourage closely held corporations not listed in the stock exchanges but are successful to unload a

portion of their stockholdings to the public, so that the public can share in the benefits or the success of the enterprise.

Right now, this high rate, which is actually 20 percent on the gross, is a disincentive to owners of closely held corporations not listed in the stock exchanges and not the object of initial public offering to unload a portion of their holdings in their corporation. That is the rationale of this provision.

This is not really intended to benefit the rich, but precisely to encourage the unloading of some portions of these successful corporations to the public, so that the public could benefit out of this success.

Senator Santiago. Thank you, Mr. President. I will now proceed to page 30, Section 24, paragraph (E), subparagraph (2) of the bill.

Senator Enrile. That is page 29, "EXCEPTION."

Senator Santiago. I stand corrected. I note that this provision allows a tax exemption of the gains realized from the sale of the principal residence to the extent that the proceeds of the sale is utilized to construct a new principal residence.

My question is: Will it not be difficult to implement this provision since it is difficult to verify the correctness of the amount of the proceeds of the sale claimed by the taxpayer to have been utilized in the construction of the new principal residence?

My fear is that all attempts will be made to prove that the full amount of the proceeds of the sale was allegedly used in the construction of the new residence. Because of this fear, I would like to propose to the considered judgment of the distinguished sponsor that instead of exempting from tax the amount of the proceeds from the disposition of the principal residence, which is actually used in the construction of the new residence, a fixed amount of the proceeds from such sale should be exempted from tax. I think this might be more equitable because the benefit resulting from such exemption will be the same, whether the seller is rich or poor or belongs to the middle class.

My intent is: That the Senate should let those who have more valuable property and who are therefore more capable of paying taxes pay the corresponding tax. I do not think it is good policy to exempt a person's income from the sale of his personal residence from taxes in order for him to be able to build a grander house out of his profits if we cannot even fully agree to exempt a poor working man's minimum wage from taxes.

Thus, the outlines of my proposal would be that tax exemp-

tion should be given for the first P1 million of the selling price or the fair market value of the property at the time of sale, whichever is higher. If the proceeds of the sale is used for the construction or purchase of a new family residence, P1 million is a reasonable amount since the exemption for a family home for estate tax purposes is pegged at P1 million. The maximum amount of the housing loan whose interest will be deductible from taxable income is also P1 million pursuant to this bill.

Furthermore, I would suggest the following:

1. The provision or the bill should define what is a principal residence. Is it the same as the concept of a family home under the estate tax provision? Is a single individual without a family entitled to claim the benefit under this provision?

2. I would respectfully suggest that the benefits of this provision should be availed of only once by a family to avoid abuse of the provision. Moreover, to allow a person to avail of this benefit more than once would make the implementation and administration of the benefit difficult because that would require endless monitoring of a series of sales and purchases of residential houses.

I am done with this particular question.

Senator Enrile. Mr. President, I would like to explain this provision.

This provision has a purpose, and the purpose primarily is to deal with the problems presented by areas like Tondo, the congested areas of the city where we have dilapidated homes, and yet the lands where these homes are constructed are valuable real estate assets. The only reason the residents in these areas would not want to unload their property in order to clear the slum areas is the tax incidence. This is a part of our urban renewal effort.

Actually, the government is not losing the revenue here. If the property remains unsold by the taxpayer, the government does not get anything. But we are encouraging the owner to sell that property and hopefully, to resolve the blight in some of our communities by foregoing in the meantime the collection of the tax until such time that the owner of the new property would finally dispose the property without using the proceeds thereof in acquiring a new home. We are only postponing the impact of the tax incidence on the selling owner or taxpayer of the home that is momentarily exempted from the impact of income taxation. In fact, we can see in this provision that the historical cost of the property has to be carried forward to the new home.

Now, will this be abused and repeatedly used? The answer

is maybe, but there are certain mechanisms introduced in the Code to prevent the abuse, and that is: The Register of Deeds must annotate at the title of the new home that the next property was actually built out of the proceeds of a tax-exempted property. The Register of Deeds must annotate this as a mandatory duty reflecting the official receipts at the back of the title of the new home as well as the amount of the proceeds of the sale.

This is provided in the latter portion of the Tax Code. So, I do not think that this will be repeatedly used. Apart from this, the government is not really exempting the proceeds from taxation. It merely postpones the collection of the tax which, anyway, is not taken into account in the projection of the revenue of government. This is, in effect, a windfall, if at all, to the government.

Senator Santiago. Thank you. I am afraid the next question is going to be very long. I am compelled to impose once more on the patience and kindness of the distinguished sponsor. I am now going to inquire about Section 27 of the bill.

Senator Enrile. On what page?

Senator Santiago. On page 37. Section 27, page 37.

Senator Enrile. Yes, Mr. President.

Senator Santiago. It is declared here that the gradual reduction in the corporate income tax rates is done for the purpose of making the Philippines a more competitive investment destination. The premise apparently is that the Philippine corporate tax rates are not competitive with those in the region.

My question is: Will it not be fruitful to conduct a closer study and exact determination of the taxing policies of other jurisdictions, at least, in the Asia-Pacific region?

The following were submitted to me as the basic corporate income tax rates in other countries within Asia Pacific.

First, I will read out the country and then, I will read out its basic rate: Australia, 36 percent; Hong Kong, 16.5 percent; Indonesia has graduated rates, 10 percent, 15 percent or 30 percent...

Senator Enrile. What is that? Indonesia?

Senator Santiago. Yes. Japan, 49.98 percent. This is the effective corporate tax rate after combining the basic corporate tax and the standard inhabitants and enterprise taxes. Malaysia has 30 percent; People's Republic of China, 33 percent;

Singapore, 26 percent; and South Korea, 16 percent. This is the effective tax rate. The effective tax rate is actually 17.6 percent after including the inhabitant tax.

I will repeat, South Korea, 16 percent but that is on the amount of income up to 100,000,000 which is their currency. And then, the rate is 28 percent with an effective rate of 30.8 percent for that portion of the taxable income exceeding 100,000,000. Thailand has 30 percent. The United States has graduated rates ranging from 15 percent to 25 percent to 35 percent for income over US\$18 million; Vietnam, 25 percent or some other applicable rates determined by the State Committee for Cooperation and Investments.

I have read out this schedule of tax rates because it appears from this summary that a 35 percent corporate income tax rate is relatively high, but my point is that the rates are not actually comparable. The comparability of the rates, it seems to me, is superficial for the tax rates and the effective tax burden on corporations in its jurisdictions to be comparable at all.

I think we should have a more detailed understanding of how the tax base is arrived at or computed. I am referring to the tax base to which the tax rate is applied. It is possible that while the other jurisdictions have lower tax rates, there are less deductible expenses.

Thus, my submission is we cannot, without knowledge of deductions allowed to corporations for purposes of arriving at the tax base, conclude that the Philippine corporate income tax rate is high or is not competitive with those in the investment destinations whether in the Asia-Pacific or elsewhere.

Please allow me to point out further that the rate alone, taken independent of the tax base and how the tax base is arrived at or computed, seems to me to be meaningless and insignificant.

I have also a note that in areas where it is believed that foreign investments should be encouraged and is beneficial or necessary, the Philippine government has already a draft of its annual investments priority plan. All the projects identified to be priority projects or industries are already given sufficient fiscal incentives pursuant to Executive Order No. 226 also known as the Omnibus Investments Code, including a tax holiday of at least three years.

Furthermore, the encouragement of foreign and local investment in areas where investment is required is already sufficiently addressed by the extension of fiscal incentives to businesses which locate in the economic zones nationwide. The government already foregoes a significant amount of taxes in extending such incentives.

I submit that the problem now is knowing when to stop sacrificing government revenues, whether for the purpose or in the guise of encouraging the entry of foreign investors and enhancing competitiveness.

If the objective for lowering the corporate tax rate to 30 percent is to attract foreign investment, I am afraid the same might not have considerable impact, given the fact that under tax treaties between the Philippines with 24 countries, residents of these 24 countries can avail of substantially lower Philippine income tax rates if not income tax exemption for income from the Philippines.

My question then is: If corporate taxes will be further reduced, where will the government get additional revenue to recover the foregone revenue? How much are the estimated losses to the government from the adoption of this measure?

That is the end of this particular question.

Senator Enrile. Mr. President, we used to have two corporate rates in the country. Traditionally, in the beginning we had 22 percent and then the upper was 28 percent, I think—22 percent and 28 percent. Then, we increased that and we maintained a two-rate system until we arrived at a single rate.

We have taken into account all of these rates in this country, Mr. President. The information we got is that the rate in Indonesia is 30 percent; in Malaysia, it is 30 percent; in Singapore, it is 27 percent, and in Thailand, it is 30 percent. The corporate tax rates in Korea and in Vietnam is 32 percent.

I would like to inform the Chamber that the gradual reduction of the corporate income tax was a studied effort to prevent a sudden shot on the revenue of government. Because for every one percent reduction of the corporate tax, it would mean a P2.58 billion of lost revenue. That is why, if we will notice, while we are reducing the corporate income tax rate, we are also introducing a dividend tax to counterbalance the reduced revenue of government and this would meet at a certain point and, that is, in the year 2000. By the year 2000, the corporate income tax rate is 30 percent and the dividend tax will be in the level of 10 percent per peso of dividend received.

Apart from this, Mr. President, while we look at a figure rate of 30 percent, we must remember that the base of this is very limited. It is based on the ordinary trade and business income of the corporation. There are certain types of income of a corporation that are subject to specialized rates much lower than 30 percent which in other countries would be included in the tax base against which the corporate tax would be imposed.

Take the case of interest income, for instance. We have a 20 percent final tax. In the case of dividends, there is no tax in the intercorporate dividend. But in the case of income derived from the sale of shares of stock in the stock market, it is subject to .5 of a percent. Then we are giving a capital gains treatment to the lands and buildings of a corporation not actually used in business. And then, there are other types of income dividends. It is tax free which in other countries would be included in the gross income of a corporation.

So, when we look at the overall tax structure, the tax rate that we have chosen is very competitive against our ASEAN partners.

Senator Santiago. I thank the sponsor for that answer. I will now proceed to Section 24, paragraph (b), subparagraph (2). This is page 25 in relation to page 43.

Senator Enrile. Dividends?

Senator Santiago. Yes, please. My question is, why are individuals subjected to tax on their dividend income from domestic corporations, while corporations are exempt from tax on intercorporate dividends?

My worry is that this provision might favor the more affluent investors and businessmen, particularly those with closely held corporations, who have their resources, flexibility and sophistication to invest through holding corporations instead of making direct equity investments in operating corporations.

I was made to understand that closely held corporations have the benefit of having stockholders who share common interests and possess control of the corporations so that instead of declaring dividends, they can keep investing the earnings of the corporation in other corporate ventures. They have the flexibility of investing and reinvesting their income through their corporation or holding company without the individual taxpayers ever receiving dividends.

I would like to submit to our colleagues to take note that there is no tax on undistributed surplus profits which would penalize the accumulation of earnings and nondeclaration of dividends by corporations. I understand that this tax on surplus profits was proposed by the House but has been deleted in the committee report. If this provision is to stay, then the provision imposing tax on surplus or undistributed profit should be imposed to force corporations to declare dividends so that ultimately, even those investing through holding companies will be taxed on their dividend income.

On the other hand, an ordinary stockholder who is less

sophisticated and only has a modest amount to invest would directly invest in a corporation. He will be subject to tax on all his dividend income even if the same income received is reinvested in business.

In the light of these points, my question then is: Why should individuals be subjected to tax on their dividend income from domestic corporations while corporations are exempt from tax on intercorporate dividends?

This is the end of this particular question.

Senator Enrile. Mr. President, the reason we studiedly removed the intercorporate dividend tax is the danger of layering.

Let us take a three-tiered corporation—A, B, C. C is the operating company; B is also an operating company but it owns C. A is also an operating company and it owns B. One peso of net income, net after tax, earned by C corporation when declared as a dividend, if we do not exempt that dividend from tax would be subject to a 10 percent dividend tax when it is received by B. When the P0.90 is declared as a dividend again, then it will be subject to another 10 percent. So, the effective tax to B of the same income flow would be 19 percent plus 30 percent or a total of almost 50 percent until we erode the entire income if we project the intercorporate relationship further.

The other side of this tax policy is precisely the proposal to encourage closely held family corporations to either offer a portion of their holdings through initial public offering so that the public may participate in them and they would then be governed by the SEC *in toto* with respect to the emitted shares of stock, including their transactions, operations and corporate management as well as those that are not listed. That is why we lower the tax rates on this in the case of these corporations.

Senator Santiago. I am now enlightened on the need to avoid layering on the part of these corporations. But if that is the case, should we not impose a tax on surplus or undistributed profits in order to force the corporation to declare dividends?

Senator Enrile. There is a strong objection to this, Mr. President, voiced by the businessmen and I am not prepared to accept any change in policy.

Senator Santiago. Then I will move on to my next question. It concerns Section 27, paragraph (f). It is on page 43 of the bill. Here, my question will simply be a point of information.

Senator Enrile. Section 27, paragraph (f), page 43 is

Minimum Corporate Income Tax on Corporations.

Senator Santiago. Yes, Mr. President. My question is: For purposes of computing the minimum corporate income tax on corporations, net assets should not be an amount determined as of the end of the taxable year. Specifying a particular date would allow the corporation to manipulate its net asset figure at such date. Instead, I humbly suggest that average net asset should be used as a tax base. An average figure discourages manipulation of the amount as of the end of the taxable year.

For example, it was explained to me that the company may reflect a lower net asset if it reduces its inventory of goods to a minimum at the end of the year, while at the same time depositing its excess cash in the bank since bank deposits are not part of net assets as defined.

With this in view, my question is: Will this provision still be applicable to holding corporations?

I am taking note that the definition of net assets excludes shares of stock in other corporations. Substantially, all of the assets of a holding company are in the form of shares of stock in various corporations.

Senator Enrile. We would welcome a suggestion to improve this provision, Mr. President. I must confess that this was one of the more difficult aspects of this effort when we dealt with this revision. There were proposals to use gross receipts as a tax base for this minimum corporate income tax. But when we examined it, we felt that it could be subjected to manipulations.

On the other hand, there was another proposal to use gross assets, including liabilities, as a base. But we felt that that would be too extreme and also too harsh.

We would be willing to consider the issue of refining this by dealing with the problem of year-ending inventory as well as cash in bank. But, again, if we deal with cash in bank, we will have to take the word of the finance officers of the corporate enterprises because they can issue a check to withdraw the cash in bank at the end of the year or create some sort of reserves or liabilities, in which case, we end up in the same problem. But, anyway, we are willing to listen, Mr. President.

Senator Santiago. Thank you. In that case, I respectfully recommend that further staff study be made on whether average net asset might be useful as a tax base. But I will make my own proposals in writing and submit them before the period of amendments.

Senator Enrile. May I respectfully suggest, Mr. President,

that any proposal be in the form of a text provision so that we can look at it, so that we will not lose time in dealing with the suggestions.

Senator Santiago. Thank you. I will comply with the request. I will now move on to Section 28, paragraph 5. In my copy, that is on page 50 of the bill.

Senator Enrile. Yes, Mr. President, we are ready.

Senator Santiago. This is the section on regional headquarters. I understand that regional headquarters by nature are generally cost centers rather than revenue centers. Regional headquarters are principally established for coordination, supervisory, and communications purposes.

Furthermore, I understand that often, these headquarters do not earn income from outside the corporate network. However, there is a system of cost allocation such that the cost of the services of the headquarters is reimbursed by the affiliated corporations benefiting from its operations.

Sometimes, the practice is for the headquarters to collect service fees from corporations within the group of companies to whom it renders its services at cost plus, that is, the cost of rendering the service plus an agreed percentage on top of such cost.

My question is: For purposes of this section, would such an arrangement give rise to taxable income in the Philippines? Would mere reimbursement of costs for services rendered in the Philippines to affiliated companies qualify as "deriving or earning income from the Philippines?"

Senator Enrile. No, Mr. President. If cost is equal to receipts, there will be no tax. If the amount received is to reimburse expenses for training or for administration, if it is not income earned from operation of the corporation or the regional headquarters, as defined in the Code, then there will be no tax on that. In fact, that is contribution to the operating expenses of the headquarters in the Philippines by the mother company.

Senator Santiago. May I please just clarify this point. Is this to say that cost is not taxable but cost plus is taxable?

Senator Enrile. If the plus reflects an increment or a profit for the headquarters, then it will be income subject to tax.

Senator Santiago. Thank you, Mr. President. I will now go to Section 32 on page 63.

My question concerning Section 32 is this: Why is there a

need to gross up when the initial figure is not an amount expressed net of tax but the actual monetary value of the fringe benefit? Is the method of grossing up not used to determine the full amount before the tax was deducted or applied?

If the actual value of benefit is P100, why would the same be divided by .70 and then multiplied by 30 percent to determine the tax? I mean, 100 over .70 equals 142 times .30 equals 42.85 as the tax, instead of 100 times 30 percent or only 30?

My submission is that, this might effectively increase the tax base for the employer without any basis.

Senator Enrile. Very simply, Mr. President. I will put it this way: If the employer granted the employee an economic benefit which will net him P35,000, or P100 in the example, that is actually 70 percent of what otherwise would have been the total financial burden of the employer if the thing is given fully in cash.

The employer is required to withhold 30 percent of an "x" amount which would net the employee 70 percent of that "x" amount. That is why we have to gross it up by dividing the rental value, for instance, of a home by .7, and the grossed up value minus the rental value of that home is equal to the tax due subject which would have been withheld and is required to be withheld and paid by the employer. That is the rationale of this formula.

Senator Santiago. Thank you, Mr. President. I understand, but I would like to clarify. Is the initial figure not an amount expressed net of tax but the actual monetary value of the fringe benefit?

Senator Enrile. No, Mr. President. Actually, the assumption is that, for instance, the rental value of a home, or P100 in the example, that is already the amount retained by the taxpayer after deducting the tax that ought to have been withheld.

Senator Santiago. Thank you, Mr. President. I am slowly working my way into the case of Michael Jackson after which I will suspend my interpellation.

I will now proceed to Section 33 which is on page 88. I have to lay the basis for my question.

Senator Enrile. Page 67.

Senator Santiago. Section 33, at any rate.

Senator Enrile. These are deductions.

Senator Santiago. Yes, Mr. President.

I have to lay the basis for my questions as follows.

Senator Enrile. By all means, Mr. President, please.

Senator Santiago. Nonresident alien individuals are classified into: nonresident aliens engaged in trade or business and nonresident aliens engaged in trade or business in the Philippines.

Foreign corporations are classified into: resident foreign corporations and nonresident foreign corporations.

Section 33 allows for deduction for depreciation. May I propose that it should only be relevant to nonresident aliens engaged in trade or business in the Philippines and resident foreign corporations, because it seems to me that this provision is not relevant to nonresident aliens not engaged in trade or business in the Philippines and to nonresident corporations which are both subject to tax on their gross income. That is, without deductions rather than on their net income.

My point is that the reference to nonresident alien individuals and to foreign corporations should, if possible, be corrected and made more specific.

Senator Enrile. Just a minute, Mr. President. The lady senator is correct because a nonresident alien not engaged in trade or business in the Philippines is assumed not to be entitled to any deduction. The same thing with a foreign corporation not engaged in trade or business in the Philippines.

We will be amenable to a proposed amendment. We will entertain any proposed amendment to reflect that thinking. But by and large, Mr. President, depreciation or deductions in general would be allowed only to people who are engaged in trade or business or the exercise of a profession in the Philippines. In the case of corporations, only for corporations engaged in business in the Philippines.

Senator Santiago. I thank the distinguished senator, at least, for introducing that into the *Record*. I shall submit the required amendment during the proper stage.

I am now going to Section 34.

Senator Enrile. Section 34, that is corporate reorganization.

Senator Santiago. Yes, but I am only going to raise the point I have raised earlier that the personal exemption should be increased in order to shield the minimum wage of the workers from taxation and thereby preserve their disposable income

level very close to the mandated minimum wage.

Senator Enrile. Personal exemption?

Senator Santiago. Yes, Mr. President.

Senator Enrile. Actually, Mr. President, as I have indicated a while ago, while this P25,000 appears to be relatively lower than what is being suggested, if we go back to the provision on exclusion, that is after Section 24, *Excluded Income*, page 59, for instance, compensation for injuries or sickness would be excluded; retirement benefits; benefits received from Social Security System; benefits under the GSIS would be excluded; and then benefits received by officials and employees both public and private entities arising from their 13th month pay as well as bonuses and other incentives up to the extent of P30,000; GSIS, SSS, Medicare and other contributions, including union dues. Although these are fringe benefits, they are excluded from the gross income of the individual as well as the fringe benefit proper. And if we quantify all of these, these would be more than P30,000.

Senator Santiago. My final question during this stage of my interpellation, after which I will request the Majority Leader to allow me to resume at a time of his convenience. I will suspend simply because I believe that I should not infringe anymore on the patience of my colleagues.

My last question concerns Section 50. A nonresident alien is required under the proposed amendments to file an income tax return.

My proposal is that the reference to nonresident alien should be corrected and changed to: "NON-RESIDENT ALIEN NOT ENGAGED IN TRADE OR BUSINESS IN THE PHILIPPINES."

Nonresident aliens not engaged in trade or business in the Philippines, like Michael Jackson who only performed in Manila for a few days, cannot be required to file a tax return because of their fleeting presence in the Philippines. The income of this class of nonresident aliens is already withheld at source, that is, the payor of the income.

Senator Enrile. We will consider an amendment to that effect at the proper time, Mr. President.

Senator Santiago. Thank you, Mr. President. With the qualification expressed earlier, I will now suspend my interpellation.

The President. May the Chair just propound one question

before I forget it. In this proposed bill, is there any new or special treatment of illegal income also in terms of—this is an issue even in the United States when corporations are caught to have made payoffs in relation to contracts that they get.

Senator Enrile. That is correct, Mr. President. We have treated that in the provision on deductions. In fact, the House version talks of illegal bribes and we provided that bribes and kickbacks will not be allowed as deductions, including amounts expended for activities that are contrary to morals, to law, to public order and public policy.

The President. But in the course of events, these are usually discovered years after, when the deductions were taken years earlier.

Senator Enrile. In the course of an audit, then the bureau can issue a deficiency assessment.

The President. And could we provide that in cases like that, that there will be some sort of a penalty or a higher tax rate in the matter of illegal income or illegal deductions?

Senator Enrile. If they deduct that amount, given the specific provision of the Tax Code, that would constitute fraud against the revenue of the State in which case, the deficiency tax will be subject to a surcharge of 50 percent.

The President. But that would be the normal..:

Senator Enrile. Plus a criminal violation, a possible imprisonment, if the legal department of the Bureau of Internal Revenue succeeds in prosecuting the erring taxpayers.

The President. For example, in the case of the hollow block-making factory in Lubao, it turns out that after investigation, it was really producing income from drugs. How will that be treated?

Senator Enrile. That will be subject to income tax, Mr. President. And to the extent that they did not report it, the fines, surcharges and penalties will be imposed in addition to their

criminal responsibility under the provisions of the Tax Code.

In due course, Mr. President, I would like to present a recommendation, through some members of the Chamber, that will now authorize the Bureau of Internal Revenue to create a legal department with the sole responsibility of prosecuting violations of the Code as well as enforcing civil penalties and the collection of taxes.

The reason for this is that the provisions of this Code is so technical that ordinary lawyers would not be able to understand them unless they live with it day in and day out.

There can be no better handlers of any litigation arising under this Code than those lawyers who grow up in the Bureau of Internal Revenue enforcing the provisions of this Tax Code. These cases could not be handled by the ordinary prosecutors of the Republic. We will now have to deal with this problem realistically and leave the handling of these cases to skillful tax practitioners.

The President. The Majority Leader is recognized.

SUSPENSION OF CONSIDERATION OF H. NO. 9077

Senator Tatad. Mr. President, at this point, I move that we suspend consideration of House Bill No. 9077 under Committee Report No. 454.

The President. Is there any objection? *[Silence]* There being none, the motion is approved.

SUSPENSION OF SESSION

Senator Tatad. Mr. President, I move that we suspend the session until 10:30 tomorrow morning.

The President. Is there any objection? *[Silence]* There being none, the session is suspended until 10:30 tomorrow morning.

It was 6:02 p.m.

RECORD OF THE SENATE

WEDNESDAY, AUGUST 6, 1997

RESUMPTION OF THE SESSION

At 10:42 a.m., the session was resumed with Senate President Ernesto M. Maceda presiding.

The President. The session is resumed.

The Majority Leader is recognized.

BILL ON SECOND READING H. No. 9077—Tax Reform Act of 1997 (Continuation)

Senator Tatad. Mr. President, I move that we resume consideration of House Bill No. 9077 as reported out under Committee Report No. 454.

The President. Is there any objection? [*Silence*] There being none, resumption of consideration of House Bill No. 9077 is now in order.

Senator Tatad. We are still in the period of interpellations. I ask that the distinguished sponsor, the chairman of the Committee on Ways and Means, be recognized, and to resume his interpellation, the distinguished Minority Leader.

SUSPENSION OF SESSION

The President. The session is suspended for one minute, if there is no objection. [*There was none.*]

It was 10:43 a.m.

RESUMPTION OF SESSION

At 10:44 a.m., the session was resumed.

The President. The session is resumed. The distinguished Minority Leader and dean of the FEU Law School is recognized to interpellate Prof. Juan Ponce Enrile, one-time professor of the FEU Law School.

Senator Gonzales. Thank you, Mr. President.

To the acknowledged authority, who was the very renowned member of the faculty of the Institute of Law, Far Eastern University, our expert on taxation.

Mr. President, will the distinguished sponsor allow me to resume my interpellation?

Senator Enrile. With pleasure, Mr. President.

Senator Gonzales. I am very happy for the distinguished gentleman's invitation for a full, open and candid debate and discussion on the provisions of this bill. We know how important it is in our national life and, certainly, the active participation of all the members of this Body is welcome.

Mr. President, in resuming my interpellations, I would want to proceed with the general principles of income taxation. For this purpose, our discussion of Sections 23 and 24 would be very basic.

The first principle of income taxation, according to Section 23, is that an individual citizen of the Philippines residing therein is taxable from all income derived from sources within and without the Philippines. Therefore, a Filipino resident is taxable not only on his income derived within the Philippines, but also derived by him from sources abroad. Is that a correct understanding, Mr. President?

Senator Enrile. That is correct, Mr. President.

Senator Gonzales. I understand too that a citizen of the Philippines is subject to taxes on his income derived from sources without because of the tie of nationality. As a consequence, the Philippines has personal jurisdictions over him regardless of where he may be.

Senator Enrile. That is correct, Mr. President. Apart from that, unlike all other taxpayers, a citizen of the Philippines residing in the Philippines enjoys the full protection of his sovereign—the government of the Republic—not only in terms of his assets and income derived from sources within the Philippines, but also with respect to his assets and income situated abroad. In case of any confiscatory action by the other sovereign, the Philippine sovereign may intervene to protect the national.

Senator Gonzales. That is correct, Mr. President. Therefore, the tie of nationality is the bond or the *vinculum juris*, as we call it in law. A state is entitled to tax him even from income derived from abroad as a consequence of the allegiance which entitles a citizen to the protection of the flag and laws of this own country wherever he is.

Senator Enrile. Yes, Mr. President. In addition to the allegiance and protection concomitant to that allegiance, there is a practical and basic fundamental difference between our resident citizens and the nonresident citizens in that the resident citizen enjoys all the roads, police protection, sanitation and health protection, and other amenities and social services ren-

dered by the government which is not open to a citizen of the Philippines who resides or works outside the Philippines.

Senator Gonzales. In order that this principle is to apply, one must be a citizen of the Philippines, meaning, he must be a natural person; and second, he must be residing therein.

Will the gentleman kindly inform us as to the meaning of residence as used in this particular section and other provisions of the Code in *pari materia*.

Senator Enrile. Mr. President, residence, as a general rule, has a settled meaning both in political law and in international law and which is also adaptable to taxation. And so, the term "residence" is equally used in taxation.

Senator Gonzales. So that it would be equivalent to domicile, that is, the place where one permanently resides and is habitually present and if absent, he intends to return.

Senator Enrile. Subject to the principle of *jus revertende*.

Senator Gonzales. I want to pose this question in the light of complaints on the part of Filipino nationals who are working abroad and temporarily residing in foreign countries by reason or as a consequence of such employment. They usually complain against double taxation. Meaning, they are taxable not only in the Philippines but also in the foreign country where they reside temporarily for the same income derived from sources outside the Philippines.

Senator Enrile. That is why, Mr. President, if we read the second principle, we did not use residence alone. We said "working or residing abroad."

Senator Gonzales. I will go there because I am disturbed indeed by the use of the word "only" in line 12, page 20. When this second principle now says that "an individual citizen of the Philippines working or residing outside the Philippines is taxable *only* for income derived from sources within the Philippines." In short, an overseas Filipino worker or an OCW would not be taxable on his income or earnings derived from abroad.

Senator Enrile. That is correct, Mr. President. If he, however, invests his earnings abroad in the stock market or in a corporation and draws dividend or lends out his earnings abroad and he draws interest in the Philippines, then those incomes will be taxable in the Philippines. But his compensation income arising from the rendition of services outside of the Philippines would not be taxable in the Philippines.

Senator Gonzales. Is that provided for under the existing

Code that we seek to amend or revise under this bill?

SUSPENSION OF SESSION

Senator Enrile. May I ask for a one-minute suspension, Mr. President?

The President. Is there any objection? [Silence] There being none, the session is suspended for one minute.

It was 10:54 a.m.

RESUMPTION OF SESSION

At 10:55 a.m., the session was resumed.

The President. The session is resumed. Senator Gonzales is recognized.

Senator Gonzales. I have posed this question, Mr. President, because sometimes, when we are travelling abroad, we take it as an opportunity to meet the members of the Filipino communities residing in the countries where we go and where we have dialogues.

For example, when we were in London, the embassy arranged for such a dialogue with the members of the Filipino community. I recall that the spokesman of the Filipino community at that time was Mr. Alberto Pedrosa, later to be appointed as Ambassador to Brussels. And their complaint was that they are subjected to double taxation. Their income are subject to tax not only in the Philippines but also in the United Kingdom.

May I seek now a clarification as to the effect of paragraph (B) of Section 23 of the bill?

Senator Enrile. I will put it in this manner, Mr. President, in order that future implementors of this statute would be guided accordingly in the interpretation.

First, in the case of citizens of the Philippines who have transferred their permanent residence from the Philippines to a foreign country, they will not be subjected under the present proposal to tax income solely derived from sources outside the Philippines like business income, income arising from profession or trade, income arising from investment like interest, dividends, or capital gains arising from the sale or other disposition of shares of stocks or real estate, and the like.

Second, citizens of the Philippines who are working abroad and have no income in the Philippines, no income other than their compensation services or income arising from investments

abroad, if they have any, will not be taxed under the income tax law of the Philippines.

This is the difference between this proposal and the existing Code. Under the existing Code, the taxability of income of citizens is based on their nationality. So that once he is a citizen, whether he is a resident of the Philippines or not, he will be taxed on all income derived from sources within the Philippines as well as those derived from outside of the Philippines.

We are now changing the rule in such a manner that income derived from sources outside of the Philippines, for OCWs especially and for citizens of the Philippines who are permanent residents abroad, will not be taxed under the Philippine laws. Only their income derived from sources within the Philippines will now be taxed. And if they have no such income, they need not, in fact, file any income tax return.

This, however, will not include government officials who are assigned abroad, because by fiction of law, these government officials have not changed their residence, neither are they working outside the country for a private employer because they are working abroad for the Philippine government.

In fact, if they are working in consulates or embassies of the Philippines abroad, by fiction of law, that area is a territory of the Philippines.

Senator Gonzales. Mr. President, I think that is very proper that the gentleman has put that explanation into the *Record*. These principles that the gentleman has explained are equally applicable to Filipino citizens who are in the United States, either as green card holders or even as temporary visitors or residents therein. The same principles are applied to them.

Senator Enrile. Will the gentleman kindly repeat the question?

Senator Gonzales. I said that the principles that the gentleman has put into the *Record* are equally applicable to citizens of the Philippines who are residing in the United States whether as immigrants or as green card holders or as temporary visitors.

Senator Enrile. That is correct, Mr. President. Whether they are residents of the United States, Canada, France, Germany, Saudi Arabia, North Pole, South Pole or Timbuktu, as long as they do not derive any income from Philippine sources and their income is only derived outside of the Philippines, they will not be taxed in the Philippines.

Senator Gonzales. We have encouraged such citizens of

the Philippines to make investments here. Some actually do. They put in a little business or buy real property, and from which they realize income by way of profits or rentals for their business or lease of their property. So that under this principle, regardless of the nature of their income derived in the United States, they will not be taxed on it but will be taxed only ...

Senator Enrile. They will not be taxed on those incomes derived in the United States.

Senator Gonzales. But they are taxable on the income derived here.

Senator Enrile. That is correct, Mr. President. May I add, for purposes of future interpretation, that, for instance, a professional—he be a lawyer, a doctor, a dentist, an accountant, an engineer or what not—whose permanent residence is the Philippines and goes out to render service outside the country for a client will be taxed for his compensation for that service under the Philippine laws on the basis of these principles that we have enunciated here.

Senator Gonzales. If this provision will be approved as it is, we ought to circularize this to our foreign services in other countries. Because, as it is now, they collect income taxes on their earnings abroad. They impose payment of such taxes as a condition for the renewal of their passports.

Senator Enrile. Mr. President, this will finally put the problem to rest. This will solve many problems of tax administration and problems of our compatriots abroad.

Senator Gonzales. I see. As far as individual alien is concerned, whether a resident of the Philippines or not, he is taxable only for income derived from sources within the Philippines. In short, a nonresident alien is taxable only for his income derived in the Philippines?

Senator Enrile. That is correct, Mr. President. Under the present law, a nonresident alien who is not engaged in trade or business in the Philippines will be taxed only on income derived from the Philippines. But in the case of a resident alien, he is taxable on income derived not only from sources within the Philippines but also from sources outside of the Philippines.

We are also modifying this in order to be consistent with our theory of income taxation, and at the same time, attract affluent foreigners to come into the Philippines and reside here without worrying that their investments abroad from which they derive income would be taxable here.

Senator Gonzales. A Filipino corporation engaged in the

import and export in the course of its business derives income in a foreign country. Would he be taxable here in the Philippines for such income?

Senator Enrile. As defined in Section 22 (b) under the proposal, which is Section 20 (b) under the present law, a domestic corporation will be taxable on all income derived from sources within and without just like a resident citizen of the Republic.

Again, for the same reason, as I have indicated in the case of a resident citizen, such a corporation enjoys the full sovereign protection of the Republic of the Philippines, apart from the fact that in doing its business in the Philippines, it uses all government facilities—roads, bridges, harbors. It also uses the economic laws of the country and many other things.

Senator Gonzales. For the purpose of discussing now the tax schedule and the tax rates as provided in Section 24, will the gentleman kindly tell us how much is the revenue take of the government under the existing income tax law from that source?

Senator Enrile. From what source, Mr. President?

Senator Gonzales. From income tax.

Senator Enrile. I would like to give the aggregate for 1996. The aggregate for 1996 was P260,774,150,000 broken down into the following: income tax of individuals for... Incidentally, I stand corrected, Mr. President.

The total is P136,354,920,000. The contribution of individual income taxation to that aggregate is P52,572,820,000. For corporate tax, the contribution is P77,698,160,000. Other taxes will amount to P6,083,940,000.

Senator Gonzales. Under the new schedule as provided for in this bill, what is the estimated revenue take?

Senator Enrile. Mr. President, with the reduction of corporate income tax and with the rearrangement of some of the provisions and lifting of certain tax exemptions of certain types of corporate activities that ought to be taxed, I venture the guess that the government will generate an additional income out of this—in spite of the losses that it will incur because of the revision of the personal exemption of individual taxpayers and additional exemption for dependents—of, at least, P5 billion.

Senator Gonzales. That would be over and above the P136 billion aggregate for 1996?

Senator Enrile. That is correct, Mr. President.

Senator Gonzales. So, there will be an additional revenue of P5 billion.

Senator Enrile. This will cover the incremental revenue arising from the reintroduction of a tax on dividends, the plugging of the tax loophole arising from what we call “tax arbitrage” where some corporate enterprises, especially banks, borrow money abroad at a low interest rate and then lend that money in our domestic economy at a high interest rate, subject to a final withholding tax of 20 percent rather than the corporate tax of 35 percent, and later on at 30 percent. At the same time, on the deduction side, they would deduct the full amount of their interest expense in servicing their foreign borrowings, in which case, the government loses in this transaction. That is why we plugged this. So, that will give an increment.

In addition, we removed certain types of deductions that in our opinion would also increase the revenue of government. We are reflecting in this Tax Code the tax equivalent of what the employer otherwise would have withheld for fringe benefits given to employees if these fringe benefits were really given in cash.

There are other things that we have done in order to bring about an equitable system of taxation: lowering the tax rates, encouraging investors into the country, giving tax concessions to our low and middle-income group but, at the same time, enhance the revenue of government without increasing tax rates.

Senator Gonzales. Mr. President, Committee Report No. 454 has been submitted by the Committee on Ways and Means as an amendment by substitution to House Bill No. 9077. Among the provisions that have been changed under this bill now is the schedule of personal income tax under the House bill.

Now, could the gentleman tell us why we have disregarded or changed the schedule of income tax as provided for in the House bill with what is now provided in this bill reported out by the committee?

SUSPENSION OF SESSION

Senator Enrile. May I ask for a one-minute recess, Mr. President.

The President. The session is suspended for one minute, if there is no objection. [*There was none.*]

It was 11:14 a.m.

RESUMPTION OF SESSION

At 11:15 a.m., the session was resumed.

The President. The session is resumed.

Senator Enrile. Mr. President, may I point out that under the House version, if we talk of the first P50,000 net taxable income of individuals under the present Code, the taxpayer would be paying about a little over P4,000 for the first P50,000. Under the House version, the taxpayer would pay P5,000 immediately because the starting rate is 10 percent. We felt that increasing the tax rate abruptly in that fashion, from 1%, 3%, 7% and 11 percent for the first P40,000—I cannot recompute the effective rate here, this is, probably, about 5% to 10%—is a very substantial increment on the tax burden of this low-income group. That is why we tried to establish a tax rate and a tranching that would serve the interest of the individual taxpayers within this income level and at the same time protect any undue erosion of the revenue of government.

Senator Gonzales. Yes. On the other hand, Mr. President, the distinguished gentleman would agree with me that under the House version, there is more disaggregation of income tax levels for those receiving over P250,000 because there is here on page 23, a bracket of line 4, over P250,000 but not over P500,000; line 5, over P500,000, and the rate of tax is even higher.

Senator Enrile. That is correct, Mr. President, but in the case of our proposal, we establish a threshold of P250,000 which we feel to be the income of low and middle level citizens. Over and above P250,000, we consider that to be already the affluent taxpayers of the country. In which case, all income beyond P250,000 would be subjected to a gross rate of 30 percent.

Senator Gonzales. Yes. I could see the reason behind adopting the benchmark of P250,000 because it would appear that on the basis of government statistics, majority of individuals or families have an income below P250,000. However...

Senator Enrile. May I put into the record, Mr. President, that of approximately two million tax filers, according to the statistics of the Department of Finance, only 3.56 percent would have an income level of P250,000.

Senator Gonzales. That is how many percent, Mr. President?

Senator Enrile. That is 3.56 percent.

Senator Gonzales. It is 3.56 percent. The information that

I have on this particular matter is that, really, a majority of the individuals or families have income below P250,000.

Senator Enrile. That is the reason Mr. President, we opted to impose the rate of 30 percent. We also reduced, by the way, the rate at that level from 35 percent to 30 percent because we are now taxing them on the gross. In fact, in the case of those P250,000 income level and below, we did a tranching, a progressive system which we feel is equitable.

Senator Gonzales. Yes, but on the other hand, while that may be so, the income distribution in the Philippines is quite uneven. In 1994, in the family income and expenditure survey, it shows that 36 percent of the total income accrues to the upper 10 percent of the population. This means that while the majority of individuals or families have annual incomes below P250,000, it will still be the minority, meaning, the upper 10 percent must be taxed more heavily since they control the bulk of the income. Would the gentleman agree on that?

Senator Enrile. May I kindly request the distinguished gentleman to repeat it.

Senator Gonzales. Yes. As I have said, it is not a matter merely of percentage, because the income distribution is quite uneven. In the 1994 family income and expenditure survey, it is shown that 36 percent of the total income accrues to the upper 10 percent of the population. This means that while the majority of individuals or families have annual incomes below P250,000, it is still the minority, the upper 10 percent which must be taxed more heavily since they control the bulk of the income.

What I am trying to say is that...

Senator Enrile. Well, precisely, Mr. President, if that were so, we are getting 30 percent of that magnitude. If we establish the effective rate of taxpayers within the P250,000-income level from P1 to P250,000, the effective rate is less than 25 percent. I think, if I am not mistaken, it is about 19 percent or between 18 percent and 19 percent. I am not sure of the exact effective rate. The differential is, I think, enough balancing factor to equitize these taxpayers.

We should not also forget that while these people in the upper bracket appear to have a bigger slice of the resulting net taxable income, they are the ones employing many of the other taxpayers in the country. If we are going to overburden them with heavy taxation, which is very popular of course, and which is the trend or the normal direction of most socialist countries or welfare states, we, in effect, put a deterrent on the expansion of employment opportunities for the people who need employment.

This is a very delicate balancing factor. Of course, this is only my opinion and it is just as good as the opinion of others. But this is a judgment call that must be made by a policymaker. There is no certitude here.

Senator Gonzales. The only point I am making is that probably, there should be another level or levels after the P250,000 threshold say, those up to P500,000 or more. As we can see, for example, our version hardly differentiates between a middle management private sector employee who earns an annual taxable income of P400,000 and a senior officer who earns P1 million. They will be taxed at practically the same rate.

Senator Enrile. Mr. President, if we are going through that, then I can equally argue that an executive who is receiving P4 million ought to be differentiated from an executive who earns P6 million; and an executive who earns P6 million ought to be differentiated from an executive earning P10 million, and so forth and so on. And there will be no end to the argument. We have to bite the bullet, so to speak, and establish a threshold.

Senator Gonzales. I understand the position of the distinguished sponsor. The only point I am driving at is that for a tax system to be more progressive, there should be a more detailed disaggregation for higher income groups. But the sponsor has his point on this particular matter, and I respect the same.

Senator Enrile. May I point out, Mr. President, with the permission of the distinguished Minority Leader, that we are not copying any taxation concepts from outside of this country. But the experience has shown that a lowering of tax rates would yield a greater amount of revenue to the taxing authority. This is the experience of the United States.

I was in America as a student in 1954-1955 when the United States revised its Income Tax Code. In fact, I participated in the study of that Code as a student of the International Tax Program of the Harvard Law School. But later on, they have to lower the rates because they went far beyond. I think the highest rate established in that Code at that time was more than 80 percent. That is the highest bracket. But the tax take or the tax yield to the U.S. government went down. And as a consequence of that, they had to revise the entire thing such that today, I think they have gone down far below the original high rates that they have established.

This is the experience of Europe; this is the experience of other countries around us, and I think we should be very prudent and specially wisened to follow the trend so that we will not be uncompetitive in the international field. Of course, we can squeeze every juice in a turnip but only up to a point. We will dry it up.

I think we should not destroy the initiative of our businessmen to grow and expand their businesses in order to expand the employment opportunities for our people.

Senator Gonzales. The 30 percent which is the highest rate for individual income taxpayers will be practically the same as corporate income tax after a period of three years?

Senator Enrile. That is correct, Mr. President. I would like to say here that the selection of 30 percent is based on our analysis of the income tax systems of our neighbors. In fact, some of them are using a much lower rate. But we felt that to radically lower the corporate tax to a level below 30 percent will mean a large revenue loss to the government, because for every one percentage point of reduction, the government will lose P2.58 billion of revenue. So we selected this guardedly and prudently.

In effect, as the gentleman said, there is a parity between the corporate income tax and the highest individual tax rate by the year 2000 because an individual who decides to do business through a corporation, compared to an individual who decides to do business as an individual, ought to be placed on an equal level because the individual doing business as an individual will only pay a 30 percent highest rate, whereas as individual who does business as a corporation will pay by the year 2000 not only 30 percent on that same income flow, but in addition, he will have to bear an additional 10 percent on the income net of corporate income tax, if that income finally reaches him.

So the total tax burden, if he uses a corporate vehicle, is actually—for every peso of net taxable income—P0.30 plus P0.07, or a total of 37 percent.

Senator Gonzales. I think it will serve our people very well if the gentleman will place again in the record the reasons the bill has provided for a graduated application of the 30 percent corporate income tax, 35 percent in the first year, 30 percent in 1999 and so on...

Senator Enrile. This year it is 35 percent; 31 percent in 1999, and 30 percent in the year 2000. The reason for that is, if we are going to abruptly reduce corporate income tax from 35 percent to 30 percent next year, the total loss of the government is P2.58 billion times 5 or approximately P12 billion.

Senator Gonzales. So, we want some period within which to adjust.

Senator Enrile. This is for adjustment purposes.

Senator Gonzales. Mr. President, the sponsor has been

very understanding as far as my questions are concerned, and for whatever it may be worth, will the gentleman kindly allow me to put into the *Record* a schedule which I am personally proposing:

For taxable income not over P50,000 = 5%; for taxable income over P50,000 but not over P100,000 = P2,500 plus 10% of excess over P50,000; over P100,000 but not over P250,000 = P7,500 plus 15% of excess over P50,000; over P250,000 but not over P400,000 = P30,000 plus 20% of excess over P250,000; over P400,000 but not over P500,000 = P60,000 plus 25% of excess over P400,000; and over P500,000, which is the highest, the threshold = P85,000 plus 30% of excess over P500,000.

I am just putting it, Mr. President, on the record.

Senator Enrile. Yes, Mr. President. We will welcome that but I would like to request a copy of that schedule so that we can subject it to an analysis and inform the Chamber how much revenue loss or gain we will make if we apply that, taking into account the entire revision that we have done in this proposal.

Senator Gonzales. We will be very happy to do that, Mr. President.

On page 24, there is provided in subparagraph (1) a final tax at the rate of 20% upon "the amount of interest from any currency bank deposit."

Is this what is commonly known as the dollar deposit or dollar account?

Senator Enrile. This is the expanded foreign currency deposit system, Mr. President, including Offshore Banking Units (OBUs).

Senator Gonzales. Is this the same as the so-called "FCDUs," Mr. President, or is it different?

Senator Enrile. That is correct, Mr. President.

Senator Gonzales. It is the FCDUs.

Senator Enrile. Yes. I would like to define the operation of this banking system. Under the Offshore Banking System, Mr. President, some banks are allowed to operate in the Philippines under what they call an "offshore banking."

The funds actually are not in the Philippines but the foreign bank establishes a branch or an office in the Philippines and it can accept deposits, but these deposits are either deposited in a bank in Singapore, in Hong Kong or in the United States or

elsewhere. It uses this money to open letters of credit, to lend out, but the funds are not here. They are not even a part of our dollar reserve.

The other portion of this is what they call the "expanded foreign currency deposit system," where one goes to a commercial bank and he is allowed to open a dollar account. But these are dollar accounts. The dollars are either kept here in the vault or deposited in the foreign depository bank of the local commercial bank outside of the country. These are not also included in the reserve, in the foreign currency reserve of the Republic.

Now, in both cases, the offshore banking unit is exempted from income taxation on its interest income or whatever income it derives from the utilization of deposits made to it in foreign currency. And these are large amounts.

Equally, a domestic banking institution that is allowed to operate an FCDU is exempt from taxation for the interest it earns out of the lending of this deposit. But, at the same time, the interest that it pays to the depositor is deducted from its gross income. I think this is unfair, apart from the fact that these banking institutions are the most affluent ones.

That is why we have a very thriving banking system in the country because of this system. They are exempted from taxation on this particular item.

Mr. President, according to the Bangko Sentral, the total FCDU in the country is US\$17 billion. If they lend that out at 10%, that is US\$1.7 billion times P29:US\$1.00, that is more than almost US\$60 billion in interest. Twenty percent of that is \$12 billion. That is what the Philippine government is losing from this sector of the economy.

That is why I see no justification in exempting this group from taxation. If we are going to burden a *sari-sari* store, a professional with income tax, then I ask the pertinent questions: Why should we exempt these people from income taxation? What is the impelling reason?

Senator Gonzales. Mr. President, I understand—and correct me if I am wrong—that FCDUs were originally introduced as a means to encourage remittances and to reverse capital flight. Through the years, there has been a rapid expansion of these accounts and foreign exchange liberalization which permitted the exporters to retain their earnings in foreign currency to such an extent that by the sponsor's own statement, the amount of dollar deposits now, according to the Bangko Sentral and also the Philippine Chamber of Commerce and Industry, is about US\$17 billion which is actually higher than our international reserves of only US\$12 billion.

I understand that Bangko Sentral ng Pilipinas Gov. Gabriel Singson wrote the gentleman a letter expressing the position of the Bangko Sentral on this particular matter. And I read from the *Business Daily* issue of August 5, 1997, quoting BSP Gov. Singson who said that:

I wrote Senator Juan Ponce Enrile, and I said that the competition is not between peso and the FCDU deposits in the Philippines but between FCDUs in the Philippines and FCDUs somewhere else. Once FCDUs are subjected to tax, dollar depositors might transfer their funds to Singapore, Hong Kong or in other countries where the FCDUs are not taxed.

It is too easy to transfer funds and open deposits somewhere else. Why should one deposit here if FCDUs were subject to withholding tax if he can do it in Hong Kong or Singapore where there is no tax? Even in the United States, it is also tax-free for residents provided that there are no other sources of income.

If I may be permitted to read an editorial of the *Manila Standard* of August 5, 1997, that quoted Mr. Federico Pascual, president of the Philippine Chamber of Commerce and Industry. I quote:

Pascual observed that foreign currency deposits have reached over US\$16 billion much higher than the country's foreign currency reserves which reached a little more than US\$12 billion this year. We were successful in securing US\$17 billion in deposits precisely because of the secrecy and the tax exemption therefrom. Now that it is a success why do we have to shoot ourselves in the foot?

Senator Enrile. Mr. President, perhaps to the uninitiated, that is very appealing. But pardon me for saying: I respect the opinion of the Bangko Sentral Governor and others, but that is a lot of hogwash.

Money will go anywhere where it can make money. They are in the Philippines not because we exempt them from taxation but because they earn a very high interest rate in the Philippines.

They cannot go to Hong Kong because the interest rate there is very low. Neither in Singapore because the interest there is very low, nor in Europe or in the United States, that is why they all come to this country. We were able to attract this magnitude because of the higher interest rate here.

To tell the truth, Mr. President, they cannot put their money in Hong Kong, it will be foolish. How much is the interest rate

in Hong Kong, in Singapore or elsewhere? Six percent. Here, the interest rate in a deposit certificate is 15 percent. If one takes out 20 percent, he nets 12 percent which is double the interest that they earn there. They will never leave this country, and yet we are foolish enough to accept that proposition that they ought to be exempted from income taxation.

Now, of the FCDUs that we have, I understand from the government sector, from the Executive, that 81 percent of all FCDUs in the country are actually held by the residents of the republic. They converted their pesos into dollars and deposited them as dollars because we are foolish enough to exempt these FCDUs from income taxation.

So, I leave it to the Chamber if we want to be deluded with this kind of a system.

Senator Gonzales. Mr. President, these are matters which indeed require not only technical knowledge but also knowledge of actual operations. I concede on that, except that...

Senator Enrile. Mr. President, I am telling this. I have an FCDU account; yet I am imposing that obligation that I must pay tax on it.

Senator Gonzales. Except, Mr. President, that we may belong to the "uninitiated." But on the other hand, we are quoting not our own personal opinion but the opinion of the Bangko Sentral ng Pilipinas itself, which is supposed to have a clear and a more thorough understanding of this case, as well as the president of the Philippine Chamber of Commerce and Industry.

Therefore, with such a distinguished company, we do not mind being grouped with them, and it is, indeed, a very nice grouping of "uninitiated."

Senator Enrile. Mr. President, I did not mean to cast aspersion to the distinguished Minority Leader whom I respect. But I am just saying that the position is a hogwash.

Incidentally, I thank the gentleman for raising this issue because it has given me the forum to answer all of these questions.

This is just like what happened when I sponsored in this Chamber the revision of the sin taxes. I was pilloried; I was attacked. There was even a demonstration outside of the Senate, and they predicted that the tobacco farmers of the North, my fellow Ilocanos, will rise against me; that the country will lose money; and that the tobacco farmers will become paupers because of my proposal. Look at it now.

Has the gentleman ever heard of any Ilocano tobacco farmer complaining? Has the gentleman ever known that the government has lost revenue out of the sin tax? In fact, they are now predicting a surplus because of the sin tax.

This is the same argument, the argument of fear that has been foisted not only now but in ages beyond memory when we deal with taxation.

Senator Gonzales. Mr. President, there is also a final tax on dividends at rates established under subparagraph (2) of Section 24. I think the opposition to it is that according to them—of course, it is not technically double taxation—they are double taxed; that the corporation itself is already taxed on its own income, and then we tax again the dividends declared by the corporation.

Senator Enrile. Mr. President, this is the practice in almost every tax system. We removed the tax on dividends during the time of President Aquino only because of some pressures on that administration which, probably, did not understand the impact of this. Regrettably, it cost the government to incur deficit spending, and who was the loser? The low-income groups.

I am suggesting that we restore this in a graduated manner—4 percent next year, 8 percent the year after, and 10 percent beginning the year 2000—in the same way that we are reducing corporate income tax gradually. I think that 10 centavos for every peso of dividend that one would receive is not really a very heavy tax burden.

Senator Gonzales. Mr. President, may I request that my interpellation be suspended to give me more time to look into the other provisions of this bill.

I thank the Chair and the kind gentleman. It was a very

enlightening experience discussing with him.

The President. We are also enlightened by the interpellations of the dean and tax professor of the FEU Law School.

The Majority Leader is recognized.

SUSPENSION OF CONSIDERATION OF H. NO. 9077

Senator Tatad. Mr. President, I move to suspend consideration of House Bill No. 9077.

The President. Is there any objection? *[Silence]* There being none, the motion is approved.

THE JOURNAL

Senator Tatad. Mr. President, we now have before us a copy of the *Journal* of Session No. 4. I move that we dispense with the reading of this *Journal* and consider it as approved.

The President. Is there any objection? *[Silence]* There being none, the motion is approved.

ADJOURNMENT OF SESSION

Senator Tatad. Mr. President, I move pursuant to Section 39, Rule XIV of the Rules of the Senate, that we adjourn the session until four o'clock this afternoon.

The President. Is there any objection? *[Silence]* There being none, the session is adjourned until four o'clock this afternoon.

It was 11:51 a.m.

RECORD OF THE SENATE

MONDAY, AUGUST 11, 1997

RESUMPTION OF SESSION

At 10:39 a.m., the session was resumed with Senate President Ernesto M. Maceda presiding.

The President. The session is resumed.

Senator Tatad. Mr. President.

The President. The Majority Leader is recognized.

THE JOURNAL

Senator Tatad. Mr. President, we now have the *Journal of Session No. 5*. I move to dispense with the reading of the same and consider it approved.

The President. Is there any objection? [Silence] There being none, the motion is approved.

SUSPENSION OF SESSION

Senator Tatad. May I ask for a one minute suspension of the session?

The President. Is there any objection? [Silence] There being none, the session is suspended for one minute.

It was 10:40 a.m.

RESUMPTION OF SESSION

At 10:41 a.m., the session was resumed.

The President. The session is resumed. The Majority Leader is recognized.

Senator Tatad. Mr. President, on a question of personal and collective privilege, I ask that the gentleman from Aurora, Quezon and Pampanga be recognized.

The President. The gentleman from Aurora, Quezon and Pampanga is recognized.

QUESTION OF PRIVILEGE OF SEN. ANGARA (On the Intelligence Project of the Government on Opposition Leaders and Senate Members)

Senator Angara. Thank you, Mr. President.

On a question of collective and personal privilege,

Mr. President, one of the leading dailies today, the largest circulating daily, *Philippine Daily Inquirer*, has bannered "Opposition Placed Under Surveillance." The report indicates that the intelligence arm of the country, the Presidential Task Force on Intelligence and Counter-Intelligence, has mounted a surveillance and monitoring project on the so-called principal targets. Among those mentioned were opposition leaders and members of the Senate.

Mr. President, this is the first time that this sinister project has been officially and publicly written up. We know that this project has been going on. We know that our telephone and communication lines have been bugged and monitored, but this is the first time that there is public and official confirmation that this is an official project being undertaken by this administration.

Mr. President, to me, this is part of the overall goal of this administration to place under doubt, or at the very least, weaken, the independent institution in this country. We have seen that. As the Senate President and I have been told only last Saturday by a former justice, we have seen that in the case of several justices in the Supreme Court who have complained that pressure have been applied on them through means of wiretapping, dossier, et cetera. The other time, they put the institution of the Senate under cloud by this wild allegation of drug dealing and drug protection.

Today, Mr. President, we can now state categorically and clearly that the opposition is the next target of this sinister project.

Mr. President, I believe it is less hypocritical, for instance, in Myanmar where they just simply jail and put under house arrest opposition leaders. But to say that we are in a democratic country and yet pursue this kind of surveillance, monitoring and bugging of the communications of the opposition, unmask the true nature of this administration.

Mr. President, we used to believe that the technological innovation in communication would make all of us free—the use of cellular phone, the use of fax machine, the use of land telephones. No, Mr. President. The very fact that this technological innovations are subject to wiretapping and surveillance have made everyone in this country suspicious of technology and suspicious of each other.

Mr. President, this is a grave day for this country. We believe that the Senate, as it has always done in the past, must stand up and speak up against this abomination. And I would move, Mr. President, that the Senate President designate the Senate Committee on Finance, preferably the chairmen of the

BILL ON SECOND READING
S. No. 9077 - Tax Reform Act of 1997
(Continuation)

Senator Tatad. Mr. President, I move that we resume consideration of Senate Bill No. 9077 as reported out under Committee Report No. 454.

The President. Is there any objection? *[Silence]* There being none, resumption of consideration of Senate Bill No. 9077 is now in order.

Senator Tatad. We are still in the period of interpellations. I ask that the distinguished sponsor be recognized; and to interpellate, the Assistant Minority Leader from Quezon City, Tarlac and Bulacan.

The President. May the Chair be informed how many more senators have reserved to interpellate on this issue? I see the hands of Senator Shahani and Senator Angara.

Senator Tatad. In that case, there are four remaining who have reserved to interpellate: Senators Shahani, Angara, Roco and Alvarez. The Minority Leader, who is the fifth, has reserved the right to resume his interpellation.

The President. All right, we will, as agreed upon with the Majority Leader, reserve the next three days—Monday, Tuesday and Wednesday—morning and afternoon sessions, so that those who would like to interpellate would please be present in any of these days so that they can have their turns.

Senator Enrile. Mr. President.

The President. Senator Enrile is recognized.

Senator Enrile. I do not want to limit the right of any member of the Chamber to ask all the questions they want. So may I request that we now debate this piece of legislation morning and afternoon during the week because we are running out of time. As we know, we have indicated that we will finish this measure at the end of the month because we will have to go through a tedious bicameral conference committee with the other House, and we need the whole month of September to do that in order to beat the October deadline which we have agreed upon to exit from the IMF World Bank conditionalities.

The President. We agree with the observation and that is exactly why we asked the question.

The Assistant Minority Leader is recognized.

Senator Romulo. Mr. President, with the permission of the distinguished and learned chairman of the Committee on Ways and Means, may I be allowed to pose some questions on this very important bill?

Senator Enrile. Gladly, Mr. President, to the very knowledgeable gentleman from Tarlac and former Majority Leader of this Chamber.

Senator Romulo. Mr. President, let me zero in on a particular provision of the bill, and that is the lifting of the Bank Secrecy Law which has aroused a lot of questions, if not controversies. In fact, when I woke up this morning, the headline stared me in the face, which is entitled: "Singson Warns of Capital Flight if Bank Secrecy Law Is Lifted." Also, before the weekend, another headline states: "Eight Chambers of Commerce Oppose the Lifting of the Bank Secrecy Law," and therefore, zeroing in on this lifting of the Bank Secrecy Law.

As I understand it, Mr. President, under this bill, the Commissioner of Internal Revenue, may cause the lifting of the Bank Secrecy Law under the following circumstances: 1) when the taxpayer waives the secrecy of his account; 2) when the taxpayer requests a compromise on the basis of his inability to pay; 3) when it is necessary to determine the amount of the remaining estate of a deceased taxpayer; and 4) when there is clear, direct and substantial evidence of fraud gathered in the course of a tax audit.

May I know if this enumeration is correct, Mr. President?

Senator Enrile. That is correct, Mr. President. I would like to emphasize again and again, with the permission of the distinguished gentleman from Tarlac, that we are not lifting the Bank Secrecy Law of the country.

The Bureau of Internal Revenue cannot, will not, shall not compel any bank to reveal the bank deposit of just anybody. For the commissioner of the internal revenue bureau to be able to do that, the enumerated situations must have to arise.

In the case of the fourth one, there must be a return that shall be audited by the Bureau of Internal Revenue. And if there is clear, direct and substantial evidence of fraud, then, they can look into the bank records of that particular taxpayer only and only to that extent.

Now, in the case of interests being paid by banks to their clients/depositors, whether they are residents, citizens or foreigners, this will not be subject to any lifting of the Bank Secrecy Law because the tax is a final tax. The tax being imposed is a final withholding tax. There would be no need to examine the

bank deposit of anyone, because all we have to do is to determine the aggregates of interest paid by the bank and the amount of withheld tax.

So, what is the thing to audit there? Nothing. We are dealing here with the problem of habitual tax evaders like those who are in government. Some of them are in the revenue collecting bureaux of government—the internal revenue bureau, the customs bureau—the smugglers, the racketeers, the grafters, the scoundrels in the police and the military, the gambling lords, the drug lords, and the members of the criminal syndicates. These are the parties who have something to fear under this provision.

But the ordinary citizens, the workers, the law-abiding citizens have nothing to fear in this, Mr. President, and the banks are not going to be bothered by this.

"Flight of Capital," the introduction of this provision in the law, will not mean a flight of capital if the economy is well-managed. If the economy is stable, if the economy is strong, money will come here; foreign money will come here to do business. It is when the economy is weak, mismanaged, or when there is too much political bickering that will cause flight of capital, not the provision as what we are introducing.

In fact, we have such a bank secrecy law in the '80s—in 1983, 1984, 1985, 1986 and yet, capital flight was not prevented. Why? Because the economy was in a bad shape.

So all of these arguments of fear that are being raised is simply to beg the issue, Mr. President.

Senator Romulo. In other words, Mr. President, the message to Governor Singson is "keep your house in order, work on the fundamentals." If the economy is strong and the fundamentals are sound, then he does not have to fear that the lifting of the Bank Secrecy Law will result in capital flight. Is that correct, Mr. President?

Senator Enrile. That is correct, Mr. President. This will affect the banks that are allowing themselves to be the haven of racketeers and grafters. That is why they are afraid because many of these Banks have accepted deposits from known racketeers.

Senator Romulo. In other words, Mr. President, what Governor Singson has to fear and has to look into is whether in fact, our banks are being used to launder the money of drug lords, *jueteng* kings, and other criminal and mafia syndicates. In which case, if that is correct that our banks and financial institutions are being used to launder the funds of these criminal elements, then, definitely, those drug lords, *jueteng* kings and kidnap and other

crime lords will have to beware. They, in fact, may have to remove their capital or launder their capital elsewhere. That is not the kind of funds that we want to protect, is it?

Senator Enrile. That is correct, Mr. President. In fact, Singapore has no bank secrecy law; Malaysia does not have one; neither do the United States. Yet, their banking systems are thriving; deposits are made. But the illegal money, money arising from drugs, from gambling, from criminal syndication, from racketeering are invested in tax havens like Cayman Island, British Virgin Island, in Netherlands Antilles, in Vanuatu, including the Philippines and Switzerland. And I do not think we want to abet this kind of activity simply because of our desire to have foreign money deposited in the Philippines.

Foreign money, Mr. President, will go to a country where they can make money—the legitimate ones—not to hide. I believe that what we can do is to establish a climate of economic and financial stability in the country, and this is the very purpose of this measure—to attract legitimate, solid foreign money to come to this country, not Mafia money.

Senator Romulo. And that precisely is the purpose of No. 4—"when there is clear, direct and substantial evidence of fraud gathered in the course of a tax audit." That precisely is the purpose.

Senator Enrile. That is correct, Mr. President. In fact, as I said, even the money of the Mafia, if they are deposited in these banks, will not be the subject of any scrutiny because the interest is subject to a final tax of 20 percent. But if in the course of an investigation of a taxpayer, it turns out that he has overdeclared his deductions, underdeclared his income, I think common sense suggests that we should not render our government inutile, and at the same time, berate the revenue collecting bureau, like the Bureau of Internal Revenue, for a seeming ineptness in not being able to collect taxes because we have shackled the Bureau of Internal Revenue in doing its job.

Senator Romulo. In fact, Mr. President, under this law, the income tax of these *jueteng* kings and drug lords will be substantiated or unsubstantiated by the amount of funds that they have in the bank. Meaning to say, if they have not paid any income tax, there are other means of ascertaining whether in fact they have illegal money to build mansions, to have cars and bank deposits and all of that. Is that not correct?

Senator Enrile. Yes, Mr. President. This will show the movement of funds in the account of the taxpayer—how much has been deposited, the sources of these deposits and how much has gone out. If these deposits were the product of borrowings, then it will be shown. So, at least, the BIR will be able to check

whether indeed the taxpayer legitimately reflected his true income in his tax return.

Senator Romulo. Therefore, Mr. President, our distinguished colleague would see no reason whatsoever why we should continue to grant tax haven, legal haven and exemption from prosecution to these criminal elements and syndicates such as the drug lords, the *jueteng* kings and other criminal syndicates by opposing this particular provision in the new comprehensive tax reform package. Is that correct?

Senator Enrile. That is correct, Mr. President. This is called a tax reform bill. And among the reforms to be introduced is precisely the area of tax administration by giving the BIR a tool for that purpose—to enforce tax laws.

Mr. President, if we study the history of Republic Act No. 1405, I think we will find out that the proponents of this measure were motivated at that time with the concept of their desire to convert the Philippines into a Switzerland of the Far East where people can hide their wealth in banks without being scrutinized. But the wish never became a reality because people will go to a country and deposit their gold, silver, dollars or pesos if the economy of the country is sound, not simply because one has a vault that cannot be opened because of the prohibition of a law.

Whereas Switzerland prospered, the other tax havens prospered, the Philippines became impoverished. At the same time, it allowed itself to be a tool of criminal syndicates to hide their loot. I do not think we should perpetuate this. It is about time we reexamined this policy.

Senator Romulo. In fact, Mr. President, since our distinguished colleague mentioned Switzerland, it is now delving deep into the recesses of the bank accounts, particularly with the exposure of the Holocaust victims' fund where, in fact, not only the Swiss government, but even an international commission headed by a former Federal Reserve Board chairman, Volker, is in charge of ferreting out the bank deposits in Switzerland, notwithstanding the so-called Bank Secrecy Law, in order to determine, ascertain, and make an audit of all the funds and gold that have been deposited in Switzerland by the Nazis during the Second World War. Is that not correct?

Senator Enrile. That is correct, Mr. President. In fact, if we study the history and the banking system of that country, there are many ill-gotten wealth of dictators around the world that have been deposited in some banks there which have remained property of the banks. Of course, the banks would want this secrecy to remain because they will enjoy the use of the money of these people. If these people die, their money cannot be claimed and it becomes an asset of the bank. This is the situation.

On the other hand, the government becomes powerless to tax them or to inquire into the bank deposits. It cannot even escheat these assets in favor of the government in spite of the provision of our laws on succession escheating estates of deceased persons when there are no claimants.

Senator Romulo. That is correct. Talking about the bank secrecy law of Switzerland, they have even refused Mobutu Sese, the Zairean dictator, to remove his funds or even to sell his property in Switzerland precisely because the Swiss believes that when the money is ill-gotten or with criminal implication, certainly the criminal element should not profit. That is precisely what I think our distinguished gentleman is trying to achieve with this particular provision in the comprehensive tax reform package law. Is that correct?

Senator Enrile. That is correct, Mr. President. In fact, I was just handed now a material involving the bank secrecy law of England. While there is some degree of absoluteness of that law, yet there are exceptions. The exception deals with indirect taxes and in cases of tax fraud. One cannot invoke the bank secrecy law of Switzerland if there is a tax fraud.

The argument is: Why not maintain the present situation and let the government go to court and get an authority from the court to look for the money in the bank?

Mr. President, the reality of the situation is that if we perpetuate the present system, by the time the poor commissioner of Internal Revenue reaches the court, the money would be gone. All one has to do is to push a button and there will be an electronic transfer of the fund from one bank to another or from this country to another country.

Senator Romulo. In that regard, Mr. President, since the gentleman has touched on the courts, is the authority of the BIR commissioner or chairman under this proposed law subject to the approval of, say, the Secretary of Justice?

Senator Enrile. No, Mr. President. It will be subject to review by the Secretary of Finance, being the department head, if the taxpayer does not agree with the finding of the examiner—the Internal Revenue officer who examined his return. If he is not satisfied with the findings or the decision of the Secretary of Finance, the courts will be opened to that taxpayer to enjoin the opening of his bank account.

Senator Romulo. But will the distinguished sponsor of the bill see any problem with the action of the BIR commissioner being supported or having a final approval by the Secretary of Justice?

Senator Enrile. I have no problem with that, Mr. President.

Senator Romulo. Mr. President, what I would like to go through now is how this may affect the ordinary citizen. Because as far as criminal elements are concerned, I think we are one in saying that we do not want to give any haven; we do not want to give any protection, any coddling of these criminal elements. But how about the ordinary citizen?

For instance, Mr. President, under this proposed law, there are only four instances where the BIR commissioner may so act to inquire into the bank accounts, and we already mentioned the fourth. The first one is when the taxpayer waives the secrecy of his account. Obviously, when the taxpayer waives the secrecy of his account, is there any problem there since the taxpayer himself waives the secrecy of his account?

Senator Enrile. There is none, Mr. President.

Senator Romulo. Obviously, that does not impinge on any of his rights—legal or constitutional—is that not correct?

Senator Enrile. That is correct, Mr. President. I venture to say into the *Record* that the general rule is that all deposits will enjoy bank secrecy, except in these four instances. Even in these four instances, the taxpayer is not subject to any arbitrary rule because, in the first place, they must have a return filed with the BIR and that return is subjected to a tax audit. There must be a finding that a clear, direct, substantial evidence of fraud has been committed and that mere finding is not enough.

The commissioner of Internal Revenue may or may not agree with that finding. If this commissioner agrees with that finding, it is still subject to review by the Secretary of Finance. If the taxpayer wants to question the finding, assuming that the Secretary of Finance will sustain the commissioner, that taxpayer can go to court.

Workers who are subject to withholding tax, ordinary middle-class taxpayers would not be affected by this. I think the Bureau of Internal Revenue will not waste its time dealing with people who are deemed to have faithfully discharged their tax obligation to the government.

The Bureau of Internal Revenue will probably audit the return of suspected evaders because we cannot deny the fact that there are people like those in our society. That is the purpose of the minimum corporate income tax; that is the purpose of this law.

Our law-abiding citizens, Mr. President, need not worry about this. Even the banks should not worry about this. I think

they themselves know that they should not worry about this, only that they want to preserve this haven because it is convenient for them. It is to their interest that this must be maintained.

I think we have to reexamine this policy in order to help our government, help the nation, and at the same time, correct the unfairness of people who are habitually evading their taxes to the detriment of other taxpayers.

Senator Romulo. The second instance is when the taxpayer requests for a compromise on the basis of his inability to pay. In other words, he has been dunned a certain amount where he can avail of a compromise, but he says, "I cannot pay because I do not have funds." That is the second instance where the BIR commissioner may go into the bankbooks of the individual. Is that not correct?

Senator Enrile. That is correct, Mr. President.

Senator Romulo. What should be the objection to this, if any?

Senator Enrile. I see no objection, Mr. President. If the fellow says, "I cannot pay because I have no more money to pay it," he should agree and allow the commissioner to check the veracity of his claim as well as his bank accounts.

Senator Romulo. And the very purpose of the checking of the bank account is for the commissioner to ascertain for himself and the government that he cannot really pay because he has no funds.

Senator Enrile. That he is really unable to pay.

Senator Romulo. Therefore, the government should not be deprived of the required revenue simply because a taxpayer, after a compromise, refuses to pay on the ground that he has no more funds but in fact, he has substantial funds in the bank. So that upon review and check, if the taxpayer is found to be making a false claim, then he should be made to pay for the compromise.

What is the penalty if it is found that he is telling a lie when, in fact, he has funds in the bank, and in addition, the government will be able to collect the required taxes?

Senator Enrile. I suppose he will be subject to the ordinary penalties for perjuring himself because the tax return is a sworn document.

Senator Romulo. But are there no provisions in the comprehensive tax reform package for penalty?

Senator Enrile. There are provisions, Mr. President. There is a general provision on criminal liability for violating the provisions of the Internal Revenue Code.

Senator Romulo. I will just look into that, Mr. President.

The third instance is when it is necessary to determine the amount of the remaining estate of a deceased taxpayer. How does this work, Mr. President?

Senator Enrile. The administrator of the estate or the executor of the will will file a return and an inventory of the assets—how much money in the bank, how much in real estate, listing the lands and the buildings, how much in shares of stocks and so forth and so on. Then in that case, the commissioner can look into the bank deposits so that he will know whether the total amount of the deposits is fully reflected in the inventory filed by the administrator or an executor.

Senator Romulo. There is also a possibility that if there is no deposit included in the estate of the deceased taxpayer, the BIR commissioner may, in fact, look to ascertain whether he has any deposit or not, under the provisions of law. Is that not correct?

Senator Enrile. Normally, if there is no bank account stated in the inventory, I suppose the commissioner will have no starting point.

Senator Romulo. Except under the fourth instance, if there is fraud.

Senator Enrile. Yes, under the fourth instance.

Senator Romulo. I see. Mr. President, what other jurisdictions or countries have similar bank secrecy laws? I think the distinguished gentleman mentioned Singapore. In the United States, does it have a similar provision? What is the history of this provision, if any, in the United States, in England, in Japan or in other European countries?

Senator Enrile. Mr. President, I think we are a few of the countries where secrecy of bank deposits is currently maintained. In the United States, they do not have this. They do not have it in Southeast Asia, like in Singapore and Malaysia. I doubt if they have it in Indonesia or in Thailand. Even in Switzerland where this concept originated, they allow examination of bank accounts in cases of taxation and tax frauds.

There are countries—just give me a few minutes to go over my records, Mr. President—that have indicated that they do not require any secrecy in their bank deposits. I have it here somewhere. I will just go over my records.

Mr. President, there are countries where banks are required to supply information on clients' annual earned interest income and other operations subject to withholding to tax authorities or other agencies. This is true in the case of Argentina, Australia, Belgium, Canada, Chile, France, Germany, Italy, Japan, Netherlands, Peru, the Russian Federation, Spain, Switzerland, the United Kingdom, and the United States.

There are countries where banks are required to supply information on any client if relevant for tax collection. For instance, the following: Argentina, Australia, Belgium, Brazil, Canada, Chile, France, Germany, Italy, Japan, Netherlands, Peru, the Russian Federation, Spain, Ukraine, the United Kingdom, and the United States.

Senator Romulo. In fact, Mr. President, the list and enumeration cover practically the entire free world. So that if these countries deemed it only fair to protect themselves and to protect the interests of their government, which is, after all, to protect the interest of the people to adopt these laws, then the question is: Why not for the Philippines?

In fact, there have been so many studies that it is not a question of more tax laws that we need but it is a question of tax enforcement and tax collection that we need. In fact, if we can just collect the taxes that are due, both corporate and individual, we can scrap some of the other taxes, and perhaps, we can even give a higher tax exemption to individuals as is being proposed.

But before that, we must first collect taxes, and our distinguished sponsor is saying that he feels this particular provision empowering the BIR commissioner with all the legal and safety nets, so to speak, would provide that ability of the government to enforce the tax laws and therefore, collect a substantial amount of taxes. Is that correct, Mr. President?

Senator Enrile. That is correct, Mr. President. The gentleman is totally correct in that.

Senator Romulo. In fact, Mr. President, looking at the instances enumerated in this Comprehensive Tax Reform Bill, the only possible area where there is objection certainly, we are not going to ask the approval of the drug lord or the *jueteng* king or the kidnap lord. Because in the first three instances, more or less, it is with the consent of the taxpayer.

But in the fourth instance, this is where we do not have the consent of the taxpayer. Perhaps, Mr. President, the word "taxpayer" here is incorrect because they are not paying taxes at all. They are really criminals and they are criminals who should be stamped out. Certainly, they should not use our laws to make a farce or a comedy of all our tax laws by hiding under

the fourth instance, if this will not be passed. Is that not correct?

Senator Enrile. That is correct, Mr. President. But it is also possible that even a drug lord could possibly file a tax return, especially if he has a business such as manufacturing hollow blocks. In which case, he has to file a tax return to reflect his income there. But if it could be found that he has other more lucrative businesses which he has not really reflected in his tax return, the BIR could possibly go into his bank accounts.

Senator Romulo. Mr. President, may I just state...

The President. With the permission of the...

Senator Romulo. ...one more sentence. And in the case now adverted to by the distinguished sponsor, the RICO Law or the Anti-Racketeering Law would come in because here, we are just talking of the Comprehensive Tax Reform Program.

Senator Enrile. That is correct, Mr. President.

Senator Romulo. Because one can launder funds not only through the bank, but one can launder funds through businesses, then probably that is covered by another proposed law. Is that not correct?

Senator Enrile. That is correct, Mr. President. But eventually, in laundering one's funds, it will end up in a bank because one cannot keep it in a vault as it would be too much to keep in one's house.

Senator Romulo. Mr. President.

The President. Yes, may the Chair just ask one question.

The proposed Section No. 4, where we require that a taxpayer whose return has been audited, is quite clear. The bigger problem is most of these drug lords and even legitimate businessmen do not even file income tax returns.

So how will we cover that? How will the BIR now look into reports that a certain Juan dela Cruz who is a drug lord has substantial bank deposits?

Senator Enrile. Mr. President, that is one problem. But I thought that with this provision, difficult to enforce as it is because of the limitations, at least the Bureau of Internal Revenue will be aided if we will pass this measure.

The President. We accept that, but if I were the lawyer of the drug lords, I will tell all of them now, "You do not want your bank accounts to be looked into, do not file a tax return."

Senator Enrile. Sooner or later, Mr. President, the government will catch up with them. The assumption is that in the course of an audit of a tax return, the bureau has discovered a fraud against the revenue of the government.

The President. What I am suggesting is that the distinguished sponsor might even consider a fifth section that somebody who is indicating enormous wealth and who, according to the records, has not filed a tax return for the last five years or so...

Senator Enrile. I have no problem with that. I will accept that, Mr. President, if that is a proposal.

The President. No, I would like the staff to look into that because that is the loophole here. Most of these people do not file tax returns so there is no tax return to be audited.

Senator Enrile. I am not quite sure whether they will not file a return but I am ready to consider a fifth situation if there is a proposal to that effect.

The President. I am just suggesting that maybe the technical staff can draft something along that line.

Please continue, gentleman from Tarlac.

Senator Romulo. Yes. Mr. President, I think the Chair has opened up one loophole that should possibly be plugged. I would say, perhaps, that most of these druglords, *jueteng* kings and kidnappers would like to legitimize their business. Therefore, in one form or another, they would file their income tax. In filing their income tax, all of these become available to the Bureau of Internal Revenue.

In fact, in answer to my question about other forms of laundering, our distinguished sponsor precisely said that whether it is a hollow-block plant somewhere or whatever, eventually, he will have to make deposits in the bank. In that case, under this fourth item, he will be caught.

I see the point brought up by the Senate President. We should really focus our attention on how to get hold of the enormous wealth and criminal activities of the syndicates. We should look into that fifth possibility so that all avenues are closed. And in passing this law, we certainly can tell the nation that we are doing a great service to the people.

It is on that score that we commend the distinguished sponsor, Senator Enrile, for standing pat on this bill.

Mr. President, I have other questions, but may I be allowed to make a reservation either this afternoon or tomorrow.

Thank you, Mr. President.

The President. The Majority Leader is recognized.

Senator Tatad. Mr. President, may I ask that the distinguished lady senator from Pangasinan be recognized.

The President. The other presidentialable from Pangasinan is recognized.

Senator Shahani. Thank you, Mr. President. I wonder whether the distinguished chairman of the Committee on Ways and Means would entertain some questions from this representation.

Senator Enrile. Gladly, Mr. President, to the distinguished lady senator who might perhaps be the one who will implement this law.

Senator Shahani. I thank the sponsor for his optimism, Mr. President.

Mr. President, in the committee report on this very important bill, the committee, in its deliberations, also took into account a bill which this representation has submitted, and this is the bill, entitled

AN ACT EXEMPTING JEWELRIES FROM THE IMPOSITION OF EXCISE TAX, AMENDING FOR THE PURPOSE SECTION ONE HUNDRED FIFTY (150) OF PRESIDENTIAL DECREE NUMBERED 1158.

May I know, Mr. President, whether this bill, in fact, was taken into account during the deliberations of this tax reform bill?

Senator Enrile. We have listed, Mr. President, all the bills that we have taken into account. I am not sure if we have considered that proposal in this bill.

I understand from the staff of the committee, Mr. President, that that bill was taken into account. This is on Senate Bill No. 1661, introduced by the lady senator from Pangasinan, entitled

AN ACT EXEMPTING JEWELRIES FROM THE IMPOSITION OF EXCISE TAX, AMENDING FOR THE PURPOSE SECTION ONE HUNDRED FIFTY (150) OF PRESIDENTIAL DECREE NUMBERED 1158, AS AMENDED, OTHERWISE KNOWN AS

THE NATIONAL INTERNAL REVENUE CODE OF THE PHILIPPINES.

Mr. President, we have taken this into account in preparing this committee report.

But I would like to put on record my personal position on this. I am in favor of exempting the jewelry industry from internal revenue taxes as far as their exports are concerned. But I cannot find any equitable justification in taxing medicine, taxing food, taxing essentials and exempting luxuries like jewelry from taxation.

Senator Shahani. Mr. President, this present bill does not contain any provision relative to the excise tax on jewelry. Does that mean, therefore, that this bill has no status as far as this Chamber is concerned? I am asking this because the counterpart bill in the House has been approved on Third Reading as a separate bill, separate from the Comprehensive Tax Reform Bill, Mr. President.

Senator Enrile. It simply means, Mr. President, that the committee has taken into account this Senate bill mentioned, Senate Bill No. 1661, but that the committee did not find it compelling to recommend an amendment of the existing law imposing a tax on jewelry.

Senator Shahani. So, Mr. President, if the counterpart bill from the House is referred to the Senate, may we know the status then of that bill?

Senator Enrile. We will recommend an adverse position with respect to internal sales of the jewelry industry in the light of the recommendation that we have made in this particular measure.

Senator Shahani. I hope, Mr. President, that the Committee on Ways and Means will still be able to look into the jewelry business as a separate item because we believe that this is one of the industries which would generate income. And since the distinguished chairman has said that it could be looked at as the exemptions which should apply to the export dimension of the industry, I believe that all is not lost.

I think that after this bill is discussed before us, that might be the time for the Senate committee to look anew at that bill with the counterpart bill from the House coming up.

Senator Enrile. Mr. President, we are on record that we are ready to recommend the removal of tax burdens on the jewelry industry as far as their export sales are concerned. But, as far as their internal domestic sales are concerned, we are not

ready to give a favorable recommendation because of the basic position taken by this humble representation—that I cannot find any rationale, equitable argument and justification in exempting a nonessential item from taxation where, on the other hand, government taxes the food items of our poor citizens.

Senator Shahani. Mr. President, I think that is precisely where the disagreement lies. We have talked to the jewelry business people. They believe, and I think this representation would support them, that the jewelry industry could be a major income-producing industry. And I think it is also the Department of Trade which has been pushing for it. But at the moment, it does need some breathing spell so that it can develop itself into a profitable business.

Considering that other countries like Thailand, for instance, have already reached the saturation point of the profitability of the jewelry business, I think it should be looked at as one of those industries which should now be given some support in order that it can grow into a more viable industry than what it is at present.

Senator Enrile. Mr. President, as I said, we have taken a position with respect to the internal sales of the jewelry industry. If we follow the logic of that argument further, then we must now equally exempt from internal revenue taxation the domestic sales of many industries in the country, in which case, we will be ruining the revenue of the government.

Senator Shahani. Mr. President, I hope that after the approval of this bill, and with the referral of the House bill to us, this issue will still be looked at with fresh eyes at a future date.

Mr. President, my other question refers to Section 7 of the committee report which provides for a new Section 4 of the National Internal Revenue Code. It embodies the powers of the BIR commissioner, and these powers are two-pronged: to interpret tax laws; and to decide tax cases.

This section, Mr. President, gives the power to interpret tax laws exclusively to the tax commissioner subject to the review of the Secretary of Justice.

Is it not true, Mr. President, that the power to assess tax liability is also lodged with the commissioner himself or herself?

Senator Enrile. The power to review is lodged on the Secretary of Finance, Mr. President, not the Secretary of Justice. And precisely, taxation, being a technical area of the law, we feel that the interpretation of our internal revenue laws ought to be within the primary, exclusive and original competence of the commissioner of the Internal Revenue. That is

the purpose of his or her being subject to the power of review of the department head.

Again, this does not derogate the right of the taxpayer to question the ruling in the proper court. Because we cannot foreclose the right of any taxpayer to question any ruling in the courts. The courts are open to any aggrieved party. But we want to avoid the spectacle which is now current where the ruling of our Internal Revenue commissioner could be overturned by the Customs commissioner; let alone any internal revenue provision being interpreted by the Secretary of Justice.

I think the interpretation of tax laws ought to have some fixity and that it should be lodged in the very agency of the government that was designed and intended to implement tax laws.

Senator Shahani. But, Mr. President, it is the commissioner of the Internal Revenue who makes the tax assessments. So if there is a dispute about his own assessment, is that not corrupting the impartiality of his or her office?

Senator Enrile. No, Mr. President. These disputed assessments would be subject to review by the Courts of Tax Appeals. That is within the original jurisdiction of the Court of Tax Appeals. And appeal from the decision of the Court of Tax Appeals will go directly to the Supreme Court.

Senator Shahani. I would like to thank the chairman of our committee for that clarifications, Mr. President. And as said, I would like to reserve my right to interpellate on this important issue. Thank you.

Senator Tatad. Mr. President.

The President. The Majority Leader is recognized.

SUSPENSION OF CONSIDERATION OF H. NO. 9077

Senator Tatad. I move to suspend consideration of House Bill No. 9077.

The President. Is there any objection? [*Silence*] There being none, the motion is approved.

BILL ON SECOND READING

S. No. 1780 — Defining the Rights and Liabilities of Parties in the Electronic Fund Transfer

Senator Tatad. Mr. President, I move that we consider Senate Bill No. 1780 as reported out by the Committee on Banks and Financial Institutions.

SUSPENSION OF SESSION

The President. The session is suspended, if there is no objection. *[There was none.]*

It was 5:32 p.m.

RESUMPTION OF SESSION

At 5:33 p.m., the session was resumed.

The President. The session is resumed.

Senator Roco. Mr. President.

The President. The gentleman from Camarines Sur, Senator Roco, is recognized.

REQUEST OF SENATOR ROCO

(To have the CTRP bill printed in full context)

Senator Roco. Mr. President, I am sorry to preempt the Majority Leader, but just to formalize, just to remind the Majority Leader of the suggestion we made in a caucus that there should be an appropriate motion so that when we discuss the CTRP, we are then looking at it in total context. There will be easier reference at least, for me and I am sure many of our colleagues will share it.

The President. The request of the distinguished gentleman from Camarines Sur will be complied with as usual.

Senator Roco. Thank you, Mr. President.

BILL ON SECOND READING

H. No. 9077 - Tax Reform Act of 1997
(Continuation)

Senator Tatad. Mr. President, I move that we resume consideration of House Bill No. 9077 under Committee Report No. 454.

The President. Resumption of consideration of House Bill No. 9077 is now in order.

Senator Tatad. We are still in the period of interpellations, Mr. President. I ask that the distinguished sponsor resume his position, and to resume her interpellation, I ask that the distinguished lady Senator from Iloilo be recognized.

The President. The distinguished gentleman from Cagayan, Senator Enrile, and the distinguished Senator from Iloilo, Senator Santiago, are recognized.

Senator Santiago. Mr. President, this is the third and final stage of my interpellation, and I will impose once more on the indulgence of the distinguished sponsor to inquire whether he is willing to yield the floor to me so that I can finish my line of questioning.

Senator Enrile. Mr. President, I am ready to be interpellated by my goddaughter, and who knows, she might be the one to enforce this law.

Senator Santiago. Thank you very much.

Senator Enrile. She would need the revenue that we will raise out of this measure.

Senator Santiago. Thank you very much.

I refer to Section 83. Please allow me the kindness of explaining extensively.

Senator Enrile. On what page?

Senator Santiago. That should be on pages 124 to 125, on the Estate Tax.

Senator Enrile. We are ready, Mr. President.

Senator Santiago. Thank you, Mr. President. I will seek permission to make an extensive introduction of the point that I will raise.

Mr. President, I submit that the proposal to reduce the tax rate on estate tax should be sufficiently justified because otherwise, some might view it as manifestly favoring the moneyed class who have substantial wealth to pass on to their heirs at the time of their death. Property passing as an inheritance is properly the subject of taxation because estate taxes are direct taxes not on those who are poor but on those who are rich and who have manifest means to pay for taxes.

On the one hand, the Tax Code provisions imposing estate tax implement the policy in the Constitution for Congress to observe the rule of equity in taxation and to adopt a progressive system of taxation. But on the other hand, the declared intention of the proposed amendment is: "To unlock assets for investment purposes and to increase capital formation."

In response to this declared intention of the proposed amendment, I would like permission to quote from Carnegie who said:

By taxing estates heavily at death, the State marks

its condemnation of the selfish millionaire's unworthy life nor need it be feared that this policy would sap the root of enterprise and render men less anxious to accumulate. For to the class whose ambition is to leave great fortunes and be talked about after their death, it will attract even more attention and indeed be a somewhat nobler ambition to have enormous sums paid over to the State from their fortunes.

The proposed amendment apparently violates the policy of the State enshrined in the Constitution to promote the equitable distribution of wealth. What this amendment seeks to achieve, as admitted by the committee, is to unlock assets for investment and to increase capital formation. But I am worried that this provision might result in the perpetration of the rich and the accumulation of wealth in the hands of a few. The ordinary Filipino, without enough to live by from day-to-day, much less to leave behind when he dies, is not in any way benefited by the reduction of estate tax rates.

My question is: What compelling necessity would justify that the Tax Code should give more in law to those who already have more in life?

In other words, may we not reconsider this proposal to reduce the estate tax rates?

Senator Enrile. Mr. President, before I answer the question of the distinguished lady Senator from Iloilo, may I point out that the rich are already taxed on the gross. Under the present proposal, they will be taxed at 30 percent on the gross, except P250,000 of their income now, and most of the wealth accumulated at the end of the life of a person is usually the product of savings which have already been taxed through income taxation. The only untaxed portion would be the incremental values of assets that have appreciated in value over time.

On the other hand, the income of government from this source has been affected precisely by the high rates on this type of taxation.

For instance, in 1990, in the figures available to us, the government raised P180 million out of estate tax and P28.89 million out of donor's tax.

In 1991, the government raised P146.28 million in estate tax and P25.93 million in donor's tax.

In 1992, the government raised again P180,540,000 in estate tax and P59,210,000 in donor's tax.

In 1993, the government lost again and it raised only

P143,590,000 in estate tax and P79,590,000 in donor's tax.

In 1994, the government realized a revenue of P215,610,000 in estate tax and P93,260,000 in donor's tax.

And in 1995, the government raised P287 million out of estate tax and P130 million in donor's tax.

From these figures, it would show that the government is not really raising enough revenues out of this because of the incidence of taxation.

I understand there are so many estates which are still pending liquidation and disposition because of this tax problem.

So this representation felt that, perhaps, one way to deal with the problem is to lower the tax so that we can expedite the termination of all of these estate proceedings. The funds could go to the heirs, and they could use them for capital formation or investments, and thereby make these funds useful tools for our economic development.

Senator Santiago. Thank you. Mr. President.

I will now proceed to Section 98. I believe it is found on pages 128 to 129. This is the provision of tax rates on donations.

On the same ground that I questioned the reduction of estate tax rates, I would like to request an explanation. Why is there a need to further reduce the tax rate on donations to persons other than strangers?

On the other hand, my more important question really is: Why should the donor's tax on donations to strangers be penalized by a higher tax rate of 30 percent up from the present rate of 10 percent?

I am proceeding on the assumption that a stranger is defined as any person other than a brother, sister, spouse, ancestor, lineal descendant or relative by consanguinity in the collateral line within the fourth degree of relationship.

In proposing an amendment such as this, are we not actively promoting or advocating the preservation of wealth in the hands of the rich, and discouraging, if not condemning, distribution of wealth to those who have less?

What makes a donation to a poor man on the street so undesirable or objectionable as to justify its being subject to tax at 30 percent as compared to a maximum 50 percent, if the donation was made to one's own daughter?

Senator Enrile. Mr. President, for the same reasons that

I have mentioned in the case of estate tax, we are proposing a reduction precisely to increase the income of government, apart from the fact that this is intended to encourage parents or ascendants who have the means to now donate some of their assets to their descendants in order that these young bulls or young tigers could use them to increase the pace of economic activity in the country.

This is not really intended to perpetuate the economic power of the rich. Because history shows that families grow, and in time, the wealth of the family is dissipated because of its divisions into different groupings.

While it is attractive to say that we are favoring the rich, I would like to disabuse the mind of those who are taking this position that the economic wealth and the economic strength of a nation lies in the hands of those who are frugal enough to sacrifice themselves over time in order to accumulate wealth and create job opportunities for so many people. Without these people who have risked their savings, time and effort, there would be no vibrant economic movement in our society. If we believe in market economy, we should not denigrate the efforts of these people.

In the case of this seeming discrimination against strangers, in the case of donor's tax, this is intended to protect the family from the possibility that the donor might dissipate the assets of the family by giving it to girlfriends or whatnot. This is the purpose of it. Giving a gift to destitute people is covered by another provision. That is charitable donation which is allowed.

Senator Santiago. I am enlightened, Mr. President.

I would now like to proceed to Section 150 on page 146, the excise tax on vehicles. I am actually raising a point of information which I wish to enter into the *Record* for clarification by those who will implement the Code.

In determining whether excise tax is due on vehicles owned by residents of free port zones, is it sufficient that the vehicle is used outside the zone for more than an aggregate of 14 days in any single month? Should the use of the vehicle outside of the zone in excess of 14 days required to be for consecutive months?

When the 14-day test is met, when is the owner required to pay for the excise tax? What is considered "use outside of the zone"? Does 14 days of use outside the zone mean 24 hours each or does it simply mean taking the car outside of the zone, regardless of the duration one is outside the zone, sufficient to qualify it as use outside the zone for a day?

Senator Enrile. The free port zone like that of Subic,

Cagayan and Zamboanga have a well-defined territorial metes and bounds. And once the car is brought outside of the perimeter of that zone, then that is already bringing the article or car within the custom's territory of the Philippines. The theory being that while the article remains within the free port zone, it is not subject to any custom's internal revenue taxes of the government or the Republic because the port is a free port.

Meaning, it is not a part of the custom's territory of the Republic and so, therefore, the goods that are found within the zone are deemed tax-free or duty-free.

We felt that a 14-day average period of use outside the zone is a reasonable period. I understand this is being worked out, in fact, by a memorandum of agreement among the agencies of the government to serve precisely the purpose. But we felt that it is time to put this in our law so that the tax administrators would not be quarreling among themselves because of this. And we have a legislative guideline to govern this.

As far as the details of enforcing this measure are concerned, this will have to be done through rules and regulations to be promulgated by the Secretary of Finance, with the recommendation of the Commissioner of Internal Revenue and the Bureau of Customs.

Senator Santiago. So these questions will be addressed to by the implementing rules and regulations?

Senator Enrile. That is correct, Mr. President.

Senator Santiago. Thank you, Mr. President.

I will proceed to Section 201, on pages 154 to 156. That concerns a documentary stamp tax or DST: DST is required to be paid within 10 days from the close of the month when the document subject to DST was executed. DST may be paid either by filing a return or by purchasing stamps or through the use of a metering machine. The BIR will not be able to enforce the payment of DST within the period prescribed if there is an option to comply with the DST requirement by simply purchasing stamps regardless of the amount involved.

I say this because stamps are undated and can be purchased any time without the date being monitored. Anyone who therefore fails to pay on time may simply buy the corresponding value of stamps.

To avoid the circumvention of the requirement to pay the DST within 10 days from the end of the month, I humbly propose that the alternative of resorting to the use of stamps should be limited to instances where the DST payable is not more than P100.

I propose that DST payment in excess of P100 should be made by filing the required return. Otherwise, I will raise the question: Are we not countenancing a loophole in the law?

Senator Enrile. Mr. President, I would like to thank the distinguished lady Senator for calling attention to this. We are amenable to a possible revision of this proposal during the period of individual amendments.

Senator Santiago. Thank you, Mr. President.

I will now go to Section 233 (C), page 170.

In my capacity as the former Immigration Commissioner, may I please propose, if acceptable, that the paragraph should clearly state that in the case of foreigners, conviction under the Code shall constitute a ground for deportation after the sentence has been served.

Senator Enrile. We will favorably consider that proposal, Mr. President. That is a very sound and good proposal.

Senator Santiago. Thank you. Mr. President.

On Section 237, page 178, considering that the personality of the estate is only for a limited duration, what is the purpose sought to be served by requiring the estate to still register and obtain a tax identification number?

Senator Enrile. Mr. President, there are many estates that have lasted for a decade. They are still being administered by the administrator or the executor of the will of the testator and unliquidated, precisely because of the problem of the heirs in discharging the tax obligation to the government.

This is a common problem not only amongst the rich members of the society but even among the people in the farming communities. Their land assets, for instance, have become valuable. They have to cut up the property and sell a portion of it to discharge their obligation, and this is the one that is causing the delay. That is why we require the registration of these estates and for them to get their tax identification number.

Senator Santiago. Finally, my last question concerns Section 283 on the informer's reward.

My question is: Why should an informer's reward be given a cap? Would it not be fairer for the informer to receive a fixed percentage of the amount actually recovered?

Senator Enrile. Mr. President, according to the experience of the Department of Finance and the Bureau of Internal

Revenue, this provision has been the source of corruption and that is the reason a ceiling has been placed. Sometimes even those in government, if they discover something, they would pass this on to somebody friendly to them, and who will be tagged as an informer when they get the reward and split it among themselves.

Senator Santiago. I concur with that observation. I simply elicit it for the *Record*. The distinguished sponsor has been very kind and patient with my questions.

Thank you very much, Mr. President.

Senator Enrile. I would also like to thank the lady Senator.

Senator Tatad. Mr. President.

The President. The Majority Leader is recognized.

Senator Tatad. Mr. President, for the next interpellation, I ask that the distinguished gentleman from Aurora, Quezon and Pampanga, Senator Angara, be recognized.

The President. The gentleman from Aurora, Quezon and Pampanga, Senator Angara, is recognized.

Senator Angara. Thank you, Mr. President.

It is quite awesome to be able to ask and interpellate one who is possibly the best tax lawyer and practitioner in this country, who knows the tax law from end to end. I am a little hesitant and, in fact, apprehensive about my questions to him. For the sake of clarifying some concepts, I would interpellate the gentleman.

The President. And one of the inspirations of the founding of the Angara Law Office.

Senator Angara. That is correct, Mr. President.

Senator Enrile. Mr. President, I would like to state for the record that I value these questions being raised because I would also like to get some kind of an education. I was unable to foresee many of these problems. It is good that we scrutinize this measure very carefully because this is something that will affect the life of our Republic.

I would like to say here that, perhaps, God willing, the Senator from Aurora will be using this measure if he becomes the President of the Republic. That is why I am very careful in dealing with this measure and in crafting it, so that there will be money in the coffers of the Republic when he will take his oath of office on June 30, 1998.

The President. For the record, let it also be reminded that the gentleman from Aurora and the Senate President were once mere assistants of the Chairman of the Ways and Means Committee in the law offices of Perkins and Ponce Enrile.

Senator Enrile. But they were brilliant assistants, that is why they are now Senate Presidents.

The President. Because we have a brilliant professor.

Senator Angara. And a brilliant tutor. Thank you very much, Mr. President, for that very kind remark.

Let me begin with something more difficult to understand and that is the proposed "grossing up" of fringe benefit provided under Section 34.

In the first place, Mr. President, what is meant by "grossing up"? I have some difficulty understanding what it means.

Senator Enrile. That is on what page?

Senator Angara. On page 63, Mr. President.

Senator Enrile. Mr. President, I will do it by example.

If A, an executive of X corporation, gets a monthly pay of P50,000 in cash, plus a housing which would require him to pay a rental of P35,000, had that rental been given in cash, A would not net P35,000. There will be a tax incidence which is at the level of 30 percent, because that is the highest rate that we are proposing. Therefore, he would be netting 70 percent of an X amount.

How do we arrive at that X amount which is unknown? We divide P35,000 by a factor which is .7, and we will come up with P50,000. That is the gross up value of the fringe benefit, had it been given to A in cash. In order to equalize A from B who gets the same privilege but in cash, we say now that the gross up rental value minus P35,000 ought to represent the amount that should have otherwise been withheld by the employer had this portion of the compensation been given in cash.

Senator Angara. What is the rationale for using .7 or 70 percent as a divisor?

Senator Enrile. One hundred percent minus 30 percent is equal to 70 percent. So we use 70 percent as a factor. We assume that this compensation would be taxed at the highest level of 30 percent.

Senator Angara. That is what I am trying to figure out, Mr. President. Would it not just be simpler if the cash value of the

fringe benefit is taxed as it is without having to gross it up?

Senator Enrile. No, Mr. President. We cannot withhold anything from the employee because he is consuming that portion of his compensation.

Senator Angara. So, this tax is a tax on the employee rather than the employer?

Senator Enrile. It is, in effect, a tax on the employee. That is why if we will look at the other side of the coin, we are allowing the employer to deduct not only the rental value of the lodging granted to the employee but also the portion of the gross up value of that lodging which represents the tax that had to be paid by the employer to the government.

Senator Angara. But how do we determine, Mr. President, whether a fringe benefit is taxable or not? Are we going to use the formula here that it is an extra benefit that... What is the criterion now for judging whether a fringe benefit is taxable or not?

Senator Enrile. For instance, if A, in my example, is a doctor employed by a hospital and he is required to stay in a furnished room in the hospital because he has to be on call all the time, that is for the convenience of his employer, not for himself.

Senator Angara. That is not taxable.

Senator Enrile. But if he is going to be allowed a home in Forbes Park as part of his compensation as a doctor in that hospital, then that is indeed a part of the compensation package given to him.

Senator Angara. What about a car assigned to that doctor, Mr. President? Could it be a fringe benefit and under what criterion?

Senator Enrile. If the car is, let us say, an ambulance, of course, it is very obvious that it should not be taxed. If it is a car that is at his disposal and related to the business of the hospital, then in that case, that is really a part of his compensation.

Senator Angara. That is exactly my point, Mr. President. That in each and every instance, the examiner will have to use his discretion whether it is used as part of the business or trade, or whether it is for the benefit of the employer.

Senator Enrile. This will be covered by regulations of the Department of Finance. In fact, there are now regulations existing in the Department of Finance but, I think, it will be too cumbersome to have all of those regulations embodied in this Tax Code.

Senator Angara. But I understand, Mr. President, that this tax reform is for simplification. I understand, too, from some papers given to me by some BIR people that this system of grossing up is an Australian system and, really, the main purpose is to simplify the tax. But it seems to me that we are not simplifying the tax here. In fact, to an ordinary taxpayer, it is a very complicated process and also introduces a lot of judgment and discretion into whether it is related to trade or business, or whether or not it is convenient for the employer.

So, we are not, in that sense, trying to simplify. We are, in fact, expanding the ...

Senator Enrile. Actually, it is very simple to apply this. Of course, in every tax situation, there is a judgmental process, whether the item of expense is a part of compensation or not. All the time this process goes on.

For the tax experts of the employer, they will understand this, but we cannot define this in the law itself because we cannot cover all possible situations.

We would welcome any formulation that will make it simpler. But I think this is the simplest that our brains could visualize.

Senator Angara. Mr. President, according to this paper that was given to me, in Australia the tax liability is on the employer rather than on the employee.

Senator Enrile. No, he is in effect paying the tax for giving that fringe benefit because to him, had the employer paid cash to the employee to be able to enjoy that lodging with a rental value of P35,000 per month, the employer would have shouldered a magnitude bigger than P35,000 which is the grossed-up amount that we are discussing here. To him that is the value of that portion of the compensation package of the employee.

Now, to be fair to the employer, however, we say, "Okay, we require you to shoulder this portion which otherwise would have been paid to the government if the fringe benefits were all in cash but you can deduct the full amount from your gross income as if these fringe benefits were paid in cash."

Senator Angara. Yes, Mr. President. Let me move to my next point, and that is the lifting of the preferential tax treatment of FCDUs as well as OBUs.

Would this not cause some drastic consequences on offshore as well as foreign currency deposits which I understand today are the prime sources of our current account spending? Many of our exporters depend on this FCDUs and OBUs for their foreign exchange needs, and if we remove the preferential tax treatment

that we have been enjoying all these years, are we not going to drive away the foreign currency deposits and OBUs from our shore?

Senator Enrile. Mr. President, money goes to a place where it can make profit. Whether we have the tax on FCDUs or OBUs, if depositors can make a margin that is favorable to them, they will be here. Business makes profit because it assumes risk.

I do not subscribe to the theory that these people will run away. In fact, they are saying that because of the announcement we made, on this FCDUs, deposits are flying away from the country. But if we look at the figures, out of a total of P17 billion or so, only a little over P200 million left the country. But, I think, this P200 million left the country to pay for obligations in order to stave off a potential increase in the peso equivalent of the foreign currency obligation, and not because of the effort to tax FCDUs. That is one.

Two, we are not discussing here a problem of competition between pesos and dollars or deutschmark or francs. We are talking here of equity in taxation. These are the more affluent members of the taxable community and yet, they get away with their tax burden. Another thing that I cannot take is, as a member of this Senate and as a member of the community, that we should tax depositors of our own currency in banks and we exclude from taxation depositors of foreign currencies. We are insulting our own currency.

Senator Angara. Mr. President, I can accept all the reasons given by the sponsor. But this repeal of the exemption to me is a very strong signal that we are changing policies in the middle of the stream. We attracted these FCDUs as well as OBUs on the promise that their income will be subject to special tax or in some cases, the offshore income of FCDUs will be exempt from any taxation. Now we are saying "No, we do not need you anymore."

Unfortunately, based on our representation in the past, they came here and they have transacted business, they have helped exporters and other Filipinos needing foreign exchange, and now we are saying "No more."

Is it not a very drastic message we send to the financial market of the world?

Senator Enrile. Mr. President, it is good that this point was raised by the distinguished gentleman from Aurora.

I would like to put into the *Record* that the exemption of FCDUs from paying income tax in the Philippines as well as the secrecy of their bank deposits was introduced in 1977, on

November 21, 1977, under Presidential Decree No. 1246 by the then President Ferdinand E. Marcos. I would like to remind the nation and this Chamber that they have been enjoying this tax concession since then.

But what have they done at a time when we were in crisis? In 1983, 1984, 1985, 1986 all the way to 1990, they all flew away. They left the country. So it is not really a question of taxation that is involved here. It is a question of whether the economy is stable enough, strong enough to lessen the risk. They will withdraw from this country even if we give them all these tax concessions and the secrecy for as long as they feel that they are going to risk their capital because of the economic weakness of the country—not because we are taxing them. They will remain here as other foreign businessmen and Filipino businessmen will remain in business even if we tax them if they can make money.

At this juncture, the Senate President relinquished the Chair to Senator Flavio.

I get tired of hearing these people arguing—I am not referring to the distinguished gentleman but people who are deluding us, thinking that we are stupid; telling us that capital will fly away from this country. Why do we not try and find out if indeed these people will leave?

Senator Angara. Is the senator referring to the Central Bank Governor?...

Senator Enrile. No, I am not referring to anybody but anyone who is taking that position.

Senator Angara. Let us test that theory, Mr. President. As the gentleman very well said, money is fungible; it will move to any place where it can make more. Obviously, the FCDUs and OBUs are operating in this country since 1976 as the gentleman said.

Senator Enrile. It was in 1977, Mr. President.

Senator Angara. Because of the special fiscal incentives that the government gives, now if we withdraw it, then there is no more reason or there is very little reason for them to operate.

Senator Enrile. Mr. President, it might surprise the gentleman to find out that out of the X amount of FCDUs being deposited in our banking system, 81% belongs to Filipinos. They will never leave the country.

Senator Angara. Maybe that is the reason why Governor Singson said, "Then they will fly away."

Senator Enrile. Where will they go, Mr. President?

Senator Angara. They will go to Hong Kong or Singapore.

Senator Enrile. To Hong Kong? How much interest are they paying there? I would like to put that into the *Record*, Mr. President, so that we can pinpoint these things.

Senator Angara. Yes, I think it is better, Mr. President.

Senator Enrile. FCDU deposit liabilities in the country from July 25, 1977 to July 18, 1997 are as follows:

Bank of the Philippine Islands - US\$613,482,000

Citibank - US\$767,314,000

Asian Bank - US\$266,868,000

Allied Bank - US\$348,122,000

International Exchange - US\$282,950,000

Banco Santander - US\$161,075,000

Standard Chartered Bank - US\$61,083,000

PNB - P1,526,334,000

SolidBank - US\$353,556,000

ANZ Bank, Australian-New Zealand Bank - US\$9,454,000

Bank of Southeast Asia - US\$102,495,000

Banco de Oro - US\$350,651,000

Bank of Tokyo - US\$71,059,000

Urban Bank - US\$92,169,000

DaoHeng Bank - US\$37,612,000

Philippine Bank of Communications - US\$264,694,000

Philippine Banking Corporation - US\$272,133,000

DBS Bank - US\$1,465,000

Prudential Bank - US\$129,737,000

DBP - US\$10,255,000

Pilipinas Bank - US\$138,094,000

Westmont Bank - US\$108,073,000
 Philippine Veterans Bank - US\$2,032,000
 Export and Industrial Bank - US\$6,795,000
 Philippine Trust - US\$78,611,000
 TA Bank - None, 000
 Global Bank - US\$228,000
 PNB Republic - US\$6,507,000
 Chase Manhattan Bank - US\$51,715,000
 Fuji Bank - US\$35,578,000
 Bangkok Bank - US\$5,636,000
 ICBC - US\$13,267,000
 China Trust (Phils.) - US\$62,885,000
 Bank of Commerce - US\$75,704,000
 East-West Bank - US\$50,520,000
 Landbank - US\$373,735,000
 Korea Exchange - US\$17,685,000
 Traders Royal Bank - US\$52,111,000
 Deutsche Bank - US\$171,094,000
 China Bank - US\$541,443,000
 ING Bank - US\$30,140,000
 Security Bank - US\$449,789,000
 Bank of America - US\$62,981,000
 UCPB - US\$593,548,000
 Far East Bank - US\$1,253,741,000
 RCBC - US\$683,720,000
 Equitable Bank - US\$753,576,000
 Union Bank - US\$452,141,000
 PCIB - US\$1,777,002,000

Hong Kong & Shanghai Bank - US\$395,987,000

Metro Bank - US\$2,437,559,000

All told, the total is US\$16,404,405,000. The amount of money that went out of the country in the month of July up to date is US\$264,197,000.

Mr. President, we can see that the foreign banks have little amounts of FCDUs. The ones that have the FCDUs are the local banks.

Senator Angara. Am I correct in saying that the FCDUs and OBUs holdings is US\$16 billion?

Senator Enrile. It is US\$16.5 billion. According to the Central Bank, it is now US\$17 billion.

Senator Angara. As of when, Mr. President?

Senator Enrile. As of the time that they published that figure in the newspapers. I could not remember. I think last week.

Senator Angara. Mr. President, am I also correct in assuming that the bulk of our current account deficit is made up mostly of the FCDUs as well as the OBUs?

Senator Enrile. I am not aware of that, but the fact is, this amount is not even a part of our reserve.

Senator Angara. That is correct, Mr. President.

Senator Enrile. It is not part of our reserve; it is not part of the Central Bank dollar reserve.

Senator Angara. That is correct, Mr. President, and that provides the country flexibility because even exporters can open an FCDU and deposit their dollar earnings into it and get money to make imports of materials. So, it does not adversely affect the reserve.

Senator Enrile. We are not preventing them from doing that. We are just saying, "Well, you earn money; you pay your share of the tax burden of the government."

Senator Angara. Yes, Mr. President, but my point is, when we begin, as what we are doing now, to take away the exemption and preferential tax treatment of the FCDUs and the OBUs, then I am afraid that we are going to dry up this source. At present, because of our wide trade deficit and our rising current account deficit, this source largely finances this current account deficit.

I hope I am wrong. But I can see that these depositors in FCDUs, as well as OBU's, will take their money out of this country, not perhaps in droves and by billions, but I think the steady flight of this amount from our country will exacerbate our current account deficit and we may find ourselves unable even to finance our trade deficit.

Senator Enrile. Where will they bring their money, Mr. President, to Switzerland, to Singapore?

Senator Angara. I do not know, Mr. President.

Senator Enrile. The interest in Singapore for six months is 3.9%.

Senator Angara. It is the same here in this country, Mr. President.

Senator Enrile. No, it is 7.75%.

Senator Angara. When one is lending.

Senator Enrile. I am sure that many of these amounts are in Certificates of Deposit (CDs), if one puts it in savings account.

Senator Angara. That is correct, Mr. President, but the banks make money there out of lending, not just simply out of the business.

Senator Enrile. The point is, why should we tax our depositors of pesos and we do not tax these people? Yet, these banks, the local banks which are enjoying the protection of government, are paying I think less on their peso deposits and higher on their FCDUs.

Senator Angara. I want to make clear, Mr. President. I am not holding any brief for these FCDUs and OBU's. What I am trying to point out is that from my own information, much of the current account deficits is financed out of these FCDUs. That is why we see the rising trend in FCDU deposit in this country. It is now US\$17 billion.

Perhaps, when we reviewed it six months ago, we did not reach that kind of level. Because we will dry up a significant source of current account financing, then we may even widen our trade deficit.

Senator Enrile. I do not think so. The trade deficit, Mr. President, is a function of exchange rate. If one makes his importation cheap, naturally, he has a large flow of imports which will overwhelm his exports, in which case he will have a trade deficit, not because of these people having FCDUs.

Senator Angara. No, Mr. President, because when one has scarce dollar in the market and then there is a corresponding higher demand, then his exchange rate will become unstable. That is the cue.

Senator Enrile. Mr. President, that is easier said than done. Because, as I said, we are laboring on the assumption that these people will leave the country.

In Indonesia, their present rate is 7.5%.

Senator Angara. Is it lending or borrowing, Mr. President?

Senator Enrile. This is time deposit. This is the interest that they pay to their depositor, and yet, they also impose a tax of 20% on interest.

In Singapore, they pay 3.9% for six months; for three months, 3.90%; for one month, 3.75%; for one week, 3.38%.

In Indonesia, for one week, it is 7%; for one month, it is 7.12%. But this is before the imposition of the 20% tax.

Here in the Philippines, we are paying 7.75%.

I cannot justifiably support the proposition that we should be exempting the most capable members of the economy from income taxation and tax *sari-sari* stores, barber shops and beauty parlors for their income.

Senator Angara. But is this move also in contradiction to the liberalization of our foreign exchange?

Senator Enrile. No, Mr. President. Taxation is one thing. Liberalization and conversion of funds into foreign currencies is different. These are quite apart.

Senator Angara. Why would the Central Bank Governor no less expressed publicly concern over this issue?

Senator Enrile. I do not know, Mr. President. Maybe I am a simple-minded businessman who knows a little bit about the movement of money because I studied this. I wonder whether they have studied Mann or Nosebung.

Senator Angara. I believe that, Mr. President. I think the gentleman is more knowledgeable in fiscal and monetary policies. But it strikes me as significant that the Governor of the Central Bank no less would feel this sudden concern over this matter.

Senator Enrile. I respect the Central Bank Governor. He

is a good friend, but his opinion is just as good as mine as my opinion is just as good as his.

Senator Angara. We will leave it at that, Mr. President.

I still have many questions to ask, but I would ask the Majority Leader and our distinguished sponsor for some more time to resume this interpellation.

The Presiding Officer [Sen. Flavie]. The reservation is noted.

SUSPENSION OF CONSIDERATION OF H. NO. 9077

Senator Tatad. Mr. President, I move to suspend consideration of House Bill No. 9077.

The Presiding Officer [Sen. Flavie]. Is there any objection? *[Silence]* There being none, consideration of House Bill No. 9077 is hereby suspended.

SUSPENSION OF SESSION

Senator Tatad. Mr. President, I move to suspend the session until 10:30 tomorrow morning.

The Presiding Officer [Sen. Flavie]. Is there any objection? *[Silence]* There being none, the session is suspended until 10:30 tomorrow morning.

It was 6:37 p.m.

Senator Angara. And the third assumption is that the tax becomes applicable three years after start-up.

Senator Enrile. On the fourth year.

Senator Angara. On the fourth year of the start-up.

Now, just inquiring more into the net asset, Mr. President. Why are the following categories of assets excluded from the computation of the net asset? That is under subparagraph 4, shares of stock, loans, et cetera.

Senator Enrile. Shares of stock, Mr. President, in order to avoid double counting.

Senator Angara. May the gentleman explain that further, Mr. President?

Senator Enrile. Let us say a corporation was organized with a capitalization of P10 million and it created a subsidiary. It invested, let us say, P5 million of that money in another corporation. That should be subtracted from the asset base of this minimum tax as far as a corporation is concerned because the P5 million will be taken into account in determining the net asset base of the corporation.

Senator Angara. What about loans?

Senator Enrile. Mr. President, loans are matched by assets. It is zero-zero. The payables are counterbalanced with an entry on the asset side. So, we should not include that.

Now, in the case of income-producing financial assets, the income from which is subject to final tax or exempted from income tax under this Code or under any special law, I think we should exclude this because the corporation holding this is assumed to have already been taxed on the income of these assets.

Senator Angara. Mr. President, I can easily understand that this will be readily applied to the normal, let us say, manufacturing or trading company. But when we get to apply it, say, to a capital-intensive industry, like utilities or mining, would it not cause some unusually large tax payment when, perhaps, that mining company is losing?

Senator Enrile. That is why we have given, Mr. President, the Secretary of Finance the power to promulgate the necessary rules and regulations that shall define the terms and conditions under which he may suspend the imposition of the minimum corporate income tax in meritorious cases.

Senator Angara. Mr. President, is it suspension or relief?

The word here is "relief," and I understand that to mean exemption from the tax.

Senator Enrile. We suspend the imposition, meaning, that this, in effect, says that in the determination of the Secretary of Finance the tax should not be imposed; therefore, it will be foregone.

Senator Angara. So, it is not just simply deferred, Mr. President? It is foregone.

Senator Enrile. No, it is foregone.

Senator Angara. So, it is a tax relief. Now, there are three criteria, Mr. President, for the suspension of this tax. One is on account of prolonged labor dispute; the other is *force majeure*; and the third is because of legitimate business reverses.

I think prolonged labor dispute is quite understandable. *Force majeure* is quite understandable. What is this "legitimate business reverses," Mr. President?

Senator Enrile. If, for instance, the business enterprise happens to have borrowed foreign currency in order to put up the business or has incurred a foreign currency liability to put up the business and all of a sudden there is a depreciation of the local currency which will increase the peso component of servicing its foreign currency liability, or in a situation where, all of a sudden, like what happened to us after August 1983, the inflation rate has gone up so high or the interest rate has gone up higher and it is beyond the capability of the enterprise to service its loan, or, let us say, that because of a new technology being introduced, the enterprise starts to lose money because of its antiquated system and cannot compete, then during this period, when these reverses ensue, the Secretary of Finance may suspend the imposition of this minimum corporate income tax.

Senator Angara. All right, the distinguished gentleman cited the three specific instances, Mr. President, as legitimate business reverses. The first is a high interest regime. How high?

Senator Enrile. Let us say that in the property market, all of a sudden we have a Thailand situation, where there is a glut and the entire economy slows down and, therefore, there is a depression in the economic climate. Then, in this case, the Secretary of Finance ought to be given the discretion to suspend the application of this tax.

Senator Angara. I do not disagree at all, Mr. President, but in such a situation there will be a general business recession, then the suspension should be for all. But I suppose this provision is really for specific examples where a particular...

Senator Enrile. Mr. President, we cannot visualize all possible situations. We have to rely on someone like a department head to handle this, who is assumed and presumed to be knowledgeable—

Senator Angara. There is no problem there, yes.

Senator Enrile. —and to be acting in good faith.

Senator Angara. No dispute there, Mr. President. What we are trying to draw from the sponsor is that set of criteria so that discretion and judgment will not be uncontrolled; that it will be guided by some standards that we are setting down in this provision.

Senator Enrile. Let us take the case of an export business. Suppose the market for garments or specific type of garment suddenly breaks down because of competition or because of quota restrictions by a foreign government...

Senator Angara. That will fall under *force majeure*, Mr. President.

Senator Enrile. Not necessarily *force majeure*. That should become business reverses.

Senator Angara. I am trying to concretize, Mr. President, and perhaps draw some reasonable standards from what the gentleman has already said as three instances where we can justify relief because of legitimate business reverses.

The distinguished gentleman mentioned about a high interest rate. He also mentioned or referred to 1983 when interest really skyrocketed. The gentleman mentioned about the devaluation of the peso and about the introduction of new technology that will wipe out that particular business.

Senator Enrile. I will add another one, Mr. President. For instance, the enterprising board is involved in the stock market, or it is an investment house and it engages in buying and selling shares of stocks and there is a sudden drop in the prices of stock issues. I think it is unfair to impose the minimum corporate income tax in that corporation in that situation if it has indeed incurred losses far beyond...

Senator Angara. So what the gentleman is saying, Mr. President, is that this "catchall" legitimate business reverses can be a catchall exemption and the only restriction—as I read the gentleman and listened to him—to this catchall legitimate business reverses is one that is caused intentionally or fraudulently by the owner or manager?

Senator Enrile. That is correct.

Senator Angara. Outside that, any genuine business reason can justify for asking for it.

Senator Enrile. That is correct. That is why I used the term "legitimate business reverses." There is deliberate, intentional and purposive effort to evade the tax or to defraud government.

Senator Angara. So now, at least, it is becoming clear, Mr. President, that this provision is not an inflexible provision; that there are leeways and flexibility for corporations or firms suffering genuine business reverses, not because of their own intentional, deliberate or fraudulent action but because of normal business reverses.

Now, Mr. President, the three-fourths of 1 percent is a creditable tax, is it not?

Senator Enrile. Yes. Actually, it is whichever is higher. If the 0.75 of a percent of the net asset is higher than the income tax computed on the basis of the reflected taxable income, then the corporation must pay the minimum corporate income tax. But the difference between the legitimate, the regular income tax and the corporate income tax will be credited or carried over to the succeeding year.

Incidentally, may I give the gentleman three examples, assuming that we have adopted this system. In the case of Meralco, for instance, based on its latest financial statements, the regular income tax would amount to P878,220,000, but its minimum corporate income tax would only be computed based on its present net asset. The minimum corporate income tax would only amount to P280,200,000. So, the minimum corporate income tax will not apply.

Hopewell Energy, for instance, has a regular corporate income tax of P99,560,000 based on its latest financial statements. Its minimum corporate income tax computed at its present financial statements would only amount to P9,360,000; Petron, based on its latest financial statements has an income tax payable of P1,495,450,000, whereas its minimum corporate income tax on the basis of our rate would only amount to P201,320,000. That is the way it is.

So, the minimum corporate income tax will not apply to legitimate business enterprises that would be reporting their taxable income faithfully.

Senator Angara. In other words, Mr. President, if the regular corporate tax is in excess or over and beyond the minimum corporate tax, then the minimum corporate tax would not be collected?

Senator Enrile. That is correct.

Senator Angara. When does a corporation or a firm pay the minimum corporate tax?

Senator Enrile. At the end of the year.

Senator Angara. December?

Senator Enrile. Yes, Mr. President.

Senator Angara. Not in April?

Senator Enrile. No, not in April.

Senator Angara. So, that means that by the time a corporation pays its income tax... let us select 1996. Meralco would have paid its 1996 corporate income tax in April 1997. If this law were applicable, Meralco would also have paid its minimum corporate tax in December of 1996.

Senator Enrile. Yes.

Senator Angara. Now, we are saying that Meralco need not pay this. What is the mechanism for either retrieving it, refunding it, or crediting it?

Senator Enrile. The system of crediting is established in the law. And this will be covered by the regulations.

Senator Angara. But in this case, Mr. President, the sponsor is saying that Meralco is not even required to pay the minimum corporate tax.

Senator Enrile. Because the aggregate income tax of Meralco for the year 1996 is much, much bigger than 0.75 percent of its net asset.

Senator Angara. Yes, I understand that, Mr. President. But what I am trying to reconcile is, how does Meralco then get back the payment it made in December of 1996 when, in the first place, it is not liable to do that because its regular corporate tax for 1996 is much, much more than...

Senator Enrile. Because Meralco will not be paying the minimum corporate income tax.

Senator Angara. But the sponsor said that there are two payment dates, Mr. President—the end of the calendar year for the minimum corporate tax, that is December, and the regular income tax payment in April.

Senator Enrile. We aggregate that. In the case of calendar-

year taxpayers, common sense will tell us that the BIR will compute the aggregate corporate income tax of the taxpayer and the minimum corporate income tax and compare them. In the case of fiscal-year taxpayers, then we do it at the end of the fiscal year.

Senator Angara. I understand that very well, Mr. President. What I am trying to reconcile is the fact that under that schedule of payment, every firm will be required to pay a minimum corporate tax—because it will be paying it ahead of its regular corporate tax—when, in fact, it may not be required to pay the minimum corporate tax. That is what I am trying to reconcile in my mind.

Senator Enrile. A corporation, given this provision, will now determine for itself whether its regular income tax is less or more than the minimum corporate income tax. If they are equal, then the ordinary corporate income tax will apply. If the ordinary income tax is less than the minimum, then the corporation will pay the minimum corporate income tax.

If, on the other hand, the minimum corporate income tax is less than the regular income tax, then the corporation will pay the regular corporate income tax. That is how it will operate.

Senator Angara. The sponsor has to explain that very well, Mr. President.

Senator Enrile. This is, in effect, Mr. President, a trigger rate to indicate to these habitual losers or manipulators of the revenue of the government that they cannot escape anymore. They have to share the burden of the government.

The minimum is 0.75 percent of their net assets. If at the end of the taxable year, whether it is a calendar year or a fiscal year, they prepare their tax return based on their operation, they know. They can compute their net asset and arithmetically apply the rate of 0.75 percent and then they also compute their net taxable income. They will now report to the BIR on a return that will be required the resulting tax.

Senator Angara. Let me recap. We can make it simpler. There are two dates of payment here. One, for the payment of the minimum corporate income tax, and that will take place during either the fiscal year or the calendar year of the taxpayer.

Senator Enrile. That is correct.

Senator Angara. The second payment is the regular income tax payment which takes place the year following the income tax year—April of 1997 for income tax 1996. What the gentleman is saying is that when a firm or a corporation files its

minimum corporate tax during the taxable year, it must already do a tentative calculation of its prospective corporate income tax.

Senator Enrile. Of course.

Senator Angara. That is what the gentleman is saying. On that basis, if the tentative balance sheet or income statement prepared by...

Senator Enrile. The profit and loss statement will show that.

Senator Angara. If the profit and loss statement shows that its prospective corporate income tax is higher than the minimum corporate tax, then it need not file.

Senator Enrile. It need not bother with the minimum corporate income tax, if it is equal or more.

Senator Angara. But, to me, that is an essential provision in this law, because otherwise the general impression is that we pay twice anyway and if we overpaid, then we just go and ask for a cash credit or ask for a cash refund.

Senator Enrile. We will welcome a provision that will refine this provision, if the distinguished gentleman from Aurora, Quezon and Pampanga would care to draft that provision.

Senator Angara. Yes, Mr. President, I would like to draft that; but since the tax experts are with the committee, as well as the assistants of the Department of Finance, I hope that they can come up with such a provision just to clarify.

Senator Enrile. Unfortunately, Mr. President, the committee has no committee amendment. We have already submitted our committee report without any committee amendment.

Senator Angara. Mr. President, we have a tax body that is supposed to assist every member of the Senate.

Senator Enrile. I am sure that they will be more than willing to accommodate.

Senator Angara. That is the kind of service we are looking for, Mr. President.

The President. With the permission of the gentlemen on the floor, we are operating under a generator power. So, the Chair would like to suggest that we relax the dress code, and if the two gentlemen would like to remove their coats, they are certainly welcome to do so.

SUSPENSION OF SESSION

Senator Angara. May we have a one-minute suspension of the session, Mr. President.

The President. The session is suspended for one minute, if there is no objection. *[There was none.]*

It was 11:14 a.m.

RESUMPTION OF SESSION

At 11:14 a.m., the session was resumed.

The President. The session is resumed. It seems that it is not only the peso and the airport that are breaking down. The power situation is also breaking down.

Senator Angara. Unfortunately, the nation is breaking down, Mr. President.

Mr. President, let me again move to a new provision in this reform bill, and I refer to page 4, Section 8.

Senator Enrile. Page 4, Mr. President?

Senator Angara. Yes, page 4.

Senator Enrile. This is Section 5 of the Code.

Senator Angara. Yes, Section 5. The gentleman is correct, Mr. President. This is the power of the commissioner to obtain information, and to summon, examine, and take testimony of persons. Under existing law, the BIR's power to obtain information is confined to information kept by government institution. That is the first distinction.

Second, there is no specification of the kind and nature of information that the BIR can obtain.

Under the proposal, Mr. President, the commissioner is now empowered to obtain on a regular basis from any person—not just from any government agency—information about a taxpayer. What is the reason for this very drastic change of scope of the information gathering authority of the BIR?

Senator Enrile. This is a part of the tools that would be accorded to the Bureau of Internal Revenue to enforce tax laws. If we will note, Mr. President, we were very studiously careful in seeing to it that we observe the constitutional provision against testifying against one's self or self-incrimination. That is why we say here that "from persons other than the taxpayer himself."

Meaning, for instance, if I sold my piece of land and I agreed with the buyer that we underdeclare the value of the land to minimize the tax impact on myself, under the present law, the buyer could not be called by the Bureau of Internal Revenue and examine him. Under this provision, the Bureau of Internal Revenue is now empowered to call on the buyer of the property and examine him under oath.

Senator Angara. Under this provision, too, Mr. President, the BIR can get financial statements of any taxpayer through the Bangko Sentral, is it not?

Senator Enrile. That is correct, Mr. President.

Senator Angara. What, again, is the rationale, Mr. President, for this wide-ranging commission, this roving commission?

Senator Enrile. If the information is available with the Bangko Sentral. I think this was also in the old provision. We just renamed the Central Bank of the Philippines into Bangko Sentral ng Pilipinas.

May I read the original provision, Mr. President?

Senator Angara. Yes, it is in the text, Mr. President. I can read it.

Senator Enrile. No. There were other provisions that were omitted.

Section 7 of the existing Code says:

Power of the Commissioner to Obtain Information, Examine, Summon, and Take Testimony. - For the purpose of ascertaining the correctness of any return, making a return where none has been made,—

We know that the Commissioner has been empowered by the Congress to make a return for a person if that person has not made a return.

—determining the liability of any person for any internal revenue tax, or collecting any such liability, the Commissioner is authorized:

(1) To examine any book, paper, record or other data which may be relevant or material to such inquiry;

(2) To obtain information from any office or officer of the national and local governments, government agencies or its instrumentalities, including

the Central Bank of the Philippines and government-owned or controlled corporations;

(3) To summon the person liable for tax or required to file a return, or any officer or employee of such person or any person having possession, custody or care of the books of accounts and other accounting records containing entries relating to the business of the person liable for tax, or any other person to appear before the Commissioner or to his duly authorized representative at a time and place specified in the summons, and to produce such books, papers, records or other data and to give testimony;

(4) To take such testimony of the persons or persons concerned under oath as may be relevant or material to such inquiry; and

(5) To cause revenue officers and employees to make a canvass from time to time of any revenue district or region and inquire thereafter concerning all persons therein who may be liable to pay any internal revenue tax, and all persons owning or having the care, management or possession of any object.

We just refined this provision to make it clearer, Mr. President.

Senator Angara. I think this is more than refinement, Mr. President. This is expansion of the inquisitory and investigative power of the commissioner which, I believe, far exceeds the need for proper investigation. But let me continue with my line of questioning.

Under this provision, there is now a specification of the nature of information that can be looked into, such as cost and volume of production, receipts of sales and gross incomes of taxpayer, names, addresses and financial statements of registered partnership.

Senator Enrile. By the way, Mr. President, there is an addition to this. This should include the names, addresses and financial statements of joint ventures, associations, joint accounts or *cuentas en participacion*, consortia, and registered partnerships and their members.

Senator Angara. Yes, Mr. President. This is even more far-ranging than what the text indicates, Mr. President.

Mr. President, what is the protection of a company, for instance, against a blanket inquisition into some of its proprietary processes or some of its technical secrets

under this kind of broad mandate?

Senator Enrile. Costs of production, Mr. President. I think this is a proper function of tax administration because we determine profits. We are talking of taxable income. How can the government determine the exact taxable income if we cannot determine costs?

Senator Angara. That is correct, Mr. President. But this information mandate is not just limited to costs. In fact, that is only an example of the type of information that the BIR can inquire into, but not limited to costs.

Senator Enrile. There is a provision in the existing Tax Code penalizing any personnel of the BIR from divulging trade secrets of a taxpayer.

Senator Angara. What provision is that, Mr. President? Because that is what I am interested in now. I do not begrudge the sponsor in providing for a wide-ranging investigatory power. But I am more concerned about the protection or the medium of relief that a taxpayer can resort to in case of an unjust, improper and harassing types of investigation.

Senator Enrile. Section 269 of the existing Code reads:

Section 269. Unlawful Divulgence of Trade Secrets.
- Except as provided in Section 64, 70 of this Code and Section 26 of Republic Act No. 6388, any officer or employee of the Bureau of Internal Revenue who divulges to any person or makes known in any other manner than may be provided by law information regarding the business, income or estate of any taxpayer, the secrets, operation, style or work, or apparatus of any manufacturer or producer, or confidential information regarding the business of any taxpayer, knowledge of which was acquired by him in the discharge of his official duties, shall, upon conviction for each act or omission, be fined in a sum of not less than Five thousand pesos (P5,000.00) but not more than Ten thousand pesos (P10,000.00) or imprisoned for a term of not less than six (6) months but not more than five (5) years, or both.

Senator Angara. Will the gentleman accept an amendment? That any reasonable ground to believe that the BIR or its agents are in the process of divulging or looking into trade secrets would be a ground for the taxpayer to enjoin the activities of the BIR?

What is the use, Mr. President, if they have already gone into the taxpayer's secrets and may have revealed it if the taxpayer's only recourse is a criminal prosecution of the agent?

Senator Enrile. We will be defeating the purpose if we will be granting the power to enjoin the action of the BIR.

The person concerned has a lot of recourse. He can file a criminal case; he can file a civil suit for damages.

Senator Angara. Mr. President, this tax reform bill, overall, looks good to me. However, I am quite bothered by the fact that there are provisions here that will make the life of the tax collector much easier and more convenient, but exposes the taxpayer to harassment without recourse to any remedy.

I am bothered by this, Mr. President, because if we say, "If you are harassed or bothered, then sue," what kind of tax law are we enacting?

Senator Enrile. The best thing to do, Mr. President, is to be faithful in reporting our tax obligations. That is the antidote to any harassment.

Senator Angara. That is no answer, Mr. President, because if that is the answer, then all we have to do is ask every citizen to be a good citizen and we will have a good society. But that is not the truth.

I think it is not the job of congressmen nor of senators to make the life of the tax collector easier. In fact, we have the duty to give more protection to taxpayers than to grant more authority to tax collectors, especially in our culture, Mr. President, when we do not see really where our tax money is going. Why are we going to render our taxpayers almost helpless in this regard?

We are expanding the inquiry power of the BIR, but we are not even telling the taxpayers, "Look, your affairs are being looked into."

Senator Enrile. Mr. President, we have been laboring under the assumption that the BIR was given a very wide latitude to look into the affairs of taxpayers to collect taxes. Precisely, we are now reforming, not only reducing, the tax rates but at the same time seeing to it that our efforts will not be thwarted because of the nefarious activities of tax evaders.

So we must now give the tools to the Bureau of Internal Revenue to really enforce our tax laws. Let us try the other side of the coin. We have been too protective of tax evaders and tax cheats.

Senator Angara. That is very nice to hear, Mr. President.

Senator Enrile. I am a businessman, Mr. President. I have

been handling corporations all my life. I would not fear an opening of the books of my corporations, or I would advise my clients to open their books. If a taxpayer does not hide any income from government, there should be no concern about the provisions that we have introduced here.

I have been involved in tax practice for a long, long time. I think I bow my head to no one in this area of the law.

Senator Angara. We will concede to that, Mr. President.

Senator Enrile. I think that the assumption that this power will be used to harass people will, maybe, with a few exceptions, not be a general rule.

Senator Angara. Mr. President, we concede to the expertise of the distinguished gentleman and sponsor. We know that his proposals are high-minded and with the interest of the country at heart, but we must also look at the other side of taxation which is that of the taxpayers.

If we are just simply looking at the authority of the tax collector, then I accept the reasoning of the gentleman. But I thought that a fair taxation is one that applies simply, equally and evenly to all, and if one is aggrieved or has a grievance, then there is a detailed provision by which he can redress his grievance. That is the one I am trying to look for in this measure.

To repeat, Mr. President, I think this is a good piece of reform, but let us not weaken it by the fact that we are overly protecting the tax collector at the expense of the taxpayer. After all, if the taxpayer revolts and thinks that this is an onerous tax, he will still try to evade or avoid taxes.

Senator Enrile. Mr. President, if we cannot look into the bank account of a taxpayer, if we cannot look into his cost of sales, if we cannot look into his books, and if we cannot look into the nitty-gritty of determining the tax liability, then what else is left to the government?

Senator Angara. I have not even gone to the bank secrecy law, Mr. President.

Senator Enrile. I am just raising this as a general proposition.

Senator Angara. Yes, I agree.

Senator Enrile. On the other hand, we have put almost an iron ring around a tax evader by providing all of this protection to him and that is why we have not really convicted a single big-time tax evader in the country.

Since we started enforcing our tax laws, tell me who is the tax evader who has been cornered, collared or corralled by the government? None, because of our own acts as legislators. We enact laws to shackle the legs, the hands and the eyes of our tax collecting agency; yet, we complain that we do not have money to spend in the government and that we are engaged in deficit spending. This is the time for us to meet this problem frontally and bite the bullet, so to speak.

Senator Angara. I certainly agree on biting the bullet, Mr. President, but I certainly do not agree that we should shoot at our taxpayers. We should at least be seen to be fair in passing a law that will be applied fairly to the citizenry. If the overall impression of this reform bill is that it is going to invade the privacy of people and look into their innermost financial secrets just to be able to help the BIR collect taxes from its citizens, I do not believe that it is a good impression to leave to our public.

I am sure that neither the sponsor nor many of us here would like to create that impression because we really want to create a good tax system that will reward initiative, that will pay for enterprise, but at the same time will be fair to the citizens.

Senator Enrile. Mr. President, like the distinguished gentleman, I am also protective of loyal, faithful and honest taxpayers. But I cannot accept the proposition that by providing these proposals in this revision of the Tax Code, we are, in effect, expanding the power of the BIR. We are just refining them.

As far as protection of our legitimate businessmen is concerned, there are provisions that we have used against recalcitrant BIR people. The only trouble is that many of our businessmen are timid or they have timid lawyers. It is easier to put money in the hands of BIR agents to hush up a case instead of enforcing the laws.

For instance, Section 268 covers all the penalties and violations committed by government enforcement officers.

I would like to read this into the *Record*. It reads:

Section 268. Every official, agent or employee of the Bureau of Internal Revenue or any other agency of the government charged with the enforcement of the provisions of this Code who is guilty of any of the offenses herein below specified shall, upon conviction for each act or omission, be fined not less than Fifty thousand pesos (P50,000), but not more than One hundred thousand pesos (P100,000) and suffer imprisonment of not less than ten (10) years, but not more than fifteen (15) years and shall likewise suffer an additional penalty of perpetual disqualification to hold

public office, to vote and to participate in any public election:

1. Those guilty of extortion or willful oppression through the use of his office;

2. Those who knowingly demand other or greater sums than are authorized by law or receive any fees, compensation, or reward except as by law prescribed for the performance of any duty;

3. Those who willfully neglect to give receipts, as by law required for any sums collected in the performance of duty or who willfully neglect to perform any other duties enjoined by law;

4. Those who conspire or collude with another or others to defraud the revenues or otherwise violate the provisions of this Code;

5. Those who by neglect or design permit the violation of the law by any other person;

6. Those who make or sign any false entry or entries in any books, or make or sign any false certificate or return;

7. Those who allow or conspire or collude with another to allow the unauthorized retrieval, withdrawal or recall of any return, statement, or declaration after the same has been officially received by the Bureau of Internal Revenue;

8. Those who, having knowledge or information of a violation of this Code or of any fraud committed on the revenues collectible by the Bureau of Internal Revenue, failed to report such knowledge or information to their superior officer or to report as otherwise required by law; and

9. Those who, without the authority of law, demand or accept or attempt to collect directly or indirectly, as payment or otherwise any sums of money or other thing of value for the compromise, adjustment or settlement of any charge or complaint for any violation or alleged violation of this Code.

Under Section 269, unlawful *divulgence of trade secrets*, that is already covered.

Then unlawful interest of revenue law enforcers in business; violation of withholding tax provision. There are so many

provisions imposing penalties on the representatives of the Bureau of Internal Revenue.

Senator Angara. But there is none, Mr. President, as far as violation of this power of inquiry provided by Section 5 is concerned, the particular area in which I am interested in.

SUSPENSION OF SESSION

Mr. President, may I ask for a one-minute suspension of the session.

The President. The session is suspended for one minute, if there is no objection. *[There was none.]*

It was 11:39 a.m.

RESUMPTION OF SESSION

At 11:40 p.m., the session was resumed.

The President. The session is resumed. Senator Angara is recognized.

Senator Angara. Mr. President, may I ask that my interpellation be suspended in the meantime and keep my right to continue with my interpellation.

The President. Could the gentleman continue this afternoon?

Senator Angara. Yes, Mr. President.

The President. All right. This afternoon, we shall continue with the interpellation of the gentleman from Aurora, Quezon and Pampanga.

Senator Tatad. Mr. President, I ask that the distinguished Minority Leader, Senator Gonzales, be recognized to resume his interpellation.

The President. The distinguished Minority Leader, the honorable senator from Mandaluyong is recognized.

Senator Gonzales. Thank you, Mr. President. May I be allowed to pursue my further interpellations of the distinguished and learned sponsor?

Senator Enrile. With pleasure, Mr. President.

Senator Gonzales. Mr. President, I just want to clarify three remaining points and I will be done with my interpellation

in order to afford our colleagues in this Chamber the opportunity to interpellate.

The first point that I would seek a clarification is the personal tax exemption. I agree with the Committee and the distinguished gentleman that the original proposal of the House of Representatives providing a maximum tax exemption of P146,000 for a family of six is unrealistically high.

On the other hand, I believe that the P76,000 maximum personal tax exemption as provided for in this Senate version may be too low.

While it is true that the exemption level is normally based on an estimate of the poverty threshold income level which, as of 1996, is only P66,000 for a family of six, we note that this would include only the consumption of basic necessities like food, clothing, shelter and fuel. Moreover, the price index may no longer be the same in view of rising prices and other adverse effects of devolution.

My own reading and study also show that the same does not include education and health-related expenses which are basic necessities for life. That is why I am proposing that we may increase the personal tax exemption for a family of six at a maximum of P100,000, itemized as follows:

Per taxpayer - P25,000 x 2 is P50,000;

Per qualified dependent - P10,000 x 4 is P40,000; and

For medical allowance per family - P10,000 which means a total of P100,000.

I hope that the gentleman's Committee can consider this.

I do not know the revenue losses that may come about if these are adopted. But I know that the gentleman has a very, very competent staff that would be able to assist or help us on this matter.

Senator Enrile. Mr. President, we have discussed this proposal based on the previous interpellation of the distinguished senator from Mandaluyong.

I was informed by the Department of Finance representatives that if medical allowance is given only to married taxpayers with dependents, this will mean a loss of P36.49 billion annually to the government.

On the other hand, if the medical allowance is given to all married taxpayers—including those without dependents—this will entail a loss of P40.56 billion annually.

Finally, if the medical allowance is given to all taxpayers, including singles, the loss will be P41.15 billion annually.

Mr. President, this is only with respect to medical allowance. It is not even considering the additional P3,500 per dependent. This is our problem.

Senator Gonzales. I realize that, Mr. President. That is why I admitted that there may be a revenue loss as a consequence of this proposal. But, I think, over and above revenue losses, we have to consider whether or not medical allowances or expenses are vital to the ordinary life of man, whether they are basic necessities. Therefore, it should be included in the determination of personal exemption.

Probably, to prevent abuse, can we have it limited to actual medical expenses, which means that it must be supported by receipts issued by the hospitals, doctors and drugstores? In which case, we also encourage the issuance of receipts by medical practitioners, hospitals and drugstores.

Senator Enrile. Maybe, Mr. President, subject to an analysis of the revenue impact of this proposal, a system of tax credit could be better used up to a certain level of income taxpayers. This should not apply to all taxpayers, including the rich people. To people who are really in need of an additional exemption, we should grant this in the form of a tax credit.

Since our starting rate is 5 percent, 5 percent of P10,000 would be P500 tax credit. We can apply that tax credit against the resulting tax so that it will be fair to everybody.

Senator Gonzales. Mr. President, can we possibly consider that only those earning below P250,000 per annum ...

Senator Enrile. I would suggest that we limit this to what the House has indicated in its proposal, and that is in the level of P150,000, if at all.

Senator Gonzales. Yes, Mr. President. But that is already something that would be meaningful to the taxpayers who are not really earning very much. That would be most welcome.

As far as this capital gains tax on the sale or disposition of real estate is concerned, the bill provides for a final tax of 5 percent of the selling price or the fair market value. This capital gains tax is imposed on the selling price or on the gross proceeds. We do not compute the...

Senator Enrile. There is no netting. We do not subtract the cost.

Senator Gonzales. That is precisely my question. Unlike before, we have to consider the historical cost when it is really a tax on gains. But here, gain is presumed by law. Is that not the concept, Mr. President?

Senator Enrile. That is correct, Mr. President.

Senator Enrile. But the trouble that was encountered in the implementation of the old system is the determination of the real cost for properties held for a long, long time.

Senator Gonzales. That is my problem, Mr. President. For example, one of the lots upon which I built my residence was bought by me sometime in 1957. That is about 40 years ago. I bought it, I think, for only P16 per square meter. In fact I put up a house because I was paid—as an attorney's fee—P30,000 for a case, which at that time was already a princely amount. This was 40 years ago. The conditions were different. The value of the peso was quite substantial.

The selling price of properties in my neighborhood now is about P10,000 per square meter. So that, in this particular case, if I sell it now, regardless of when I acquired this property, regardless of at what price, regardless of the improvements that I have made throughout the years, then such sale will be subjected to capital gains tax of 5 percent of the gross price of the sale.

Senator Enrile. That is correct, Mr. President. May I know if this is the principal home?

Senator Gonzales. Yes, Mr. President. But I do not intend to buy another house or residence from the proceeds of the sale for which, as an improvement over the past Code, we have now a provision of exemption under this bill. To me, there is some unfairness or inequity.

Therefore, what I am proposing is this: Can we graduate this 5 percent, that when we acquired the property, let us say, for a sale of land or real property 30 years before, we apply only 2 percent; and those acquired about 20 years ago, we apply 3 percent; those acquired 10 years ago, we apply 4 percent, et cetera, something that would make the law equitable?

Senator Enrile. First of all, under the old system, if we apply a true capital gains treatment, normally the effective rate—meaning, what will actually be imposed on the gain realized by the taxpayer—is 15 percent based on our proposal of 30 percent. Why? Because under the old law, if the property was held for less than one year, if I recall correctly, the full amount of the gain will be taxable and subjected the highest rate of 30 percent in our proposal.

On the other hand, if it was held for more than a year, then it is called a long-term capital gain, in which case we only apply the tax on one-half of the gain. In which case, our effective rate will be 15 percent because we only taxed half of the gain.

But there was some problem in tax administration then just like now. But it was more deeply felt in those days because the taxpayers normally underdeclared the sale of real estate. That is precisely the purpose of the provision that was discussed by the distinguished senator from Aurora, Quezon and Pampanga about giving the Commissioner the power to obtain information.

Under the present proposal, Mr. President, which is felt to be fair, we are, in effect, saying that we are putting the rate of 5 percent flat on the gross. We do not discuss anymore the net. Five percent on the gross is a very mild tax as compared to the ordinary system of treating capital gains.

If we are going to graduate the rate according to the length of time of holding the property—first of all, some may say there is going to be difficulty in determining the length of time the property is held because the records have been lost when they were transferred, et cetera, or that there may be some degree of unfairness. I am not prepared at this point to answer yes or no on this. This is quite a difficult policy decision to be made.

Senator Gonzales. I agree with the reasons for changing the tax. As I said, when we held a property for so many years and we are taxed at the same rate as the one who acquired it only a year ago, there seems to be some degree of unfairness and lack of equity. I am not suggesting 5 percent, 4 percent, or 3 percent, but something that would somehow make this tax equitable.

Senator Enrile. May I just point out, Mr. President, if the gentleman will permit me.

Senator Gonzales. Yes, please.

Senator Enrile. Looking at it cursorily, one may have the impression that there is a degree of unfairness. But let us compare two persons, like the gentleman who acquired the property 40 years ago at P16 per square meter. Today, what is the price per square meter in his area?

Senator Gonzales. In my own area, it is...

Senator Enrile. It is P20,000.

Senator Gonzales. That would be already along Boni Avenue. In my own area, it is about P10,000.

Senator Enrile. If it is P10,000, he has actually a gain of P9,984.

Senator Gonzales. If the gentleman will compute it that way, yes, Mr. President, and that is frightening indeed when we do that.

Senator Enrile. I will show the gentleman. The gentleman has actually a gain of P9,984. On the other hand, if *B* acquired his property a year ago and he paid P8,000 per square meter and now he sells it at P10,000 per square meter, he will be paying 5 percent on the gross, including his original cost. On the other hand, *A*, the one who bought the property 40 years ago, will be paying a lesser erosion on his original investment.

I would say that there is unfairness on the part of the one who recently acquired the property as compared to the one who acquired the property a long time ago.

Senator Gonzales. Yes, Mr. President. On the other hand, we are speaking of different time frames and different economic conditions existing. Certainly, now it is easy to become a millionaire; but 40 years ago, when one is a millionaire, my God, he is a real millionaire. So, comparisons in this case will be very odious. But, as I have said, something within me strikes as unfair in such a situation.

At any rate, Mr. President, I think I have delivered my own message and we are expressing a hope that the distinguished sponsor, with the assistance of his staff, would consider this in due time.

Senator Enrile. We will consider it, Mr. President. May I just say that it is a general principle of taxation, especially income taxation, that it is neutral as far as economic conditions are concerned.

For instance, if one acquires a property yesterday when the exchange rate was at, let us say, P26 per dollar and all of a sudden there is a devaluation of the currency such that the peso rate is changed from P26 to P52, and he sells his property which he acquired at the rate of P26 to a dollar, the law will not consider the impact of devaluation. It will eat up to his capital because income taxation deals only with the difference between costs which are nominal figures as against one's profit which is also a nominal figure. It is a matter of arithmetical computation as to the amount of one's proceeds from selling a thing as against his historical cost in nominal terms.

To that extent, Mr. President, every student of income taxation could not find a solution to these aberrations. There is a degree of harshness and unfairness in this respect.

Senator Gonzales. Mr. President, as I have said, it is easy to become a millionaire now. In fact, the compilation of the statements of assets and liabilities filed by members of this Body would show that except for one or two, practically all have assets worth more than a million pesos. But we know that is merely a consequence of the appreciation of values of real estate.

Senator Enrile. Inflation and depreciation.

Senator Gonzales. They are actually paper values.

Senator Enrile. That is correct, Mr. President.

Senator Gonzales. For example, I have a home but I do not care whether it appreciates in value to a million pesos or so because I do not intend to sell it. On the other hand, I am a millionaire, I have so much property and I pay higher taxes as a consequence of the increase in its value. Probably, it will have concrete meaning if and when I leave it to my own heirs as part of their inheritance later.

So, that is the point, Mr. President.

Senator Enrile. On the other hand, Mr. President, I would suggest that the gentleman should not sell his property because we do not know the extent of the erosion of the value of the peso. *Nalulusaw ang halaga ng peso pero hindi nalulusaw ang halaga ng ari-arian ninyo.*

Senator Gonzales. That is the point. *Kaya nga ang sabi ko sa inyo, paper value lamang.* One becomes a paper millionaire, but in reality, it is the same property that one acquired many years ago, the same property that he had inherited from his parents, but suddenly real estate values have risen.

Now, I am even willing to use this tax against land speculators because the complaint of most people now is that the value of land has risen to such a point that it is almost impossible for one to buy a land to build a house on. It is now an impossibility and this is the result of land speculations.

I think this is one thing we ought to study—how we can really prevent this land speculation and prevent this surging of real estate prices so much so that only a few can really acquire lands and build their homes. Can we use the capital gains tax in order to discourage land speculation?

Senator Enrile. Actually, Mr. President, people who are involved in this so-called land speculation are not given a capital gains treatment. Because if they convert their assets into a subdivision, these assets become ordinary assets subject to the ordinary income tax on their profits.

Now, if they are just acquiring the land and keeping it and selling it again, of course, there are those who might be taking advantage. But by and large, the so-called land-banking people are not acquiring these lands for development, and when they are developed, they become stock in trade or the commodity for sale in which case they become ordinary assets subject to the ordinary tax rates.

Incidentally, Mr. President, very soon we will have a big, big tract of land that can be disposed of by this Congress, and I will be reporting this to the Senate one of these days.

Senator Gonzales. Well, probably, I will wait for that time, Mr. President.

Senator Enrile. And maybe this will depress property values in the country.

Senator Gonzales. But may I reiterate my concern that we should really find ways and means by which we can arrest this land speculation which actually deprives the ordinary Filipino of the opportunity to own a land of his own.

There is just, probably, one last point that I wish to take up, and this is Section 98, page 188 of the bill, Mr. President. It says:

Section 98. The Bureau of Internal Revenue is hereby directed to codify the National Internal Revenue Code and renumber and restyle accordingly all the Sections and all references thereto which are affected by the insertions and deletions as provided in this Act.

My problem, Mr. President, is that, heretofore, I consider codification, whether it involves a restatement or reenactment of 95 percent or 98 percent of its original provisions with a few amendments, as part of legislation, and therefore that power belongs to Congress and cannot be delegated to the Bureau of Internal Revenue.

Senator Enrile. I agree, Mr. President. We can delete this provision, and as a consequence of the request of the distinguished senator from Bicol and as directed by the Chair, we can now reproduce the entire Code. I have requested the working committee, the STRSO of the Senate to precisely do that in collaboration with the Bureau of Internal Revenue and the Finance Department so that we can now reproduce the entire Code and approve it *in toto*, including these proposed revisions as an entire legislation.

Senator Gonzales. That would be very well, Mr. President. I think I have made my point and therefore conclude my

interpellation, and barring an entirely new matter which may arise as a consequence of the interpellation of other members of this Body, I now thank the gentleman for his patience and for the time that he has given me.

Thank you, Mr. President.

Senator Enrile. Mr. President, I would like to state for the record that I consider the distinguished senator from Mandaluyong one of the best minds we have in the Senate and our political firmament at the moment. I have always enjoyed his questions and answering them. I respect his opinions. In fact, many of his concepts were very sound concepts. That we disagree on certain points is, of course, a product of a democratic debate. But that does not lessen my admiration for the intellectual capacity and prowess of the distinguished gentleman from Mandaluyong.

Senator Romulo. Mr. President.

The President. The Assistant Minority Leader is recognized.

Senator Romulo. Mr. President, I have made a reservation to continue my interpellation. May I ask that I be given a time to interpellate—depending on the Majority Leader—tomorrow morning since, I think, this afternoon there will be other interpellations.

Thank you, Mr. President.

The President. It is so noted.

The Majority Leader is recognized.

SUSPENSION OF CONSIDERATION OF H. NO. 9077

Senator Tatad. Mr. President, I move to suspend consideration of House Bill No. 9077.

The President. Is there any objection? [*Silence*] There being none, the motion is approved.

Senator Tatad. Mr. President, relative to the remarks made by the Assistant Minority Leader, there are just a few more senators who have reserved to interpellate. So we estimate that the period of interpellations should wind up tomorrow afternoon on this particular measure.

Mr. President, the Journal of Session No. 6 is before us. I move dispense with the reading of the same and consider it approved.

The President. Is there any objection? *[Silence]* There being none, the motion is approved.

APPROVAL OF S. NO. 1699 ON SECOND READING

Senator Tatad. Mr. President, I move that we vote on Second Reading on Senate Bill No. 1699, as amended.

The President. Is there any objection? *[Silence]* There being none, we shall now vote on Second Reading on Senate Bill No. 1699, as amended.

As many as are in favor of the bill, say *aye*.

Several Members. *Aye.*

The President. As many as are against the bill, say *nay*. *[Silence]*

Senate Bill No. 1699, as amended, is approved on Second Reading.

SUSPENSION OF CONSIDERATION OF S. NO. 1699

Senator Tatad. I move that we suspend consideration of Senate Bill No. 1699.

The President. Is there any objection? *[Silence]* There being no objection, the motion is approved.

Senator Tatad. Mr. President, I move that we resume consideration of House Bill No. 9077 as reported out under Committee Report No. 454.

Senator Shahani. Mr. President.

The President. The senator from Pangasinan would like to make a manifestation.

MANIFESTATION OF SENATOR SHAHANI
(Recognition of the Presence of Demonstration Groups)

Senator Shahani. Mr. President, I would like to manifest on the floor that for the past two days, there have been quite a number of people demonstrating outside. And this is the *Kilusan Laban sa Kahirapan, Ilegal na Demolisyon*, TRAPO, and other groups. They are here to show support to Senate Bill No. 1575 which is in our agenda, the Anti-Squatting Law Repeal Act of 1996.

In view of the fact that they have been outside for the past two days, I have invited 20 of their leaders to be here. If we could

just recognize them and show support for their efforts.

Thank you, Mr. President.

The President. The manifestation of the distinguished senator from Pangasinan is recorded.

The Chair takes note of the presence of the leaders of KALAS group and the Urban Land Reform Task Force.

The Majority Leader is recognized.

BILL ON SECOND READING
H. No. 9077—Tax Reform Act of 1997
(Continuation)

Senator Tatad. Mr. President, I reiterate my motion that we now resume consideration of House Bill No. 9077 as reported out under Committee Report No. 454.

The President. Is there any objection? *[Silence]* There being none, resumption of consideration of House Bill No. 9077 is now in order.

Senator Tatad. Mr. President, we are still in the period of interpellations. I ask that the distinguished sponsor be recognized, and to continue his interpellation, the distinguished gentleman from Aurora, Quezon and Pampanga.

The President. The distinguished gentleman from Cagayan, the sponsor of the measure, is recognized, and the distinguished gentleman from Aurora, Quezon and Pampanga, to continue his interpellation.

Senator Angara. Thank you very much, Mr. President.

When we were on the floor this morning, we were asking about the scope of the power of inquiry being vested with the BIR. Let me now move to other points, Mr. President.

Under Section 2—again this is a new provision of the proposed measure—the BIR is now going to be placed under the direct supervision and control of the Secretary of Finance.

Senator Enrile. That is correct, Mr. President. The reason for this proposal is that the Department of Finance is the department of government in charge of the financial soundness of the Republic and it is tasked to raise revenue for the Republic. The Secretary of Finance is the chief financial officer of the Republic and is in charge also of defining fiscal policy hand in hand with the Bangko Sentral ng Pilipinas that handles monetary policies.

Mr. President, it is anomalous, to say the least, that a department head is almost coequal to a bureau supposedly under it. I happened to serve in this department in the past, and ever since we have established our constitutional system from the time the Philippine Commission was established in the Philippines to govern the country all the way to the Jones Law, all the way to the Constitution of 1935, all the way to the 1973 Constitution, the Secretary of Finance has always exercised supervision and control over the revenue collecting bureaus under it—the Bureau of Customs and the Bureau of Internal Revenue.

I am now proposing that we revert to that condition in order, first, to establish the hierarchy of power in this department; and in addition, to provide a balancing power to the powers exercisable by the Commissioner of Internal Revenue as head of the Bureau of Internal Revenue.

Senator Angara. Mr. President, we have no objection to this scheme. What we want, if the sponsor is willing, is to clarify the extent of control, because control, as we know, implies the power to review and reverse, and, in fact, substitute one's judgment for the controlled agency.

Senator Enrile. That is correct, Mr. President.

Senator Angara. Does Section 2, Mr. President, then mean that the Secretary of Finance can go directly into matters of assessment?

Senator Enrile. No, Mr. President. The Secretary of Finance can review, modify and reverse a decision made by the commissioner, subject to the provision of Section 4.

Senator Angara. That means, Mr. President, that his power in this instance is only appellate, not direct. He cannot, for instance, order one of his people to do some assessment or collection of taxes.

Senator Enrile. That is correct, Mr. President. That has always been the meaning of "supervision and control" in our system of government.

Senator Angara. Because we are reinstating this provision now, Mr. President; it is good to put on record what this means.

We know that the appellate jurisdiction over tax matters is exclusively vested with the Court of Tax Appeals. How do we reconcile this now?

Senator Enrile. It is so stated on page 4, from line 1 to line

8 - "THE POWER TO DECIDE DISPUTED ASSESSMENTS, REFUNDS OF INTERNAL REVENUE TAXES, FEES OR OTHER CHARGES, PENALTIES IMPOSED IN RELATION THERETO, OR OTHER MATTERS ARISING UNDER THIS CODE OR OTHER LAWS OR PORTIONS THEREOF ADMINISTERED BY THE BUREAU OF INTERNAL REVENUE IS VESTED IN THE COMMISSIONER, SUBJECT TO THE EXCLUSIVE APPELLATE JURISDICTION OF THE COURT OF TAX APPEALS."

Senator Angara. This is what I want to clarify, Mr. President. Despite the control vested in the Secretary of Finance, the line of appeal is uninterrupted. It still continues to go up to the Court of Tax Appeals.

Senator Enrile. That is correct, Mr. President.

Senator Angara. So the word "control" in this instance, Mr. President, really refers to administrative control rather than control over the quasi-judicial function of the BIR. Am I correct, Mr. President?

Senator Enrile. I beg the gentleman's pardon.

Senator Angara. The use of the word "control" here should be interpreted to mean administrative control rather than control over the quasi-judicial functions of the BIR.

Senator Enrile. That is correct, Mr. President. I think this is well-defined in the case of *Mondano v. Silvosa*, 51 *Official Gazette*, p. 2885.

Senator Angara. We just want to put that interpretation on record, Mr. President, so that there will be no misunderstanding.

Let me go to Section 3. Here, we are creating four deputy commissioners. What is the rationale for having four deputy commissioners?

Senator Enrile. Mr. President, we are elevating the position of the chief, the head of the law division of the bureau into the level of deputy commissioner. Later on, we will propose that we now lodge in the Bureau of Internal Revenue itself the sole authority to prosecute tax evasion cases.

I suspect, Mr. President, that one of the reasons we have not succeeded in really challenging the habitual tax evaders in this country and sending them to jail is, perhaps, based primarily and mostly on the fact that those who are tasked to prosecute such cases are not familiar with the nuances of taxation, apart from the fact that the evidential requirement for that purpose is so complex that it would require not only knowledge of the Rules

of Evidence but a thorough knowledge of the provisions of the Internal Revenue Code and business practices.

Senator Angara. Yes, I understand that, Mr. President.

Mr. President, is there a requirement that the four appointees now as deputies come from the ranks? Considering that the functions of the BIR are highly technical and specialized, and normally the appointee to the BIR commissioner is a political appointee, would it not be desirable that we prescribe that the four deputies should come from the ranks, and at least have some tax enforcement or administration background for at least five or 10 years?

Senator Enrile. I have no objection to that proposal if it is going to be made as an amendment.

On the other hand, Mr. President, I would imagine that the appointing power ought not to be limited in the selection if he can find someone better qualified and prepared to handle that position. Perhaps, if we have someone who has mastered taxation from the Harvard Law School or from the New York University, then he will be more than qualified to handle that position.

Senator Angara. Perhaps, Mr. President, out of the four, one of whom is a deputy for legal. Maybe the deputy for legal can be recruited from the outside, but the three other deputies whose work really pertain to tax administration and enforcement should come from the ranks.

Senator Enrile. As I said, Mr. President, I have no objection to an amendment suggesting that, by and large, the deputy commissioners ought to be coming from the ranks or that people from the ranks ought to be preferred, given preference over those from the outside.

Senator Angara. Let me move on to the next section, Mr. President, which is quite an interesting section. Interesting because it is also new, and that is the power of the commissioner to interpret tax laws and to decide tax cases. The novelty is the power to interpret the provision of this Code and other tax laws as his exclusive jurisdiction.

Senator Enrile. Primary, exclusive...

Senator Angara. Primary, exclusive and original jurisdiction, Mr. President.

Senator Enrile. This is the power to issue rulings, Mr. President.

Senator Angara. I understand that, Mr. President, but that

is not my point. My point is, despite this grant of primary, exclusive and original jurisdiction, does this mean then that the Secretary of Justice cannot render now an opinion on tax matters?

Senator Enrile. That is correct, Mr. President. Precisely, we will canalize the power to interpret tax laws to the commissioner.

With due respect to our secretaries of justice, unless they are trained in this field, I doubt whether they would be in a position to render a sound and acceptable opinion on tax matters, especially on matters that are quite complicated in this area, like corporate reorganizations.

Senator Angara. Mr. President, under our general scheme of government, the legal adviser of government is the Secretary of Justice, and his opinion, under the Administrative Code, is persuasive on all branches of government unless reversed by the Supreme Court. So this is establishing an exception to that general rule.

Senator Enrile. That is correct, Mr. President. But may I remind the Chamber respectfully that the opinion of the Secretary of Justice could not be sought by just anybody; it must be sought by the head of an institution of government. I doubt whether the Secretary of Finance would write his colleague in the Department of Justice asking him for his opinion regarding an interpretation of the Tax Code. This will be primarily addressed to the Commissioner of the Bureau of Internal Revenue.

Senator Angara. Mr. President, if the rationale is that because the BIR commissioner possesses a unique expertise, that kind of reasoning can also be extended to labor matters. And one can say that the Secretary of the Department of Labor should have the exclusive, primary and original jurisdiction to render opinion on labor matters. But that will bring the whole thing to a ridiculous length.

I am trying to find a special justification for making the BIR the final interpreter of the law.

Senator Enrile. Mr. President, I do not know whether the rule has been changed. I had been Secretary of Justice before. Normally, the Secretary of Justice will only wait for a request for legal opinion either by the Office of the President, by the department head concerned or by the agency concerned.

Senator Angara. I understand that, Mr. President, and we are not disputing that.

What we are trying to point out is that by this grant of

exclusive original jurisdiction to interpret tax laws, then we are taking the justice secretary out of that principle that he is the legal adviser of government, as far as tax matters are concerned.

Senator Enrile. He is the attorney-general and chief prosecutor of the Republic. As attorney-general, he is the chief legal adviser of the Republic, especially the President. When there is a request for opinion from any department head or any head of an institution, he may or may not rule on the issue. That is discretionary on his part.

But in the case of the Bureau of Internal Revenue, Mr. President,—I am not at the moment prepared to debate on the problems of other bureaus—it would be in the best interest of the Republic that we confine the power to interpret the laws to the very office designed to perform that function of tax collection in order to orient the public.

Senator Angara. Mr. President, in the first instance, I think it is good administrative law to say that the agency especially tasked to do a particular job ought to have the initial primary jurisdiction to interpret the law, but not an exclusive one, which this provision intends.

Senator Enrile. *Ginoong Pangulo, ang mga taxpayers o namumuwisang ay matatalino rin naman. Kapag hindi nila nagustuhan iyong desisyon ng Bureau of Internal Revenue, pupunta sila sa Secretary of Justice kung sakaling ito ay kaibigan nila.*

Senator Angara. *Hindi nga po sila makakapunta roon sapagkat private citizens sila.*

What I am saying, Mr. President, is that if there is an interpretation, then they can dispute it, file a protest and that protest will go to the CTA.

Senator Enrile. I understand, Mr. President, that there have been instances where the rulings of the Bureau of Internal Revenue had been reversed by the Secretary of Justice in certain tax assessments.

Senator Angara. That should be the case because that is part of the overall check and balance in our system, Mr. President.

Senator Enrile. Yes, Mr. President. But, precisely, we are giving exclusive jurisdiction to the Court of Tax Appeals to review the assessments, denial for the claim of refund, or denial for exemption made by the Bureau of Internal Revenue which ought to be elevated to the Court of Tax Appeals instead of being decided by the Secretary of Justice.

Senator Angara. Yes, Mr. President. But in that instance, the opinion of the Secretary of Justice is really not authoritative; it is persuasive on other agencies. But in the matter of tax, the Court of Tax Appeals would have the exclusive adjudicative function.

Senator Enrile. Then it will bind the Bureau of Internal Revenue and, therefore, the party could escape.

For instance, in the case of Pagcor, the Bureau of Internal Revenue issues an assessment to them. Then the Secretary of Justice, based on the request of the head of Pagcor, reverses the assessment of the Bureau of Internal Revenue. There are so many government corporations that will be affected by this.

Mr. President, we are establishing a system of discipline in the interpretation of tax laws in order to help the government raise money for public services.

Senator Angara. We have no dispute at all, Mr. President. That is not at issue. We must really entrust the ruling to specialized agencies because of their special competence, expertise and technical training. I think that is an accepted rule in administrative law.

In the matter of securities, the Securities and Exchange Commission is given the first crack at interpreting the Securities Act; the BOI is given the first crack at interpreting investment laws; and the BIR is given the first crack on tax matters.

What we are trying to object here is making it a monopoly, Mr. President. Why would we want the BIR to have the monopoly on tax ruling? For instance, would a court, in the course of its ruling, be able to interpret a tax law and be accepted because under this rule, the only one who can interpret exclusively is the BIR? Would the courts be prevented then?

Senator Enrile. I do not know how that situation will arise because any tax issue will have to go to the Court of Tax Appeals.

I would like to cite one situation, if I may be permitted. There is a situation where the BIR commissioner has issued a ruling that certain types of vehicles ought not to pay any ad valorem tax under certain classification. But the Commissioner of Customs, who, by law, is designated simply as an agent of the Commissioner of the Bureau of Internal Revenue, would defy the principal and say "No. I do not agree with your interpretation. My interpretation is that these cars ought to be subjected to this ad valorem tax."

Do we encourage that kind of a situation in our public administration?

Senator Angara. No, Mr. President. We do not encourage that. Neither do we want to encourage reposing monopoly of power in any agency because, as we very well know,...

Senator Enrile. There is no monopoly of power here, Mr. President. I think the semantic is wrongly made, if I may say so. The ruling of the commissioner is subject to review by his or her own department head. In terms of disputed assessments, disputed refunds of taxes, fees or other charges, penalties or other matters arising under this Code, it is reviewable on appeal, through an action of the taxpayer, by the Court of Tax Appeals.

Senator Angara. Let us not use the word "monopoly" then, Mr. President. Let us say, concentrating exclusive power to one agency may not be the best rule in administrative law because we break up the checks and balances inherent in the system.

But let me move on to the next point, Mr. President. At least we have explained for the record what this means.

I know that this provision has been touched before by several of our colleagues, Mr. President. But just one or two more clarificatory questions about this. This is the power to inquire into the bank accounts of a taxpayer.

What safeguards do we have for this taxpayer when we give this power not to the BIR commissioner? Please note that this can be given to any revenue official under this text.

Senator Enrile. No, Mr. President. This power cannot be delegated. The power to inquire is non-delegable by the commissioner. He must exercise it himself or herself.

Senator Angara. But it is very clear, Mr. President, that the trigger to exercise that power is a determination that there exists a clear, direct and substantial evidence of fraud, and that initial determination is made not by the BIR commissioner but by a revenue official.

Senator Enrile. That is correct, Mr. President. But it is assumed that the BIR commissioner knows his or her business in enforcing tax laws, and I doubt whether the commissioner will just swallow hook, line and sinker the report of the examiner. He or she will scrutinize that report, and if he is not convinced at all about the veracity and soundness of the conclusions made by the examiner, the commissioner probably will not exercise the power to inquire. On the other hand, if the commissioner believes, by the evidence and documents presented, that the conclusions of the examiner were true, then the commissioner will inquire.

Senator Angara. Yes, Mr. President. But would we want

a citizen's bank account to be opened on the say so of an anonymous revenue official that there is now clear evidence of fraud?

Senator Enrile. He is not an anonymous revenue official, Mr. President, because in another section, there must be a written authority given to this examiner to conduct a tax audit of the return of this specific taxpayer. A revenue officer cannot just go to any taxpayer and say "Hey, I will examine your books, your tax return." He cannot.

Senator Angara. Yes, Mr. President. So, let me amend my statement then. We are going to allow a revenue official to make a drastic determination, a far-ranging determination that the taxpayer is committing a fraud.

Senator Enrile. It is not a drastic determination. It must be based on evidence, Mr. President.

Senator Angara. What guidelines will he follow under the law, Mr. President?

Senator Enrile. The guideline of a rational mind, of a mind trained in the law of evidence.

Senator Angara. Mr. President, that is a very generous assumption, and as we know, that kind of assumption is always disproved in reality. The best safeguard, the best assumption is one written in black and white in the law. I do not see any safeguard at all in the exercise of this trigger event that will open up the bank account of a taxpayer.

Senator Enrile. May I just state, for the record, Mr. President, that apropos to this very debatable subject matter that has been the focus of attention of many of our colleagues, there is a provision, under Section 14 of this proposed measure, relating to the proposed Section 13 of the Tax Code, page 11, which says:

Authority of A Revenue OFFICER. SUBJECT TO THE RULES AND REGULATIONS TO BE PRESCRIBED BY THE SECRETARY OF FINANCE, UPON THE RECOMMENDATION OF THE COMMISSIONER, a Revenue OFFICER ASSIGNED TO PERFORM ASSESSMENT FUNCTIONS in any district may, PURSUANT TO A LETTER OF AUTHORITY ISSUED BY the Revenue District Officer, EXAMINE TAXPAYERS WITHIN THE JURISDICTION OF THE DISTRICT IN ORDER TO COLLECT THE CORRECT AMOUNT OF TAX, OR TO RECOMMEND THE ASSESSMENT OF ANY DEFICIENCY TAX DUE IN THE SAME MANNER

THAT THE SAID ACTS COULD HAVE BEEN performed by THE Revenue District Officer himself.

And then in the other portion of the Code, the question of substantiality has been, more or less, implied or indicated.

Senator Angara. Let me move on to another point, Mr. President, and that is Section 6.

Senator Roco. Mr. President.

The President. With the permission of the gentlemen on the floor, Senator Roco is recognized.

Senator Roco. Mr. President, may I beg the indulgence of the gentlemen. I have a very few points just on this secrecy matter. If the two gentlemen will allow, I will raise it now so that we can finish this. I have no other questions.

Senator Angara. I have no objection, Mr. President.

The President. The gentleman from Aurora, Quezon and Pampanga may rest for a while and take his seat, if he so desires.

Senator Roco. Maybe it will take three minutes, Mr. President.

Senator Angara. Yes, Mr. President, as long as I still retain my right to continue to interpellate.

The President. Yes, of course. As a presidentiable, we can never take away the right of the gentleman to interpellate.

Senator Roco. We will add to the right, Mr. President.

Senator Enrile. The three of us can interact, Mr. President. I think this will expedite matters.

Senator Roco. Yes. In fact, if the gentleman from Aurora, Quezon and Pampanga have already finished, I would just like to settle in my mind also the areas of debate on this matter of opening bank accounts.

The President. We will extend the same remark. The sponsor had already stated on the floor several times that the interpellation of the gentleman is welcome because he might be the one to implement this law.

Senator Roco. Thank you, Mr. President. Will the gentleman from Cagayan yield just for a few questions?

Senator Enrile. It will be an interesting Code to enforce, Mr. President, when the gentleman gets elected in 1998.

Senator Roco. *Que tengas voca de angel*, Mr. President. As my father would have put it, "May you have the lips of an angel."

But in Section 6, on the authority of the commissioner to inquire into the bank deposits, as I understand my readings, grounds 1 and 2, as regards decedent determining his gross estate and a taxpayer who has filed an application for compromise, are in the present and existing law.

Senator Enrile. That is correct.

Senator Roco. As a matter of fact, Section 3 also is an existing law under the Bank Secrecy Law.

Senator Enrile. That is correct, Mr. President.

Senator Roco. So the real issue that we are discussing is this subsection (4).

Senator Enrile. That is correct, Mr. President.

Senator Roco. My first question is,—if this is what we are discussing, and it seems to be the source of great debate—when we say any taxpayer, do we refer to individuals or do we, in fact, apply it to any taxpayer so that we do not distinguish?

Senator Enrile. The term speaks for itself. Any "taxpayer" means any individual or corporate or, for that matter, estate or trust.

Senator Roco. Or trustee. If a corporation is a holding company or, let us say, even if it is not a holding company controlled by an individual, does it mean that we can also open under the same conditions? The BIR may be authorized to open the bank deposit of this corporation.

Senator Enrile. Mr. President, if the return of the mother company is the subject of a tax audit, and the conditions are established that a fraud has been committed and this is backed up by the quantum of evidence needed to make that conclusion, if there is no relation between the fraud committed by the mother corporation with the subsidiary's operation, there would be no reason to pierce the veil of corporate fiction.

On the other hand, if a consolidated financial statement has been made and there is an indication that there is a fraud committed through the entire operation of this organization, in that case the commissioner can perform the function to find out the truth. In trying to find out the truth, the commissioner would probably look into the bank account not only of the mother company but also of the subsidiary.

Senator Roco. I take it, Mr. President, that under this provision, we can pierce the veil of corporate fiction.

Senator Enrile. If it is warranted.

Senator Roco. Yes, if it is warranted, assuming the other standards have been complied with, there is good reason to pierce the corporate veil. So I take it under this provision. Can I further pierce so that I go through the layers?

If it is clear, for instance, that in a series of corporations, an individual is hiding his control of another corporation so that the individual himself may not have assets under his name but are hidden under the historical value of his shareholdings under his investment, can we therefore pierce through all these corporate interconnections to get to the individual?

Senator Enrile. In fact, Mr. President, that has been done to me by the former administration when they investigated my transactions for nine months. The committee was headed by no less than the Commissioner of Internal Revenue at that time, Benny Tan, who later on became Ambassador to Germany. They went over not only my personal books but the books of all corporations under my name. And I allowed them because I was very sure that I was not a tax evader.

Senator Roco. So I take it, Mr. President, considering that it was done to the distinguished gentleman, he would want the same thing done, under this provision, to others.

Senator Enrile. No, I am not saying that, Mr. President. If there is any ground, we have established the basic conditions in this provision precisely because we do not want anybody to suffer the same thing that we suffered—that, without any evidence, the government was really on a fishing expedition. That is why I devised a provision to protect others from being treated in the manner I was treated.

Senator Roco. I understand, Mr. President. I find the motivation commendable and we share in the motivation. Apparently, the protection against such possible harassment—because we do not want to inflict piercing of corporate veils to pursue an individual, and we have heard this from the sponsor—is the phraseology of clear, direct and substantial evidence.

Senator Enrile. That is correct, Mr. President.

Senator Roco. My first question, Mr. President, is: If there is clear, direct and substantial evidence of fraud, why not file a case and arrest him? I mean, why do we have to go through so many... in which case, it falls under the other provisions. There is clear, direct and substantial evidence of fraud. I guess

that will be criminal in nature, unless...

Senator Enrile. The primary function of the BIR is to collect taxes. If the money is in the bank, I think the bureau should be allowed to exercise the power of levy and distraint.

Senator Roco. The only point though, Mr. President, is, that is true. But if we argue that that is the principal function of the BIR, then we would also tend to nullify this provision. It is not its function to be opening bank accounts. But if there is fraud and there is a case now filed, then other laws now in existence can be availed of to open the bank account. Then, we may have no debate.

Senator Enrile. Mr. President, we come back to the same answer that I have been giving with respect to similar questions raised by my other colleagues who preceded this interpellation and that is, if we are going to require or perpetuate the present practice where the government must be the one to go to court to exercise this power, by the time the BIR gets an order from the court, the *manok* has left the coop.

So, what good will that do the government? *Kaya po natin pinapalitan iyong prosesong ay upang matulungan natin ang ating gobyerno. Iyong mga tax evaders na hindi nahuhuli—hanggang ngayon ay wala pang nahuhuling tax evader sa ating bansa—ay dapat nang matakot para kumita naman ang ating gobyerno sa mga taong hindi nagbabayad ng tamang buwis.*

I would like to put on record that workers, salaried people, people earning fixed income subject to a final tax are not going to be affected by this provision. Only the big-time racketeers, smugglers, maybe drug lords, *jueteng* operators, kidnappers, carnappers, scoundrels from the police and military organizations, the Bureau of Internal Revenue, the Bureau of Customs and bureaucrats, including politicians and tax cheats from the business sector, will fear this law.

Senator Roco. That is very comforting, Mr. President. But based on the explanation, we have one *manok* who has not run away and they have done their worst and we do not want that to happen.

Senator Enrile. Who is that *manok*?

Senator Roco. Only because he was not a tax evader but the one who is...

Senator Enrile. Who is that *manok*? I would like to know. I have not heard of a *manok* that is... Let us be candid, Mr. President.

Senator Roco. Now, in the context of the discussion, I am not suggesting that the gentleman is, in any manner, violative of the tax laws. But earlier in the discussion, I did ask and the gentleman offered to say that this was inflicted upon him.

Senator Enrile. That is correct, Mr. President. I was very sure of my case. Even now, if they want to look again, I am willing to bare out all my records.

Senator Roco. But I asked the gentleman: Do we want it to happen to others?

Senator Enrile. Actually, Mr. President, I do not think that this was intended to harass. What happened to me was pure harassment. I allowed it because I know that in spite of it all, they will not find anything because I was very clean in my recording of my assets and payment of my taxes.

Senator Roco. Mr. President, just to go back to the point we were pursuing. Under this provision, therefore, the BIR, when it thinks—whoever the officer may be, because this is a valid judgment—has clear, direct and substantial evidence of fraud, can exercise the opening of bank accounts or inquiring into the bank deposits of individuals. Now, we were told that it is the intention of this provision that we can also pierce the veil of corporate fictions.

Senator Enrile. If they are connected with the tax fraud that has been discovered.

Senator Roco. Yes, but we will not be able to determine that until we see, until we open up.

Senator Enrile. If we have, for instance, a situation where we have corporate marketing organizations but, in fact, they are controlled by the same interest, in that case we will have to do a holistic examination of tax liabilities.

Senator Roco. That is correct, Mr. President.

Senator Enrile. I doubt whether the distinguished gentleman would protect the taxpayer in such a situation.

Senator Roco. No, we all will abide by our duties under the law, Mr. President, and that is what is expected from all of us. Right now, since we are trying to interpret and see how this is applied, we are probing the parameters of the power.

Senator Enrile. I am open to a probe. I am willing to discuss this issue.

Now, incidentally, the gentleman was not here when I read

into the *Record* the names of countries where they have no bank secrecy laws, yet, the taxpayers were living comfortably within it. In fact, the businessmen have not flown away.

Senator Roco. I have scanned the *Journal*, Mr. President, and I am familiar with the names of some of the countries that were mentioned by the gentleman. But the fact is, we do have a bank secrecy law and we seek to overturn it. That is why there is a debate.

Senator Enrile. We are not overturning the bank secrecy law, Mr. President. That is the fallacy of what is being purveyed. Far from it. We are not lifting the Bank Secrecy Law. *Hindi natin sinisira at hindi natin tinatanggal iyan. Ang sinasabi lamang namin, kung may sapat na ebidensiya o katibayan ng pandaraya sa buwis, dapat lamang na tulungan natin ang ating Rentas Internas na buksan iyong mga bank accounts ng mga mandarayang namumuwisang o tax evaders.*

Senator Roco. *Wala pong problema roon.* But because it is the proposed statute, let us make sure that we understand it so that its application will be properly understood when it gets to become a law. I guess direct evidence here will be used in the sense of the rules of evidence.

Senator Enrile. That is correct.

Senator Roco. So, without any intervening fact or assumptions, there is a direct connection.

Senator Enrile. Not by implication or circumstantial evidence.

Senator Roco. Substantial evidence, I guess, is something that will be...

Senator Enrile. Well, actually, if I remember correctly the provision, I think it states that underdeclaration of sales by 30 percent or overdeclaration of deduction by 30 percent or underdeclaration of income by 30 percent is a measure of substantiality.

Senator Roco. I see. So, when we use substantial evidence here, we take it to mean that beyond normal understanding of substantial evidence, it is that degree of evidence that would normally convince an unbiased moral mind and administrative proceedings.

Senator Enrile. That is correct.

Senator Roco. But beyond that, there is a...

Senator Enrile. It is almost beyond reasonable doubt.

Senator Roco. Be that as it may, that is even better. But beyond that, there are specific standards that, apparently, the totality of the bill imposes. There are rules like, if it is 30 percent under...

Senator Enrile. Well, that is only one rule on this. In fact, that is the basis for a tax audit.

Senator Roco. No. All I am trying to understand, Mr. President, is how this is supposed to be implemented if it gets to be approved.

All right. I understand now direct and substantial evidence together with the technical requirements. Would the gentleman want to tell us what is clear evidence?

Senator Enrile. I think clear is clear, Mr. President.

Senator Roco. Yes.

Senator Enrile. Maliwanag. Ang ibig sabihin ay maliwanag, hindi malabo.

Senator Roco. *Hindi malabo*, all right. So this "clear" is a new term and we are not following here the Rules of Evidence because I could not find it.

Senator Enrile. Ang ibig sabihin noon, hindi iyong kurukuro lamang kundi direct. Hindi iyong suspicion.

Senator Roco. Malinaw na malinaw.

Senator Enrile. Malinaw na malinaw na talagang may kasalanan iyong tatamaan.

Senator Roco. Malinaw na malinaw. Direct and substantial. It will convince a normally unbiased mind and lead it to a moral conviction, and yet...

Senator Enrile. Kung mayroon pong mas magandang salita na gustong imungkahi ang ating magiting at matalinong senador, ako ay papayag na baguhin ito. Pero ito lamang ang maaabot ng aking utak.

Senator Roco. Hindi ko pa po naaabot iyon sapagkat...

Senator Enrile. Alam po ninyo, sa ating mga abogado, alam natin iyong clear and present danger. Iyon lamang po ang abot ng aking kakayahan at kaisipan.

Senator Roco. *Alam natin na iyong clear and present danger ay medyo naiiba rin.* Pero dito, because these are adverbs

to the term or adjectives to the noun evidence, *nililinaw lamang natin. Sapagkat lumalabas po na malinaw na malinaw*, direct, *walang* intervention, *walang* insinuation, *walang* assumptions, *pagkatapos* substantial.

Pero ang sinasabi natin, some agencies, some authorized revenue officers under Section 14, will make all these valuations, all these judgment calls, instead of giving these to the court. *At iyon naman po ang itinatanong ko, kung ganoon nga ang iniisip natin.* Because we prefer that the BIR officer makes the determination of direct and substantial evidence instead of giving it to the court.

My question is, why? The only answer so far is, *kung hindi raw natin pagtitiwalaan o tutulungan ang BIR, papaano na?* But they are the law enforcers.

Senator Enrile. Alam po ninyo, matagal na nating ginagamit ang sistemang iyon—na dapat ang gobyerno ang pumunta sa husgado. Hanggang ngayon ay wala pang nabibilanggong tax evader. Baguhin naman natin iyan. Iyong namang taxpayer ay maaaring dumulog sa husgado para hadlangan iyong gagawin noong Commissioner. The courts are open to the taxpayer.

Senator Roco. Lumilinaw na po iyan. Samakatwid, Ginoong Pangulo, ang gusto natin ay baliktarin iyong presumption of innocence.

Senator Enrile. Hindi po. Walang innocence dito. This is a civil case. It is not a criminal case yet.

Senator Roco. Tama po iyon.

Senator Enrile. Alam naman nating mga abogado na the principle of presumption of innocence is only when one has indicted the person. In a civil case there is no question. This is the civil aspect of tax collection.

Senator Roco. No. Ang sinasabi ko po lamang ay kumporme doon sa kasagutan ng ating magiting na senador mula sa Cagayan—na babaliktarin natin ang procedure. Napakatagal na raw. Na ang gobyerno naman ang maghahabla. Sapagkat ang pagkaintindi ko po, dahil sila ang law enforcers, kaya naman sila ang naghahabla.

Pero dito ay bibirahin muna at pagkatapos ay maghahabla naman ang mamamayan. Iyon po ang naiintindihan ko. Kaya ang itinatanong ko... Well, analogically, it looks like overturning. Alam ko po iyan. It does not apply to criminal cases. But, analogically, ang prinsipyo po, ang unang sasabihin ninyo ay good faith. Iyon po ay in good faith. Kayo naman ay matino. We assume matino. Pero dito medyo baligtad.

Nakikita raw ng revenue officer, malinaw na malinaw, direct, walang assumptions, ang substansiyal at seryosong ebidensiya that will convince an unbiased moral mind. Gayunman ay bibirahin muna, pagkatapos ay maghahabla naman itong mamamayan. Aba, kung ganoon ang hinihiling natin, baka delikado iyon.

Senator Enrile. Hindi naman po siguro tama iyong sinasabi na ganoon ang proseso. In my simple mind, Mr. President, there is no difference between this process involving bank accounts with the case of a taxpayer who has hidden cigarettes, untaxed cigarettes somewhere where the BIR commissioner can really confiscate, or hidden drums of untaxed alcohol or untaxed liquor, or assets that are placed in the name of other people.

If in the course of an examination of a return, a BIR commissioner discovers these things, the Bureau is authorized not only to examine but confiscate all of these assets. Here, all we are asking is to determine the bank account and get the records of withdrawals and deposits to complete the recording of the tax liability of the taxpayer.

Senator Roco. And if warranted, this applies also to the corporations owned by this individual who is hiding behind corporate shares.

Senator Enrile. It does not matter whether the taxpayer is individual or corporate, Mr. President.

Senator Roco. That is what I am trying to understand, Mr. President. It seems to me to be overbroad and it is dangerous. And that is all I was trying to clarify.

Senator Enrile. It is not overbroad nor dangerous, Mr. President. It will be dangerous to tax evaders but not to honest taxpayers.

Senator Roco. Yes, Mr. President. The problem is, the BIR may think somebody is dishonest. In fact, we see law enforcers thinking some are druglords when they are not. And when this happens, the only thing we can tell the taxpayers is, "Maghabla kayo."

Aba, tama ba iyon? "Maghabla kayo." And that is how the Senate will explain to the people: "Maghabla po kayo pag inaapi kayo."

Senator Enrile. Wala pong apihan dito. I have faith in the rationality and good faith of the people who are administering our tax laws. In fact, today, as I said, in spite of the reality of our society, there are so many people whose corporate enterprises are losing year in and year out, and yet they own subdivisions,

they own big condominium buildings, but the poor BIR cannot do anything.

Are we going to perpetuate this? Are we going to shift the burden to the law-abiding citizens of the country and let these people go? They can spend money in the casinos; they can spend money in nightclubs. All tax money of the people that ought to have been collected by government. Simply because we have surrounded these people with an iron ring of laws, would that protect them in the guise of freedom and respect for their human rights? No way.

Senator Roco. May I inquire, Mr. President. If the BIR sees a BIR officer also in the casino playing at high stakes, or a Customs official, some supernumerary in Customs, or a public works contractor or engineer among the 43,000 engineers in the public works department, can it not look into their net worth and determine whether they have unexplained betting capacity? And will it not have the power even now not to isolate these people but to precisely accost them? Is that not within the power of the BIR? Or does it need more powers to confront these guys so blatantly?

Senator Enrile. Right now, Mr. President?

Senator Roco. Yes, right now.

Senator Enrile. I do not think it has that power, Mr. President. Suppose the man is spending his own resources, tax-paid resources, how can we presume? That is why we said that there is no presumption here. There must be an evidential requirement to be observed before we exercise the power. For all we know, the guy goes to a casino and is spending the fortune of his wife, or the fortune of his mother-in-law or father-in-law or his girlfriend.

Senator Roco. Under those same conditions that may have occurred, but under the terms of this bill, we are now ready to open their deposit.

Senator Enrile. No. That is again a fallacy, Mr. President. The provision is very clear. There must be a return that is subject to audit. Let us not twist the provision. The text is very clear.

Senator Roco. That is correct, Mr. President, under the condition that the return has been audited. But who determines when the audit will be conducted? Is it not also the BIR?

Senator Enrile. It is the Commissioner or the district officer.

Senator Roco. That is correct. So, it is the same people

determining when the return will be audited and when there is clear, direct and substantial evidence. It is a conjunction between the prosecutor and the judge. Yet, we do not feel alarmed under these provisions and in the example I gave. When a BIR officer himself is gambling in the casino, we must assume that he may be spending the wealth of his wife.

Senator Enrile. For all we know, the fellow revenue officer who sees somebody gambling in the casino coming from the BIR might look into his return and report it. The guy will be subjected to audit. In which case, they might discover that he has committed a fraud.

Senator Roco. At this point, Mr. President, the points have been made clear, or I thought I was making clear my points and my concerns. At this point, may I just close my questions as regards Section 4 of Subsection 6 and thank the gentleman from Quezon, Aurora and Pampanga for allowing me a share of the period of interpellations. I will continue at some appropriate time on the other points.

Thank you very much, Mr. President.

SUSPENSION OF CONSIDERATION OF H. NO. 9077

Senator Tatad. Mr. President, with the understanding that the gentleman from Aurora, Quezon and Pampanga may continue his interpellation, I move to suspend consideration of House Bill No. 9077.

The Presiding Officer [Sen. Flavie]. Is there any objection? *[Silence]* There being none, the motion is approved.

Senator Tatad. I ask that the gentleman from Aurora, Quezon and Pampanga be recognized for a short manifestation.

The Presiding Officer [Sen. Flavie]. Sen. Edgardo J. Angara is recognized.

MANIFESTATION OF SENATOR ANGARA (Nomination of Senator Tatad in lieu of Senator Revilla as Member of the Commission on Appointments)

Senator Angara. Thank you very much.

Mr. President, we have one vacancy pertaining to the Laban party in the Commission on Appointments as a result of the resignation of one of our members. We have the honor to nominate Sen. Francisco S. Tatad as a member of the Commission on Appointments in lieu of Sen. Ramon B. Revilla who has resigned from our party.

The Presiding Officer [Sen. Flavie]. Is there any objection? *[Silence]* There being none, the motion is approved.

SPECIAL ORDERS

Senator Tatad. Mr. President, I move that we now transfer from the Calendar for Ordinary Business to the Calendar for Special Orders Senate Bill No. 1575, entitled

AN ACT TO DECRIMINALIZE SQUATTING AND OTHER SIMILAR ACTS, THEREBY REPEALING PRESIDENTIAL DECREE NO. 772, ENTITLED "PENALIZING SQUATTING AND OTHER SIMILAR ACTS."

The Presiding Officer [Sen. Flavie]. Is there any objection? *[Silence]* There being none, the motion is approved.

BILL ON SECOND READING

S. No. 1575 - Anti-Squatting Law Repeal Act of 1996

Senator Tatad. Mr. President, I move that we consider Senate Bill No. 1575 as reported out under Committee Report No. 458.

The Presiding Officer [Sen. Flavie]. Is there any objection? *[Silence]* There being none, the motion is approved.

Consideration of Senate Bill No. 1575 is now in order. With the permission of the Body, the Secretary will read only the title of the bill without prejudice to inserting in the *Record* the whole text thereof.

The Acting Secretary [Atty. Raval]. Senate Bill No. 1575, entitled

AN ACT TO DECRIMINALIZE SQUATTING AND OTHER SIMILAR ACTS, THEREBY REPEALING PRESIDENTIAL DECREE NO. 772, ENTITLED "PENALIZING SQUATTING AND OTHER SIMILAR ACTS"

The following is the whole text of the bill:

Senate Bill No. 1575

AN ACT TO DECRIMINALIZE SQUATTING AND OTHER SIMILAR ACTS, THEREBY REPEALING PRESIDENTIAL DECREE NO. 772, ENTITLED "PENALIZING SQUATTING AND OTHER SIMILAR ACTS"

RECORD OF THE SENATE

WEDNESDAY, AUGUST 13, 1997

RESUMPTION OF SESSION

At 10:42 a.m., the session was resumed with Senate President Ernesto M. Maceda presiding.

The President. The session is resumed. The Majority Leader is recognized.

BILL ON SECOND READING H. No. 9077 — Tax Reform Act of 1997 (Continuation)

Senator Tatad. Mr. President, for a while we will have the gentleman from Cagayan on the floor. I move that we resume consideration of House Bill No. 9077 as reported out under Committee Report No. 454.

The President. Is there any objection? *[Silence]* There being none, resumption of consideration of House Bill No. 9077 is now in order.

Senator Tatad. Mr. President, we are still in the period of interpellations. This morning, the Assistant Minority Leader, the gentleman from Quezon City, Tarlac and Bulacan, has reserved the right to interpellate.

SUSPENSION OF SESSION

The President. The Chair shall recognize the gentleman from Cagayan and the Assistant Minority Leader.

The session is suspended for a few minutes, if there is no objection. *[There was none.]*

It was 10:43 a.m.

RESUMPTION OF SESSION

At 10:45 a.m., the session was resumed.

The President. The session is resumed. The Majority Leader is recognized.

Senator Tatad. In view of the fact that the gentleman from Aurora, Quezon and Pampanga made a reservation to conclude his interpellation today, the Assistant Minority Leader has agreed to allow the gentleman to proceed and thereafter, the Assistant Minority Leader will continue.

The President. We would like to thank the Assistant Minority Leader for giving way without any implication that the

gentleman from Aurora, Quezon and Pampanga is a better presidentiable than he is.

Senator Angara. This is a season of presidentiables, Mr. President. But, in the meantime, we would like to find out more about our income tax reform.

Mr. President, to continue, under Section 6, paragraph (G), there is a requirement that anyone representing a taxpayer before the BIR must have received prior accreditation. I understand, under this present system, that accreditation of a lawyer or an accountant is discretionary, but it is now made mandatory under this provision. Is this correct?

Senator Enrile. Under the present provision of the Tax Code, Mr. President, the commissioner may require prior accreditation. In order to help the Bureau enforce our internal revenue statutes, it was felt that the commissioner should accredit and register, based on professional competence, integrity and moral fitness, individuals and general professional partnerships and their representatives who prepare and file income tax returns, statements, reports, protests and other papers or who appear before the Bureau for any taxpayer.

Senator Angara. Then the accreditation is now made mandatory; whereas, under existing laws, it is discretionary.

Senator Enrile. That is right, Mr. President.

Senator Angara. I am just raising that, Mr. President, because in the case of lawyers, I believe that the qualification to appear before courts and quasi-judicial bodies, like the BIR, is determined by the Supreme Court. There may pose some conflict between this requirement and the power of the Supreme Court to regulate the practice of law.

Senator Enrile. Mr. President, all I can say is that the rules and regulations will be prepared by the Secretary of Finance, upon the recommendation of the commissioner, to implement this provision. I believe that until the Supreme Court shall have spoken on this issue, whether to invalidate this or sustain it, the presumption is that this is a valid law. There is no harm in putting it in the statute at this time, subject to a challenge by the professionals concerned, if they so desire and believe that there is a taint of unconstitutionality, which I do not subscribe to.

Senator Angara. Mr. President, it is really a question of who decides and who can practice before quasi-judicial bodies. Because an anomaly may occur, that a lawyer can appear before the CTA to which the BIR rulings are appealed to and yet he cannot appear before the BIR, the lower court, because he has not been accredited.

I am just trying to say that, perhaps, we ought to look into the possible conflict between the practiced rules of the Supreme Court and this requirement of mandatory accreditation.

Senator Enrile. May I point out, Mr. President, for the record and for the satisfaction of everyone concerned, that this practice is not new. Lawyers cannot just appear in the Bureau of Customs for the release of goods unless they are licensed brokers. The fact that they know the Customs Code is not enough. They must be accredited and licensed as customs brokers. This is the same thing.

Senator Angara. Mr. President, as the distinguished Minority Leader said, a similar requirement by the Patents Office was invalidated by the Supreme Court. Perhaps the staff of the distinguished chairman can look into that law.

I do not want to linger unduly on this point because what we are trying to do is clarify the scope and meaning of these provisions so that the ordinary taxpayer can understand what we are discussing here. But I would suggest that the legal staff of the committee, perhaps, ought to look into that.

At this juncture, the Senate President relinquished the Chair to Sen. Juan M. Flavio.

Senator Enrile. We will look into this, Mr. President.

Senator Angara. Let me move on to Section 7, Mr. President. This is the power of the commissioner to delegate his function to subordinate BIR officials.

Is it clear, Mr. President, that the commissioner can delegate his function, except in five instances, to BIR officials with the rank of division chiefs and no other? Is that the meaning of this?

Senator Enrile. The commissioner may delegate the powers vested in him under the Code, except these five enumerated powers.

Senator Angara. Yes, I understand that, Mr. President. What I am asking is: Is the delegate confined only to division chiefs or can he delegate also below the division chiefs?

Senator Enrile. Only up to a division chief level.

Senator Angara. Now, why is it that the commissioner, Mr. President, cannot delegate his power to compromise or abate any tax liability whereas he can delegate the more serious power to compromise criminal violations? Is there some logic there?

Senator Enrile. I understand that the criminal violations cannot be compromised.

Senator Angara. Under this, Mr. President, he can delegate the power to compromise criminal violation, whereas he cannot delegate the power to compromise civil liabilities.

Senator Enrile. What line is that, Mr. President?

Senator Angara. That is under Section 7, Mr. President.

Senator Enrile. The criminal violations contemplated here, Mr. President, refer to minor infractions of the Internal Revenue Code. I think under Section 205... may I just be given a few minutes to go over this.

Senator Angara. Yes, please.

Senator Enrile. On page 158, line 6 of this proposed measure, it says: "All criminal violations may be compromised except: (a) those already filed in court, and (b) those involving fraud."

Senator Angara. Exactly, Mr. President. Why is it that he can delegate this power to compromise criminal prosecutions prior to court filing, whereas he cannot delegate...

Senator Enrile. Actually, these are minor violations, but if the distinguished gentleman wants to amend this, we are open to an amendment.

Senator Angara. Mr. President, to me, it is just quite logical that if we can delegate the greater, more serious power, then we ought to be able to delegate the lesser power. I suppose the power to compromise will also help in tax administration.

Senator Enrile. When it involves tax fraud like underdeclaration of income or overdeclaration of deductions, or other similar activities. I think in the case of excise taxes, when one underdeclares his production or he pays an excise tax less than what he actually removed from his place of manufacture, then these are not subject to compromise.

Actually, even the present Code, I understand, Mr. President, contains this delegation. "The Commissioner may delegate his power to compromise internal revenue cases,"—all kinds of cases—to the Deputy Commissioners and Regional Directors, subject to such limitations and restrictions as may be imposed under the rules and regulations to be promulgated for the purpose."

This is a more general provision. Now we have refined it.

Senator Angara. But I thought, Mr. President, that one of the five exceptions is the power to compromise and appeal which cannot be delegated.

Is the gentleman saying that despite these exceptions, there is a general grant to delegate?

Senator Enrile. That is correct, Mr. President. The power to compromise the amount of tax to be paid by the taxpayer or not to collect anything from him ought not to be delegated. But minor violations of the Code not involving fraud or active criminal cases already in the courts may be delegated to subordinate officials.

In fact, I think that is the practice today. The recommendation of the legal division of the bureau matters in the decision of the commissioner—whether to abate or to compromise a particular criminal violation, unless the case is already in the courtroom.

Senator Angara. Let me move to another administrative matter, Mr. President, and this refers to Section 17. This bill authorizes the BIR commissioner to assign or reassign internal revenue officers and employees to other or special duties concerned with enforcement or administration subject to Civil Service laws.

What are the Civil Service laws applicable to this power to assign and reassign, Mr. President?

Senator Enrile. I suppose when there is a reduction in emolument, the transfer or assignment will mean a diminution or limitation of the rank.

Senator Angara. So this power to assign or reassign is not intended as a punitive measure.

Senator Enrile. A management tool, Mr. President.

Senator Angara. This is part of management tool to put people in a position where their qualifications and training would be...

Senator Enrile. To put people in places where they can be more useful. And also at the same time to prevent fraternization.

Senator Angara. Yes. I think it is important to put that on record, Mr. President, because this may be used as a tool.

Senator Enrile. To prevent familiarity and fraternization between the taxpayers and the revenue enforcing officials of the government. This does not mean, however, that the officials enforcing this law ought to isolate themselves from the society where they operate. But, as much as possible, we should not allow that familiarization or fraternization to go deeper than the requirements of civility.

Senator Angara. Mr. President, does this power also apply to reassignment of assistant commissioners and division and section chiefs, or it applies to all?

Senator Enrile. That is correct, Mr. President.

Senator Angara. It applies to all.

Senator Enrile. In fact, there is a provision that if the purpose of the assignment is to pull out an officer and assign him to a special duty, then the assignment cannot exceed one year.

Senator Angara. Yes, there is a 3-1 assignment. But in the case of assistant commissioners and division chiefs, does that 3-1 period also apply? If one is assigned to do assessment, will it be for three years only? And if one is assigned to a special duty, is it for a maximum of one year?

Senator Enrile. That is correct, Mr. President. In normal cases, in a special duty, one cannot be assigned to it for more than one year. In the case of assignment to places where articles subject to excise tax are produced or stored, one ought not to be assigned there for more than two years. And in all other cases, the assignment should not extend beyond three years.

Senator Angara. In other words, Mr. President, this power to assign or reassign is not a power that is given to the commissioner to move people around, especially people who do not please him.

Senator Enrile. And this is also a limitation on the power of the commissioner, so that a commissioner will not put his or her people in areas where they could enjoy some lucrative benefits, to be blunt about it. *Ang kailangan ay may* dispersal of benefits, if we want to be malicious about it.

Senator Angara. Yes. Now, moving on to Section 20, page 14, Mr. President, on the creation of an oversight committee, why is it necessary to have a congressional oversight committee?

Senator Enrile. This is with respect to compromises. This implies, although not expressly, in effect to the reality of human weakness, such that in the performance of the duty to compromise, the commissioner ought to report to the Congress of the Philippines cases that have been compromised by the commissioner within a certain time. And we say here that that certain time ought to be every six months.

Senator Angara. Are we not apprehensive that this kind of body overseeing the work of the BIR is, one, in effect making them less autonomous, and two, it can be used, the present

chairman exempted, for purposes other than oversight? Because oversight can very well be performed by Congress through its appropriate committees rather than a special committee like this.

Senator Enrile. Mr. President, actually, this was a voluntary proposal of the BIR. In order to remove all these suspicions, we are willing to submit the reports to the Ways and Means Committee of both chambers of Congress on compromise tax liabilities. If we do not want this, let it be on record that we are the ones asking that we do not want it.

Senator Angara. I believe, Mr. President, that no matter how noble the intention is or how well-intentioned the proposal is, in the long term, for the sake of institutional arrangement, I think this is more detrimental than helpful. If Congress wants specifics of any compromise, Congress can very well do that.

Senator Enrile. Mr. President, we have a similar provision in the case of the Bureau of Customs. It has not been abused by Congress. There is no harm in putting this in the law. In fact, I would say that it will be beneficial because this will also put the commissioner on his toes that there is an oversight committee of Congress that can look into the compromises of tax liabilities entered into between the bureau and the taxpayer.

Senator Angara. Mr. President, I have very grave doubt about the wisdom of this oversight committee because the oversight function of Congress can be exercised anyway, and perhaps more effectively without creating an imposition of a body on top of the BIR commissioner. It is already difficult to be a BIR commissioner when there are so many constituents, whether politicians and private persons, badgering him. It will be worse if there is an institutional medium of pressure like this.

I believe, Mr. President, the good chairman can rethink this request of the BIR and, perhaps, do away with this. Because it may not, in the end, help the BIR or the institution of an independent internal revenue system.

Mr. President, with that request to the Chairman, let me move on...

Senator Enrile. Just a minute, Mr. President. May I just point out before we leave this, that on page 159 of this proposed measure, lines 19 to 23 and lines 1 to 21 of page 160, there is a provision which says:

THE COMMISSIONER SHALL SUBMIT TO THE COMMITTEE ON WAYS AND MEANS OF BOTH THE HOUSE OF REPRESENTATIVES AND THE SENATE OF THE PHILIPPINES, EVERY SIX

MONTHS, A REPORT ON THE EXERCISE OF HIS POWERS UNDER THIS SECTION,—

that is on compromise—

STATING THEREIN THE FOLLOWING FACTS AND INFORMATION, AMONG OTHERS: NAMES AND ADDRESSES OF TAXPAYERS WHOSE CASES HAVE BEEN THE SUBJECT OF ABATEMENT OR COMPROMISE; AMOUNT INVOLVED; AMOUNT COMPROMISED OR ABATED; AND REASONS FOR THE EXERCISE OF POWER: *PROVIDED*, THAT THE SAID REPORT SHALL BE PRESENTED TO THE OVERSIGHT COMMITTEE IN CONGRESS THAT SHALL BE CONSTITUTED TO DETERMINE THAT SAID POWERS ARE REASONABLY EXERCISED AND THAT THE GOVERNMENT IS NOT UNDULY DEPRIVED OF REVENUES: *PROVIDED, FINALLY*, THAT THE CONGRESSIONAL OVERSIGHT COMMITTEE SHALL BE COMPOSED OF THE CHAIRMEN OF THE COMMITTEE ON WAYS AND MEANS OF THE SENATE AND THE HOUSE OF REPRESENTATIVES AND FOUR ADDITIONAL MEMBERS, TWO FROM EACH HOUSE, TO BE DESIGNATED BY THE SENATE PRESIDENT AND THE SPEAKER OF THE HOUSE OF REPRESENTATIVES, RESPECTIVELY. THE CONGRESSIONAL OVERSIGHT COMMITTEE SHALL MONITOR AND ENSURE THE PROPER IMPLEMENTATION OF THE POWER VESTED UNDER THIS PROVISION.

Senator Angara. My comment to that, Mr. President, is, perhaps we can retain that portion requiring the commissioner to submit a report once every six months. But I still maintain that the creation of an oversight committee may not only be a surplusage but also an unnecessary imposition that can undermine the autonomy of an inland revenue service that we are trying to professionalize and strengthen.

Senator Enrile. Mr. President, maybe I am naive in the sense that I have greater faith in the rectitude of my fellow government servants, with the exception of a few. I think in the conduct of men in government over my time as a government functionary spanning almost 30 years now, the general rule is good behavior. There are a few exceptions, and this should be dealt with by the criminal laws that we have provided for the purpose.

The sad part of the whole thing is, we talk about it but we never enforce the law. That is why we always have this problem.

But if we are going to enforce the law consistently, without any fear or favor because of friendship, relation, or official affiliation, then we will have a better system of government and society. All of these fears of abuse of power, imagined or otherwise, will dissipate.

That is why, I have no qualms, no hesitation, in proposing this because I am basing them from my own personal experience, not just perception, but empirical experience over a period of 30 years.

Senator Angara. Mr. President, the best way to insure citizens' good behavior is to make clear, reasonable, predictable laws, and not create any exception in favor of any single body. Talking about good faith, presumption, et cetera, is going to be useless unless the law is clear, and the institutions are very well-defined.

Senator Enrile. But may I add, Mr. President, as a reaction to the last statement of the distinguished gentleman. I think the law is very clear. If there is any vagueness, we are willing to accept an improvement of the language.

Second, the Congress has the power over the purse. The delegate of Congress to provide the money in this purse is the Department of Finance and its bureaus, primarily the Bureau of Customs and the Bureau of Internal Revenue. As a matter of hierarchy of power, I think common sense and reason would tell me that it is within the prerogative of Congress to scrutinize the implementation of the instrument to provide the wherewithal so that government can function, and that is money.

We are not crafting this for charity; we are crafting this for a purpose, and the purpose is to raise money for government.

The agent of Congress in performing this and in achieving this is the commissioner of the Bureau of Internal Revenue and the commissioner of the Bureau of Customs. I think that on the basis of the law of agency, the principal has the power to check the actuation of the agent.

Senator Angara. Just a short reply to that, Mr. President. We do not dispute at all that we have the power of the purse; we have the power to review the finances of the government. What I am saying is that that power can be exercised effectively by just Congress and its appropriate committees exercising its oversight power. We need not create an institution that will impose on any agencies like what we are trying to do here. That is all that I am saying.

Let me move to Section 22, *Definition of Terms*, Mr. President.

Under Section 22(B), corporations have been redefined to include joint ventures or consortia. As I understand it, joint ventures or consortia, especially for construction and energy operations, under the present law, are not treated as corporations, and their income is taxed separately.

Senator Enrile. That is correct, Mr. President. But they did not agree with us. As corporation lawyers...

Senator Angara. Let me finish first my question, Mr. President, because I have not put my question yet.

Senator Enrile. Yes, please.

Senator Angara. What is the rationale for departing from that existing practice? The apprehension is that, especially in energy projects or big construction projects, we really have to put together a consortium or a syndicate of many firms. But if we tax that entity as a corporation now and impose the corporate tax on it, maybe this will be a disincentive for organizing syndicates or consortia for big item projects.

Senator Enrile. Mr. President, that is the illusion. But in reality, if we study the structure of this definition in relation to the operating provision, there is no double taxation. Because in a joint venture, we treat the joint venturers together and deal with the joint venture as a corporation.

If the joint venturers, as is the practice, are mostly corporations, the taxability of the joint venture stops at the joint venture because whatever sharing the corporate co-venturers would get from the joint venture would be in the form of a dividend, and there is no intercorporate dividend. Only individuals who are going to engage in a joint venture for construction, or for anything of the like, would be affected.

Senator Angara. It is good that the gentleman is asked these questions so that he can explain it the way he did, otherwise this will lead to the impression that this is now a counter-business measure.

Senator Enrile. I am just pointing this out, Mr. President, that these businessmen who are doubting this provision have not really studied the structure of this statute that we have crafted. So, I am just emphatically pointing out that their fears are unwarranted.

Senator Angara. That is good, Mr. President. That is the reason we are discussing and debating it—so that the sponsor, who is knowledgeable about this matter, and who has drafted and studied it, can explain to the public.

Senator Enrile. Another blunt reason we have to change this is that many of the current land developers in the country are getting away with their tax liabilities because of this provision undertaking construction projects. They are using this as a basis to avoid paying their taxes.

Senator Angara. Maybe the gentleman ought to explain that for the record, Mr. President.

Senator Enrile. Yes, Mr. President. I understand that because of this, the Bureau of Internal Revenue issued a ruling that people engaged in subdivisions, when the landowner and the developer enter into a joint venture, the joint venture is not taxable because of this provision. Otherwise, that joint venture is a pure joint venture, and yet because of this provision, the bureau was justified in issuing a ruling.

Senator Angara. What about the share of the joint venturers in the venture?

Senator Enrile. They are individuals. They will be taxed as if they were individual stockholders.

Senator Angara. The landowner will be taxed?

Senator Enrile. Yes, of course. His share will be an ordinary income to him.

Senator Angara. And the developer who is organized in a corporate form will be taxed?

Senator Enrile. Under the present bill?

Senator Angara. Yes.

Senator Enrile. Without this, the corporation is not double-taxed because when he receives his share from the joint venture after it has been taxed, then the amount received will no longer be subject to a corporate tax. But in the case of the landowner, it ends to him. He has to pay the tax.

Senator Angara. In what way is this exclusion of joint ventures in the corporate concept being used under the present time as a dodge or as an evasion of their tax?

Senator Enrile. Under the present system, the joint venture itself is not taxable. The parties, in their individual capacities, are taxed on their ratable share of the resulting profits from the actual land development.

Senator Angara. That is correct. But if we make them now a corporation, they will be subject now to corporate tax.

Senator Enrile. In the level of the joint venture.

Senator Angara. In the level of the joint venture. And I, as a landowner, when I receive my share of the profit, am I required to report that?

Senator Enrile. That is correct, Mr. President.

Senator Angara. So I am taxed twice?

Senator Enrile. Yes.

Senator Angara. Why should I be taxed twice?

Senator Enrile. The tax will be in the form of a tax on dividend.

Senator Angara. But that is distribution of profits. It may not be a distribution of dividends.

Senator Enrile. It is a dividend, because we treat the joint venture like a corporation. So the distribution of the profits will be in the nature of a dividend.

Senator Angara. That means that I will receive the dividend...

Senator Enrile. Subject to 10% additional tax.

Senator Angara. Not to my individual rate.

Senator Enrile. Yes. I forgot I was the one who crafted this provision.

Page 25. "DIVIDENDS - A FINAL TAX AT THE FOLLOWING RATES SHALL BE IMPOSED UPON THE dividends EARNED BY AN INDIVIDUAL from a domestic corporation OR FROM A JOINT STOCK COMPANY, INSURANCE OR MUTUAL FUND COMPANIES AND REGIONAL OPERATING HEADQUARTERS OF MULTINATIONAL COMPANIES, OR ON THE share of an individual IN THE DISTRIBUTABLE NET INCOME AFTER TAX OF a partnership (EXCEPT A GENERAL PROFESSIONAL PARTNERSHIP) OF WHICH HE IS A PARTNER, OR ON THE SHARE OF THE INDIVIDUAL IN THE NET INCOME AFTER TAX OF AN ASSOCIATION, A JOINT ACCOUNT, OR A JOINT VENTURE OR CONSORTIUM OF WHICH HE IS A MEMBER OR A CO-VENTURER at the rate of 4% FOR CALENDAR YEAR 1998; 8% FOR CALENDAR YEAR 1999; AND 10% FOR CALENDAR YEAR 2000 AND THEREAFTER."

Senator Angara. What about a corporation, Mr. President,

which is a member of a joint venture?

Senator Enrile. There is no intercorporate dividend tax, Mr. President.

Senator Angara. So he will not pay anything?

Senator Enrile. No, Mr. President.

Senator Angara. Mr. President, it is worthwhile to inquire into this provision because it gives the gentleman a chance to explain this highly complicated technical provision to us and to the public.

Senator Enrile. I am just leaving some work to the lawyers so that they can earn a living, Mr. President.

Senator Angara. Now, let me ask a few more questions, Mr. President, and I will be done. There is some doubt in my mind, Mr. President, about this second principle of income taxation stated here in Section 23.

Senator Enrile. Page 23, Mr. President?

Senator Angara. Section 23.

Senator Enrile. Yes, these are individual citizens of the Philippines working or residing outside the Philippines.

Senator Angara. Yes, I want to have some clarification here, Mr. President. When one is a Philippine citizen and working or residing abroad, he is only taxable on income from Philippine sources?

Senator Enrile. That is correct, Mr. President. Suppose one is a doctor, or an engineer, a maid, an ordinary carpenter, mechanic, nurse, or whatever, and he works abroad, that is where he gets his pay, he renders service there, he has no other income but that, he does not have to file an income tax return to the Philippines because he is not subject to tax for his compensation income abroad.

On the other hand, if one is a Filipino resident of any country outside of our national borders and he has investments there where he earns a rent, an interest, or a dividend, or a royalty, or an annuity, or when he has properties that he sells and he gains a profit, those are not taxable here.

Senator Angara. And is that the intention, Mr. President?

Senator Enrile. Yes. However, the reverse is true if one has interest earned in the Philippines, dividends, royalties,

annuities, rents or profits from the sale of land or other capital assets, then he is taxable for those incomes under Philippine law.

Senator Angara. That is clear enough, Mr. President. Now, let us talk of a resident of the Philippines whether citizen or alien. If one is a Philippine citizen, then he is taxed on his worldwide income?

Senator Enrile. That is correct, Mr. President, because of the fact that he is distinguished from the same Filipino citizen who is not a resident of the Philippines. In the case of the Filipino citizen resident of the Philippines, he enjoys police protection of the government; he enjoys the protection of the army; he enjoys the roads and the health services of the country.

Senator Angara. Suffers the same traffic congestion, pollution.

Senator Enrile. Suffering the same traffic congestion and the same noises uttered by politicians like us.

Senator Angara. And subjected to wiretapping.

Senator Enrile. I do not know about that. I do not think ordinary mortals in this country are subject to any wiretapping or eavesdropping, except maybe for peeping toms.

Senator Angara. Let us compare the status of a Philippine citizen resident in the country who is taxed on his worldwide income with an alien resident of the country. Now, the tax treatment of that resident alien is only for income earned within the Philippines?

Senator Enrile. That is correct, Mr. President.

Senator Angara. Why is it that the same persons, Filipino and alien, enjoying the same protection of this government and enjoying the privileges of this country, are treated differently?

Senator Enrile. Because that alien is protected by his own government, Mr. President.

Senator Angara. No, but he is a resident.

Senator Enrile. Both here and abroad. But the Philippine government will not protect that alien with respect to his investments abroad. The Philippine government will protect the citizen not only on his investments inside the country but equally on his investments abroad. That is the purpose why we have consulates and embassies.

Senator Angara. Talking of illusion, Mr. President, that

may be illusory. The principle of taxation, as I understand it, is that we apply it to people who enjoy the protection of the country's laws.

Senator Enrile. With respect to their special circumstance. As I have said already, Mr. President, in the case of a resident alien, the Philippine government will not bother to protect that resident alien if his assets are confiscated in Switzerland or in Timbuktu. But surely, the Philippine government will be concerned if the investments or assets of a Filipino citizen, a resident of the Philippines would be confiscated by a foreign government or injured by a foreign government.

Senator Angara. It seems to me that this is one instance, Mr. President, where a resident alien is given better treatment than a Filipino citizen.

Senator Enrile. Not really, Mr. President. In fact, this is the trend in the world today. The only countries that use the system that we are changing are the Philippines and the United States, because we copied our income tax law from the United States. We copied the 1918 Income Tax Law of the United States. Another one is a *retria*. I stand corrected. I do not think we should be placed in that category.

Senator Angara. Certainly, Mr. President, we should not be placed in that category. But at the very least, we are placed in the US category and the principle involved is fairness to one's own citizens.

Senator Enrile. That is correct, Mr. President. But why should the resident alien pay for the protection of the Philippine government on assets that it cannot protect abroad?

Senator Angara. We will leave that point, Mr. President, with the explanation of the distinguished senator. Let me move to Section 24 (D), Mr. President. This applies to sale of unlisted stocks and sale of listed stocks, but not through the stock exchange.

The tax applicable here has been reduced by half. The present tax of 10/20 has been reduced to 5/10.

The 5/10, Mr. President, as I understand it, is based on net capital gains. And if it is so, then is the 5/10 smaller than the one-half of 1 percent imposed on sale through the stock exchange? Would it be smaller than the one-half of 1 percent?

Senator Enrile. Just a minute, Mr. President, I would just like to reread this provision.

Senator Angara. This is larger than the one-half of 1 percent.

Senator Enrile. Yes, that is correct, Mr. President.

Senator Angara. A couple of more points, Mr. President.

Senator Enrile. There is a special reason for this, Mr. President. As we can see, the tax imposed on shares of stock traded in stock exchanges is half a percent. To impose a 10 percent on the net capital gains for the first P100,000 is, I think, rather inordinately heavy as a burden, and then 20 percent over and above P100,000.

We feel that we should encourage closely held corporations that cannot yet allow themselves to be listed in the stock exchange to sell some of their shares of stock to the public. That is the basic policy and philosophy of the half-percent tax on listed shares—to encourage listing so that the public can participate in these successful ventures.

By the same manner, we should apply this to those corporations that cannot list themselves yet in the stock exchange but are already successful in their level. That is the purpose of this section.

Senator Angara. Maybe, one additional purpose is that because of this favorable treatment now, people will be encouraged to conduct business through the corporate form.

Senator Enrile. That is correct, Mr. President.

Senator Angara. Let me touch one or two more points and I will be done, Mr. President. Section 33, which is now renumbered as Section 31-B on page 59.

Senator Enrile. Yes, Mr. President. Page 59.

Senator Angara. This is just a plain omission. May I suggest that the retirement benefits under RA No. 7641 be included among the list of exclusions.

Senator Enrile. What is RA No. 7641?

Senator Angara. As we will recall, Mr. President, RA No. 7641 is a law that provides retirement pay in companies where there is no collective bargaining agreement or an approved retirement plan. About three years ago, Congress provided that the employee can, nonetheless, receive a retirement pay.

Senator Enrile. We are willing to accept an amendment at the proper time on that, Mr. President. That is a good suggestion, and I would like to commend the distinguished senator from Aurora for calling our attention to that.

Senator Angara. I am sure my other comments on the other provisions are also noteworthy, Mr. President.

Senator Enrile. That is correct. That is why we have argued with the distinguished gentleman from Aurora. That goes without saying, by the way.

Senator Angara. Thank you, Mr. President. By way of suggestion, too, perhaps it is also appropriate to provide or to give the Secretary of Finance the power to increase the P30,000 ceiling in the light of the increasing costs of living, et cetera, rather than peg the limit of P30,000—

Senator Enrile. We are amenable to a possible amendment to that, Mr. President.

Senator Angara. —so that we do not have to go back and forth to Congress and have that adjusted.

Senator Enrile. This is with respect to the 13-month pay and other benefits given to officials and employees of public and private entities.

Senator Angara. That is correct, Mr. President.

Senator Enrile. Yes, Mr. President. We are amenable to consider an amendment.

Senator Angara. Finally, Mr. President, the exemption of nonstock and nonprofit educational institutions. I am sure the proprietary educational institutions are not exempted.

Senator Enrile. On what page?

Senator Angara. That is on page 57, Mr. President.

Senator Enrile. “A NONSTOCK AND NONPROFIT EDUCATIONAL INSTITUTION.” That is correct, Mr. President. These are exempted.

Senator Angara. This will exclude proprietary educational institutions.

Senator Enrile. That is correct, Mr. President. In fact, there is a special treatment of proprietary educational institutions on the deduction side of this measure. If I remember correctly, I was about to recast that provision but, on second thought—I know that this is the favorite sector of the distinguished gentleman from Aurora—that I decided to leave it as it is. This is an unusual provision.

Senator Angara. That is found on what page, Mr. President?

Senator Enrile. Mr. President, it says “In addition to the expenses allowable as deductions under THIS CHAPTER...

Senator Angara. What page is that, Mr. President?

Senator Enrile. Page 72—”and a private educational institution, referred to under Section 27(B) of this Code, may at its option elect either (A) to deduct expenditures otherwise considered as capital outlays of depreciable assets incurred during the taxable year for the expansion of school facilities or (B) to deduct allowance for depreciation thereof under paragraph (F) of this Section.”

Even the entire building could be deducted as an ordinary expense.

Senator Angara. It is a positive help to private education, Mr. President, and we welcome this provision.

Senator Enrile. That is why I did not touch this, Mr. President, because I know that this is the pet subject of the distinguished gentleman from Aurora, Quezon and Pampanga.

Senator Angara. Thank you, Mr. President. Two more small points, perhaps, Mr. President. That is on the net operating loss carryover. The recommendation is for three years.

Senator Enrile. That is on what page?

Senator Angara. That is on page 82, lines 10 to 12. The proposal here is to have this carryover for a period of three years.

Senator Enrile. That is correct, Mr. President.

Senator Angara. Would the five years not make us competitive with the rest of the Asean?

Senator Enrile. I think that will be too long, Mr. President. In year one, we project that to year three. Our loss in year one is all the way to year three; our loss in year two is all the way to year four; our loss in year three is all the way to year five. That is the way it is going to end. So on and so on. Every three years will be time trenching of this deduction.

Senator Angara. What about the accelerated depreciation, Mr. President? I noted that this is only confined to mining corporations. Could we not apply this to all?

Senator Enrile. It applies to all, Mr. President.

Senator Angara. It does? No. I do not think so, Mr. President. Under the text, it is only applicable to mining corporations.

SUSPENSION OF SESSION

Senator Enrile. Just a minute. May I ask for a one-minute suspension of the session, Mr. President. I would like to go over the provision on depreciation.

The President. Is there any objection? *[Silence]* There being none, the session is suspended for one minute.

It was 11:43 a.m.

RESUMPTION OF SESSION

At 11:45 a.m., the session was resumed.

The President. The session is resumed. Senator Enrile is recognized.

Senator Enrile. Mr. President, may I explain that in the income tax world, there is one generally accepted method of depreciating assets, and that is a straight-line method, taking into account the useful life of the capital asset involved.

In the case of equipment and machinery, generally these are given a useful life of five years. If we, let us say, acquire a tractor and it costs us P1 million, we ought to depreciate that on a straight-line basis of P200,000 per year. So we recover our investment against our taxable income or gross income over a period of five years.

Lands are not depreciable. In the case of buildings, normally these are depreciable over a period of 20 years on a straight-line method. Five percent recovery of our capital investment per year. This is the accepted normal life of structures or buildings.

In some cases, under varying economic conditions, tax policymakers have adopted additional type of depreciation which they call "accelerated depreciation methods." Normally, there are two of these, which are generally accepted, namely, the declining balance method and the sum of the years' digits.

How does the so-called declining balance method operate? In the case of the tractor, it has a useful life of five years. Meaning, we depreciate it over a period of five years. We should use a percentage factor of, let us say, 20%. So we apply 20% the first year, we have a balance of 800. We apply 20% on the 800 the next year, and so forth and so on, until we shall have finished it. But in this case, we always have an unrecoverable balance.

In the case of the sum of the years' digits, we sum up the number of years—one, two, three, four and five. So we have 15. In the first year, we take one-third of the entire cost of the

property because 5/15 is equal to 33 1/3%. In the second year, we take four-fifteenths of our investment; in the third year, we take three-fifteenths of our investment; in the fourth year, we take two-fifteenths; and in the last year, we take one-fifteenth of our investment. We accelerate our recovery in the earlier period of the useful life of our equipment.

What happened was, because of our unjustified desire, in my opinion, to encourage mining industry in the country and other types of industry, we allowed a further acceleration of depreciation by authorizing a doubling of this method of accelerated depreciation. Meaning, in the case of the tractor, if our normal declining balance method is 20%, we should take 40% during the first year, and then also 40% on the declining balance during the second year, and so forth and so on.

In the case of the sum of the years' digits, the same thing, we multiply the depreciation by two. So, in effect, we take ten-fifteenths of the... Not really, we double the amount. I cannot get the exact arithmetical magnitude.

Because of this, I felt that this is too much. So I deleted the double deduction for everyone and let them apply the principle of accelerated depreciation under normal situation.

Senator Angara. Yes. My final query, Mr. President, is about donation to charity. That is on page 96, lines 16 to 23.

Mr. President, the donation in kind under this proposal will be based on historical cost. I am afraid that with this kind of formula, it would be almost difficult to stimulate and encourage philanthropy in this country. Much of our artistic work, perhaps, will never be donated by owners if the base used is the historical cost.

For instance, it is possible that we may have bought an Amorsolo painting in the 1940s for P8,000 or P10,000. That Amorsolo painting may very well cost P1,000,000 now. If the owner is going to get only P10,000 as a tax credit, I do not think that we will be encouraging many people to give charitable donations, Mr. President. I think we ought to look into this.

Senator Enrile. Mr. President, if, indeed, our prospective donors are acting out of charity and not out of pecuniary consideration, they could give away the work of art to the National Museum without having to deduct the amount. But if we allow them to deduct the amount to encourage them, they could use it as tax shelter.

Senator Angara. That is all right, Mr. President, as long as works of art are given to charity. Because once given to charity, then it is open to the public rather than held in private hands.

Senator Enrile. This is now a question of whether we encourage them. We now prefer the money that otherwise we would collect. Not to be collected because we want to foster art, and thus deprive the use of that money for the hospitalization benefits of poor people or something else.

Senator Angara. I think the gentleman put the policy issue quite well, whether we want to get more money out of art owners or art collectors, or we would want to foster art pieces giving or charity so that the general public will now have a chance to view what otherwise would not be viewed by the public.

Senator Enrile. Maybe we should allow that deduction, if at all, not on income tax but on the eventual estate tax of the donor, Mr. President, to be fair. Otherwise, they will manipulate this and use it as a tax shelter.

Senator Angara. Well, charity is not always untainted, Mr. President.

Senator Enrile. Because, if the gentleman will allow me, that is a part of taxable estate of the individual if he keeps it up to the end of his life. So if he is willing to give it to the government, and there is a document showing that he gave it to the government, the fair market value of that asset, at the time of giving, ought to be considered as a deduction against the estate of the individual.

Senator Angara. That is one approach, Mr. President. I think we are halfway to taking a policy in favor of charitable donation. But the other way, perhaps, is a combination of estate tax deduction and a portion of it being able to be deducted from the regular income tax.

Senator Enrile. In the first place, Mr. President, very few people would have a gross income that would be offsetted by the fair market value of a Luna, except maybe, for people like the Ayalas, Gokongweis, Sorianos, Tans, Lopezes—

Senator Angara. The Enriles.

Senator Enrile. —Enriles—to include me in that—or the Yuchengcos, Tys or the San Miguel Corporation or the like. In America, the Fords, Carnegies, Dillons, and the Rockefellers were big donors. How many of these can we find in our income taxpayers here in the Philippines?

Senator Angara. We are quite many in this country.

Senator Enrile. There are quite a number of them in Binondo and Chinatown, Mr. President, but if we look at their income tax returns, they do not earn any income.

Senator Angara. That is another issue, Mr. President. The issue here is whether we should now lay down a tax policy that will encourage charity. Unfortunately, we do not have a tradition of philanthropy in our country, that is why education is having a difficult time, hospitals are having a difficult time, and arts is suffering very greatly in this country because, first, there is no consistent state subsidy to arts; and second, there is no incentive for the private sector to donate to art.

This is an opportunity to foster that kind of philanthropy in favor of charitable donation. I think we should not be stingy on this. I even wonder how much tax will be lost as a result of this. Let us take a longer look.

Senator Enrile. Actually, Mr. President, if we read the bracketed provision, for a long, long time we have this provision in the Code. But we will hardly find anybody donating their Lunas and Hidalgos, let alone Manansala, especially the nude ones, to government galleries. First, perhaps, because they feel that to do that, they will be destroying the paintings themselves. These will not be cared for, considering the dilapidated condition of our Museum building which often leaks when there is heavy downpour. Apart from that, by nature, we are not prone to giving donations. Maybe the best time to really deduct this is at a time when the person dies, and it will be deducted from gross estate.

Senator Angara. I hope, Mr. President, the gentleman can come out with a combination of deduction against current income plus deduction on estate tax.

Senator Enrile. Maybe we can use both estate and donor's tax. The donor who wants to take advantage of the fair market value of what he is giving away to the government can now combine it with a donation to his children and allow this as a deduction from that donation.

Senator Angara. As long as we have now a definite tax policy favoring charity.

Senator Enrile. Then, this will be justified because normally a donation affects the legitime of the forced heirs and they have a right to complain if the parents will donate all the assets to other people or to government.

Senator Angara. I hope the staff of the able chairman will be able to come up with that provision.

Mr. President, I have no more question, except to thank very greatly our distinguished chairman for his patience and very enlightening answers.

Thank you, Mr. President.

Senator Enrile. I would like to thank the distinguished gentleman from Aurora. As I said, he was too humble to admit that he knows taxation as much as this representation knows it. I am sure deep in his heart he agrees with us that this is a good proposal and that he will be the one to enforce it when he reaches Malacañang in 1998.

Thank you, Mr. President.

The President. The Majority Leader is recognized.

SUSPENSION OF CONSIDERATION OF H. NO. 9077

Senator Tatad. Mr. President, I move that we suspend consideration of House Bill No. 9077.

The President. Is there any objection? *[Silence]*
There being none, the motion is approved.

ADJOURNMENT OF SESSION

Senator Tatad. Mr. President, I move pursuant to Section 39, Rule XIV of the Rules of the Senate, that we adjourn the session until four o'clock this afternoon.

The President. Is there any objection? *[Silence]*
There being none, the session is adjourned until four o'clock this afternoon.

It was 12:01 p.m.

RECORD OF THE SENATE

MONDAY, AUGUST 18, 1997

OPENING OF THE SESSION

At 4:26 p.m., the Senate President, Hon. Ernesto M. Maceda, called the session to order.

The President. The tenth session of the Third Regular Session of the Tenth Congress is hereby called to order.

Let us all stand for the opening prayer to be led by Sen. Ernesto F. Herrera. After which, we shall be led in the singing of the Philippine National Anthem by the Earth Savers Dreams Ensemble, which is a socially integrated performing group composed of disabled and blind street kids and Smokey Mountain kids. Thereafter, they will render a freedom song in honor of Ninoy's martyrdom.

Everybody rose for the prayer.

PRAYER

Senator Herrera.

Almighty God, our Father, twenty-four of Your servants gather anew in this Chamber to serve Your people in Your name.

We humbly stand in Your presence to receive the gifts of Your inspiration, Your light and Your guidance so that our labor may be fruitful and worthy of the trust that the people have reposed in us.

Help us to work for justice; ever embolden us to proclaim Your truth; infuse us with the humility to treat everyone as our brother or sister; and teach us to love.

For only if we work for justice, only if we speak Your truth; only when we love can we have peace; and only in peace, Your peace, may we find the answers that we seek; and the fulfillment that we so desire from all the things that we do.

Amen.

NATIONAL ANTHEM

Everybody remained standing for the singing of the national anthem.

The President. The Earth Savers Dreams Ensemble has successfully performed at the UN Human Rights Conference in

Vienna, UN Social Summit in Denmark, the UN Habitat Forum in Turkey, and for the Pope at the Vatican. They are trained through the Arts Focus and Environmental Education Program under the direction of Ramon Magsaysay Awardee for Public Service, Cecille Guidote Alvarez, of course, with the inspiration of Sen. Heherson Alvarez. *[Applause]*

The Majority Leader is recognized.

ROLL CALL

Senator Tatad. Mr. President, may I ask for the roll call.

The President. The Secretary will please call the roll.

The Secretary, reading:

Senator Heherson T. Alvarez	Present
Senator Edgardo J. Angara	Present
Senator Anna Dominique M.L. Coseteng ..	Present
Senator Franklin M. Drilon	Present
Senator Juan Ponce Enrile	Present
Senator Marcelo B. Fernan	Present
Senator Juan M. Flavier	Present
Senator Neptali A. Gonzales	Present
Senator Ernesto F. Herrera	Present
Senator Gregorio B. Honasan	Present
Senator Gloria M. Macapagal	Present
Senator Ramon B. Magsaysay Jr.	Present
Senator Orlando S. Mercado	Present
Senator Blas F. Ople	Present
Senator Sergio R. Osmeña III	Present
Senator Ramon B. Revilla	Present
Senator Raul S. Roco	Present*
Senator Alberto G. Romulo	Present
Senator Miriam Defensor Santiago	Present
Senator Leticia R. Shahani	Present
Senator Vicente C. Sotto III	Present
Senator Francisco S. Tatad	Present
Senator Freddie N. Webb	Present
The President	Present

The President. With 23 senators present, there is a quorum.

THE JOURNAL (Consideration Deferred)

Senator Tatad. Mr. President, I move that we defer the consideration and approval of the *Journal* of the previous session.

*Arrived after the roll call

Fernan	
Flavier	Yes
Gonzales	Yes
Herrera	Yes
Honasan	Yes
Macapagal	
Magsaysay Jr.	Yes
Mercado	Yes
Ople	Yes
Osmeña III	
Revilla	Yes
Roco	
Romulo	Yes
Santiago	
Shahani	
Sotto III	
Tatad	Yes
Webb	Yes
The President	Yes

APPROVAL OF P.S. RES. NO. 835 ON THIRD READING

The President. With 16 affirmative votes, no negative vote, and no abstention, Proposed Senate Resolution No. 835 is approved on Third Reading.

BILL ON SECOND READING

H. No. 9077 - Tax Reform Act of 1997

(Continuation)

Senator Tatad. Mr. President, I move that we resume consideration of House Bill No. 9077 under Committee Report No. 454.

The President. Is there any objection? [Silence] There being none, resumption of consideration of House Bill No. 9077 is now in order.

Senator Tatad. Mr. President, we are in the final stage of the interpellation. I ask that the distinguished sponsor, the chairman of the Committee on Ways and Means, Sen. Juan Ponce Enrile, be recognized; and to continue his interpellation, the distinguished gentleman from Cebu and Bohol, Sen. Ernesto F. Herrera.

The President. The distinguished sponsor, the gentleman from Cagayan, is recognized; and the distinguished chairman of the Finance Committee, the gentleman from Cebu and Bohol, Sen. Ernesto F. Herrera, is recognized to continue his penultimate interpellation.

Senator Enrile. We are ready, Mr. President.

Senator Herrera. Thank you, Mr. President.

I have only about two or three more points. Let me just mention that I am concerned about the net operating loss carry-over provision which might be used by certain firms in order to take advantage of not paying taxes.

As I have said earlier in this morning's interpellation, a review of the 1996 financial performance of the top 5,000 corporations in the Philippines shows that 648 reported net losses equivalent to P15.8 billion. With this provision, that would mean that these companies can use this provision in their financial report to avoid payment of taxes to the tune of P15.8 billion, even assuming that they will be making profit in 1997.

I would just like to put that into the *Record* so that if the very able chairman of the committee would find merit in my comment, he can take a second look at this particular provision.

In principle, Mr. President, I have nothing against this provision. What I just want is to have certain safeguards that, probably, we can adopt this provision if we can abolish or rationalize the BOI incentives. Because based on the records of the government, in particular the Department of Finance, we have lost so much amount under these BOI-approved incentives. Probably, we can have some sort of a compromise on this.

Senator Enrile. Mr. President, may I reply to the distinguished gentleman from Cebu and Bohol in that these companies that are alluded to have been losing, therefore, they are not contributing in any way to the revenue of government.

The revenue level of government is attained without consideration of these companies that incurred these losses of P15 billion; so that from that point of view, there is no distortion or adverse effect on the revenue of government, even assuming that we will now have a net operating loss carryover.

Second, Mr. President, assuming that these companies will continue to lose, then the same situation will not alter. They are not sources of revenue of government. But, on the other hand, these companies will start paying taxes in 1998 because of the minimum corporate income tax that we are introducing, except those that have just started their business operations not more than three years ago. To the extent of the minimum corporate income tax even if they continue losing, the government will now start to get something from these companies.

I suspect that many of these companies that have shown losses are the perennial companies that are operating year in, year out but showed no taxable income.

So, Mr. President, I doubt whether there will be any adverse effect on the revenue of government if we adopt the net operating loss carryover. Even assuming that they will reflect a slight taxable income over and above the operating losses that are being carried forward and matched against their gross income, if the resulting corporate income tax of these corporations is less than the minimum corporate income tax based on the formula that we are writing in the Code, then these corporations will pay the minimum corporate income tax. To that extent, the interest of the country and the government is fully safeguarded.

Senator Herrera. In fact, Mr. President, I am very glad that we have this minimum corporate income tax. My concern is that when these companies which are now incurring losses and even if they will make profit in 1997 or in the succeeding year in 1998, they cannot be required to pay tax simply because of this provision. As I said, if the gentleman thinks that there will be a possibility that this can happen, we can take a second look in this provision and make the necessary protection.

The other point that concerns me is Section 36, which provides an individual taxpayer with an additional and unlimited allowance for interest expense on loans incurred to acquire the first family home. On the surface, this particular provision is very attractive in the sense that the proposal has a very noble purpose or purposes. It addresses a basic need, and it aims to provide a relief to a taxpayer building a home for himself and his family.

However, the effectiveness of this proposal must also have to be addressed on certain issues. For instance, on the question of equity. The relief will have an upside down effect. For example, the benefit will accrue to affluent taxpayers relative to the poor since the tax relief will be directly proportional to the amount of its interest expense. Thus, the more expensive the house of the taxpayer is, the greater is his tax relief, and it will have little or no effect on poor taxpayers who cannot afford to acquire a home.

Senator Enrile. Mr. President, my short answer to that is, if the distinguished gentleman will care to make a proposed amendment to delete this, I will accept it. We are reconsidering this point precisely because of the possibility that it could be abused by people who have the wherewithal to put up expensive houses.

Senator Herrera. I am glad that the gentleman has also recognized that possibility, Mr. President. In fact, this will also create a sort of distortion because this will favor the debt-financed housing as against the housing financed through personal savings.

Mr. President, this is a good provision. What we can do perhaps is to provide a ceiling to a certain extent that the

taxpayers can avail of this benefit. Probably at a certain cost of the housing, that should be the ceiling and later just adjust this in accordance with the inflation rate.

I will propose an amendment to that during the period of amendments, Mr. President.

Senator Enrile. During my luncheon meeting with the technical group, including the Department of Finance and the Senate Tax Study and Research Office, we came up with the conclusion that this ought to be deleted from the proposal precisely because, apart from the possibility of abuse, the erosion on the revenue of government will become rather large. So I acceded to the representation of the Department of Finance, and I hope that the distinguished gentleman from Cebu and Bohol will be the one to make the proper motion to delete the provision.

Senator Herrera. As I have said earlier, Mr. President, this particular provision has its own noble feature. That is why I said that probably a certain safeguard can be provided just so this cannot be abused. I would be the first one to join the Chairman of the committee in his original proposal to include this particular provision, because this is one provision that will really help those who are building their first home, only that we have to make sure that this will be equitable and will not be abused.

The other point, Mr. President, has something to do with the income of overseas workers. I just would like to have a clarification on whether the income of seafarers who are hired by a domestic corporation but on board a chartered vessel by this corporation, an ocean liner, will be considered as income outside the Philippines, and therefore, not subject to income tax.

I am raising this, Mr. President, because the average salary of a seafarer on an ocean liner would be something like \$1,200. So that if we have to exempt them completely, it may happen that a worker in the domestic company, receiving very much less than \$1,200 or \$2,000, is paying taxes, but the seafarer on an ocean liner is not paying a single centavo to the government. We might be creating a problem here.

Senator Enrile. Mr. President, also as a consequence of my discussion with the technical group this noon, we decided to modify paragraph (b) appearing in lines 10 to 13 on page 20 of this measure by removing the word "WORKING OR" and instead of that, we will put another paragraph specifically stating that, OCWs regardless of the time of their stay abroad and non-OCWs who have worked abroad for the full year shall not pay any income tax on their compensation earned abroad.

Now, a seafarer, a seaman working on a foreign vessel is, by fiction of law, working in a foreign country because the vessel

is an extension under international law of the territory of the country whose flag it flies. Therefore, he is not a resident of the Philippines while on board a foreign vessel.

Senator Herrera. If the vessel is chartered by a domestic corporation, certainly, it is not considered a foreign vessel, is this correct?

Senator Enrile. If it is chartered by a local corporation, then it carries Philippine flag. Under international law, the ship is an extension of Philippine territory.

Senator Herrera. Now, there are certain peculiarities in the maritime industry. A vessel can be chartered by a domestic corporation but it is registered in countries which they consider as flag of convenience, like Panama. This is one peculiarity that I think we have to address, Mr. President, because technically, they are domestic vessels in the sense that they are chartered by a domestic corporation.

But to avoid interdiction by international unions, they register in other countries which they call "countries of flag of convenience." Probably, this can be addressed in the implementing rules or we can put this in the law itself.

Senator Enrile. Mr. President, as I said, we could not possibly cover every conceivable situation in this Code, otherwise, we will write a Code that is much more voluminous than Merriam Webster's Dictionary. But what I can say is that we should leave some of these situations to the rule-making power of the Department of Finance, because this involves interpretations already of the Tax Code.

Senator Herrera. I agree with the distinguished gentleman, Mr. President. But the Filipino seafarers would number about 280,000. It is expected that in 1998, they will reach 320,000, 27 percent of the overseas vessels are manned by Filipino crew. So it is really a big sector of our economy.

Senator Enrile. How many of these people, Mr. President, would fall under the characterization of the distinguished gentleman from Cebu and Bohol as boarding vessels that are actually chartered by Philippine business groups and/or owned by Filipino owners, but flying flags of convenience?

Senator Herrera. The Department of Labor and Employment can certainly give us the number, but I agree with the distinguished gentleman that probably, we can leave this to the rule-making authority to make sure that there will be no problem that may arise as regards this particular provision.

Mr. President, let me now go to my last point, and this has

something to do with the provision in Section 72 which would expand the 20 percent...

Senator Enrile. May I know the page, Mr. President?

Senator Herrera. I think it is on page 146, Mr. President. It has something to do with the expansion of non-essential commodities subject to the 20-percent excise tax.

Senator Enrile. That is correct. These are the toilet preparations.

Senator Herrera. My concern, Mr. President, is that cars with engine displacement of 1600cc and below are only subject to a 15 percent excise tax, while the toilet preparations are subject to 20 percent tax. We know that almost everybody is using shampoo.

I am just trying to raise the issue of equity. Because there are certain items which are really non-essential like cars, golf sets that are not covered. But shampoo, lotion, and cosmetics are covered. Probably, we will just look into this and try to reexamine this. Let us take a second look so that we can be more equitable in dealing with this particular provision, Mr. President.

Senator Enrile. May I know the question, Mr. President?

Senator Herrera. The question here, Mr. President, is that we are imposing a 20 percent excise tax on these toilet preparations, but there are certain items like cars with engine displacement of 1600cc and below that are subject only to 15 percent. I think the issue of equity here can be raised. Why do we have to impose 20 percent on shampoo and lotions?

Senator Enrile. What is the pleasure of the distinguished gentleman, Mr. President?

Senator Herrera. My recommendation, Mr. President, is that we include those that are really non-essential items. Let us expand the coverage. We have to include cars and golf sets. I think we cannot be criticized for that.

Senator Enrile. Mr. President, with the permission of the distinguished gentleman, these are nonessentials: perfume, essences, extracts, lotions, toilet water, cosmetics, hair oil, pomades, hair dressing, hair tonics, hair restoratives, hair dyes and similar substances. These are categorized as nonessentials.

In the case of cars, Mr. President, I am also in favor of imposing higher taxes on cars. But in some cases, many of these vehicles are utility vehicles.

Senator Herrera. Yes, Mr. President. But everybody is using shampoo, hair dye and all that. Maybe we can be more equitable if we should include those that would appear to be excluded like cars and golf sets.

Senator Enrile. We are amenable to a proposal, Mr. President. The only reason we reexamined this is that we expanded the meaning of "toilet water" to "toilet preparation." Instead of using the term "toilet water," we used "perfumes and toilet waters" because we are not just dealing here with water. We are dealing here with alcohol-based products.

Senator Herrera. As I said, Mr. President, since the gentleman has no objection to include cars and others in expanding this, I would like to terminate my interpellation.

I congratulate the gentleman for this landmark legislation. I am very confident that once this bill becomes a law, we will be able to develop a stable source of revenue for the government.

Thank you, Mr. President.

Senator Enrile. Thank you, Mr. President. I would like to thank the distinguished gentleman from Cebu and Bohol for his very incisive questions.

Senator Tatad. For the next interpellation, Mr. President, I ask that the distinguished gentleman from Isabela be recognized.

SUSPENSION OF SESSION

The President. The session is suspended for one minute, if there is no objection. *[There was none.]*

It was 5:07 p.m.

RESUMPTION OF SESSION

At 5:08 p.m., the session was resumed.

The President. The session is resumed. The gentleman from Isabela is recognized to interpellate the gentleman from Cagayan.

Senator Alvarez. Will the gentleman be good enough to answer a few inquiries, Mr. President?

Senator Enrile. Gladly, Mr. President, to the gentleman who will possibly enforce this law if he makes it in 1998 to Malacañang.

Senator Alvarez. Mr. President, that will be a law which all presidents must enforce and it is the distinguished gentleman's law.

Senator Enrile. Truly, Mr. President

Senator Alvarez. Mr. President, we have gone on the nitty-gritty of this legislation. According to the Medium-Term Development Plan, this piece of legislation is one of the major pillars of the economic program in order that we can raise the collectible taxes as percentage to GNP from 15 to 17 percent, in effect, increasing the ratio to somewhere around 2.6 or 2.8 percent. Those are the details.

In any case, Mr. President, this is a major tax collection effort. We tried to make some calculations that the volume to be collected is somewhere around P20 billion. Am I right in this?

Senator Enrile. From this measure, Mr. President?

Senator Alvarez. Yes, from this measure.

Senator Enrile. After deducting all the additional personal independent exemptions and the other proposed amendments that are going to be submitted by the distinguished members of the Chamber, we will end up with a possible net revenue to the government of something between P4 billion to P5 billion, Mr. President.

Senator Alvarez. The P4 billion to P5 billion will be much lower than the 2.2 percent increase.

Senator Enrile. That is taking into account the populist provision that we want to introduce, Mr. President.

Senator Alvarez. Talking of the populist provision, it seems that the rates of taxable income of individuals have not changed.

Senator Enrile. They have, Mr. President. In fact, if you take the effective rate, the tax rate has gone down.

Senator Alvarez. Accumulatively, Mr. President, because from Section 27, which used to be Section 24, I get the impression that there is a decreasing tax rate on taxable income of corporations.

Senator Enrile. Yes, Mr. President, but that will also be balanced by the introduction of the dividend rate.

In the case of individuals, let us take the threshold income of P250,000. If we add up all the taxes resulting from the

application of the varying rates against the varying tranches and sum them up, divided by P250,000, we will come up with what we call an effective rate. We will see that the effective rate of the present Tax Code is much higher than the effective rate of this proposed Code. And that means that the government will be losing revenue to the extent of the difference between the effective rate in the present Tax Code and the effective rate in the proposed Code. That is an erosion.

We are supplementing that without increasing the rates of taxpayers in this country. On the other hand, by lowering the rates, we have compensated that with some adjustments in the exempted income from taxation, as well as plugging loopholes that are being used by certain bright tax lawyers and tax accountants to erode the revenue of the government, Mr. President.

Senator Alvarez. Does that sufficiently respond to our measure of progressive taxation as demanded by the Constitution, Mr. President?

Senator Enrile. By all means, Mr. President. The income tax of the country is a progressive system.

Senator Alvarez. And under this reform, comprehensively, that principle is upheld.

Senator Enrile. If we take the totality of the tax system, there is no tax system in the world that is progressive. None. I can tell the gentleman offhand, there is none. But if we take the income tax portion, then it is progressive.

Senator Alvarez. I am concerned in pursuing the idea that as we provide for more opportunities for collection, and as we increase the proportion of what is collected in revenues through taxes, we are able to increase collection from sectors that will really be able to afford the payment of these taxes. And I think this is what we refer to under Article VI of the Constitution as progressive mode of collecting.

But with the targets of the government to keep increasing, and even if we increase it to 17 percent, we are still far below. What would be a modern apparatus for tax collection and a bigger participation from the public sector to move ahead the economy? Other countries, like Singapore for instance, or even the United States were far below the standard. I wonder whether the gentleman has looked into the approaches that he has begun here, so that the progressive mode of collecting enables the government to continually upgrade the percentage of the share of the public sector.

Senator Enrile. Mr. President, I am quite confident that if

this measure is approved, with all the improvement in tax administration and tax implementation that we have introduced, it will increase the revenue of the government not only because of the lifting of some exemptions and plugging of loopholes, but also because we are now providing the Bureau of Internal Revenue with essential tools to perform its function to collect the rightful tax due every taxpayer in the country.

Senator Alvarez. May I go to Section 205, on the authority of the Commissioner to compromise, abate and refund, or credit taxes, talking of tools. Whereas this authority is limited to 50% of collectible tax, under this proposed reform, we may now compromise up to 90%. The provision here is 10% to 40% or 40% to 10%, which means he may compromise from 60% up to 90%.

Senator Enrile. This is on the basis of financial position. If the taxpayer goes to the commissioner and says, "Look, Commissioner, I am not in a financial position to pay my tax." And if it is really verified that the taxpayer is incapable of financially discharging his or her tax obligation to the government, then the commissioner may compromise the tax liability within minimum, not less than 10% of the amount due.

Hindi ba mas mabuti iyong something is collected for nothing?

Senator Alvarez. But it seems that the elbowroom for compromise, Mr. President, is a big quantum jump—from 50% to a minimum of 10%.

Senator Enrile. There was no minimum before, Mr. President. The 50% is only for large taxpayers. But for people claiming financial inability to pay, there is no minimum.

So now he says, "Okay, if you are really financially unable to pay, you should pay at least 10% of your resulting tax."

Senator Alvarez. Mr. President, we will further explore that in the period of amendments. But may we explore another provision here?

Senator Enrile. By all means, Mr. President.

Senator Alvarez. This one refers to the taxation of equity income.

Senator Enrile. What page is it, Mr. President? Are we talking of the sale of shares of stocks?

Senator Alvarez. Income on dividends of individuals. The highest personal rate will be 30%; corporate will also be 30%. But in the case of individuals, they pay an additional 10%.

So, cumulatively, they pay effectively 40%.

Senator Enrile. No. The effective rate is P0.37 for every P1.00 of income, passing from the corporation to the individual stockholders. Because per P1.00 of net taxable income is reduced by P0.30. That is the corporate tax.

When the remainder P0.70 is declared as a dividend, by the year 2000 the government takes 10% of that. The net to the individual stockholder is P0.63 per P1.00. So the effective income tax rate is 37%.

Senator Alvarez. But the maximum rate for corporation is 30%.

Senator Enrile. That is correct, Mr. President.

Senator Alvarez. But does it not show a little disincentive? As a matter of fact, it is a clear disincentive for an individual investor, especially the middle class.

Senator Enrile. In a sense, there is a degree of disincentive, Mr. President. But I think that is a little price to pay for limited liability, privilege that is granted to an investing individual taxpayer in a corporate enterprise.

If the corporation goes bankrupt, the extent of one's exposure is to the extent of his investment in the corporation. They cannot reach his other assets.

Senator Alvarez. Yes. But on the one hand, there is the countervailing reality that there is a very minimal investment on the part of the general public that may be needed to be encouraged precisely by softening up the rules on stock market.

Senator Enrile. Actually, Mr. President, if the general public or the people want to pay less tax, they should buy shares of stocks in the stock market, so that they pay only one-half of 1 percent. So their effective rate is 30.5 percent.

Senator Alvarez. Well, considering the tax on dividend...

Senator Enrile. If they want to receive a dividend, then, Mr. President, that is the reality of life. These people who are actually receiving dividends, who are investing to receive dividends are mostly in the upper level of our society.

Senator Alvarez. I see that this is a reform tax package, Mr. President. I was hoping that these minute signals cumulatively all over these provisions progressively indicate that we want certain public attitude to be developed. That individual should take risk. That they should come in as equity investors.

Senator Enrile. That is true. They should also be responsible citizens. So that they can say, "I am a taxpayer. You should not misspend my money because I am a taxpayer." But many of our people in this country are saying, "I am a taxpayer, you should not misspend our money." But if we look at it, they do not pay any tax. And yet, they have many condominiums.

Senator Alvarez. For certain taxpayers. But if we compare this level of tax on money market ventures, for instance, practically for doing nothing and taking no risk, we get 20 percent.

Senator Enrile. There is always a risk, Mr. President, whenever we invest money. There is no such thing as a "riskless investment."

Senator Alvarez. I was wondering whether the investment could be managed in such a way that it gives encouraging signals. Instead of investors going to the money market, they would go into equity investments. We encourage more risk-takings and more corporations in the process, and get the confidence of private investors and middle-class investors as well.

Senator Enrile. That is the basic principle of the reduction of some of the tax rates in this Code, Mr. President.

Senator Alvarez. We saw that. I thought that we can really round this up with the specific situations that I pointed out. After all, the gentleman is not just here to collect more taxes. Actually, he is reforming the whole tax-collecting process.

Senator Enrile. This is a mixture of policy. It is given that government, Mr. President, must be provided with revenue. But in doing so, first, we must see to it, using an old cliché, that the goose that lays the golden egg will not be thwarted from laying the golden egg; and second, taxation should not be used as an instrument to destroy.

So, balancing all interests—encouraging foreign investments into the country, heightening business activities, equity in taxation, giving a bigger free income to the lesser capable members of the society, imposing a higher burden on those with better capacity to pay, and so on and so forth—all of these were taken into account in the conception of this measure. We have introduced this quietly into every nook and corner of this Code.

Senator Alvarez. Mr. President, we saw that there are really these progressive efforts. I hope that this tax reform proposal of the gentleman will last for generations to carry the need of the burden of raising public revenue.

One last point, on this TIN, Mr. President. There are diversity transactions proposed to be covered with the TIN. There has been some reservations about having a national ID system. Is this not tantamount to having a national ID system when we have the TIN?

Senator Enrile. When we already had a TAN, now we want a TIN. Because the TAN did not succeed, now we want a T-I-N instead of a T-A-N.

Senator Alvarez. Why should we collect, as we do and we shall, from individuals their shared income and use this to surreptitiously bring in an ID system which we seem to reject in this Chamber?

Senator Enrile. Mr. President, this is only for taxpayers. If somebody will say "You should not be wasting our money." Then we have the right to ask him: "Do you have a TIN?" Because if he does not have a TIN, he has no right to say, "Do not waste our money."

Senator Alvarez. In any case, Mr. President, when the opportune time comes, I wonder if we could look at this proposed provision, because every aspect of the taxpayer's monetary undertaking, whether it is official or personal, can easily be accessed by government with the proposed TIN.

While I am in favor of the TIN, it should be done with such restriction and rigor, so that it does not become a national ID system.

Senator Enrile. This is only for taxpayers, Mr. President. In fact, we should welcome a TIN, because it shows that we are good citizens, we are supporting our government, and we are performing our civic duties.

Senator Alvarez. I think that while we should do that, it should not go to such bounds that it becomes an ID.

Senator Enrile. It is an ID only for taxpayers, Mr. President.

Senator Alvarez. Why do we not, during the period of amendments, see to it that it is an ID only for taxpayers and that it cannot be accessed for some other purposes?

Senator Enrile. Actually, this is going on in the communication world also. If one wants to use his privilege of availing credit facilities, then he is also given an identifying sign or symbol for that purpose, the same thing with the TIN that we are introducing.

Senator Alvarez. I hope that in the world to come, Mr. President, we really are able to channel the use of TIN for specific purposes and nothing more. I am just expressing a concern that have been addressed to this Chamber on the use of a national ID.

Thank you very much, Mr. President.

Senator Enrile. By the way, this is already in the Code, Mr. President. So, it is not a new one.

Senator Alvarez. Thank you, Mr. President.

Senator Roco. Mr. President.

The President. The distinguished senator from Camarines Sur and Bohol is recognized.

MANIFESTATION OF SENATOR ROCO (Absence in Picture-Taking of Senators)

Senator Roco. First, Mr. President, on a point of personal privilege. Just to put on record that I was not here for the picture-taking because I was relying completely on the word of the Senate President that I could come at five o'clock since I had prior engagements.

Senator Enrile. May we have a one-minute recess, Mr. President.

Senator Roco. Yes, Mr. President.

The President. Please continue.

Senator Roco. And so, we feel aggrieved, Mr. President, that our full faith and reliance on the word of the Senate President was not sufficient to protect one's presence in the picture-taking.

Just to put on record, Mr. President, as a personal privilege.

The President. The same is noted. In view of the presence of 23 senators, it was suggested that we go ahead with the picture-taking. But as I indicated to the gentleman, we will try to schedule another one, especially since three senators were not in *barong*.

At any rate, should that not be possible, then the Senate will not officially use the photograph of 23 senators without the gentleman from Camarines Sur and Bohol.

Senator Roco. Thank you, Mr. President. But it is really reliance on words.

I would also like to exercise my turn to ask some questions, Mr. President.

SUSPENSION OF SESSION

The President. The session is suspended, if there is no objection, because the sponsor had asked for time. *[There was none.]*

It was 5:33 p.m.

RESUMPTION OF SESSION

At 5:34 p.m., the session was resumed.

The President. The session is resumed.

Senator Roco. Are we in session, Mr. President?

Senator Enrile. We are ready, Mr. President.

Senator Roco. Thank you, Mr. President.

Mr. President, I would like to thank the sponsor for some of the provisions on the tax. This will be brief. In fact, I hope that after this maybe we can close the period of interpellations and proceed to the period of amendments.

May I just state, Mr. President, that we fully subscribe and we support the provision that individual citizens of the Philippines working or residing outside of the Philippines are taxable only for income derived from sources within the Philippines. This was also part of our bill and so we want to thank the sponsor for having included this. I know that he was also very strong in this regard.

I take it, Mr. President, that this refers to natural persons only and that this will not apply to corporate or juridical personalities.

Senator Enrile. Obviously, Mr. President, there is no question about that.

Senator Roco. Yes. May we just put on record, Mr. President, the reason for the distinction.

Senator Enrile. Yes. Incidentally, Mr. President, as I have mentioned a while ago, we will recast the paragraph appearing on page 20, lines 10 to 13. We will separate those working abroad which will cover OCWs.

Senator Roco. Yes.

Senator Enrile. Those who are not OCWs but working for the entire taxable year abroad, their compensation income will not be subject to income taxation in the Philippines.

Senator Roco. Thank you, Mr. President. Then, again, I agree with the principle of separating the natural from the juridical. But again for the record, so that others may be guided in the future, may we put why the juridical persons or corporations are not given the same treatment?

Senator Enrile. Mr. President, a corporation is domiciled in the country where it was created. While it may apply for a license to do business in other countries, the country of domicile or residence is actually the country that created it.

Now, in the case of domestic corporations, they cannot transport themselves out of the Philippines.

Senator Roco. Yes.

Senator Enrile. They will always be a Philippine resident.

Senator Roco. Would there be some benefit in terms of generating savings for the corporations? Would there be some benefit in terms of allowing a branch of a corporation operating, let us say, in Hong Kong, that they should not be taxed for their income in Hong Kong?

Senator Enrile. The income of a subsidiary abroad is not taxed here, Mr. President. It is not subject to income tax.

Senator Roco. It is not subject to worldwide tax?

Senator Enrile. Until that income is declared as a dividend.

Senator Roco. That is correct.

Senator Enrile. Even then, because we are not imposing an intercorporate dividend, there is no impact until that flow of income reaches the individual stockholders.

Senator Roco. That is very good, Mr. President. Now, on the income tax of royalties on books, Mr. President, there have been requests from the National Book Development Board. I am not sure if this is a repetition, I will withdraw the question, but there have been requests for a lowering of the tax and this may be beneficial in terms of making available books and information to the general public. Would this be an acceptable amendment to the committee? I am referring to Section 24(b)(1), page 24, lines 10 to 22...

Senator Enrile. Page 24, Mr. President?

Senator Roco. Yes, but this might have changed under the new—my memo is on the basis of the old but the committee report imposes a final tax of 20 percent on royalties derived from sources within the Philippines. I do not know if the sponsor is ready to indicate whether he may be willing to consider a lowering of this final tax as far as books are concerned.

Senator Enrile. If I remember correctly, the tax on royalties is 20 percent.

Senator Roco. I think that is already a reasonable tax, considering that without this, the royalty could be taxed at the level of 30 percent. So, will this be a significant amount, Mr. President? Because authors of books are the ones seeking help in this regard and so, we are just raising it to the committee. If it is not really a significant amount in terms of revenue, maybe the social benefit of encouraging the book authors may outweigh the small revenue that we may generate here.

Senator Enrile. While that is true, we are not prepared to give a quantification of the amount of revenue at this point. What I can say is that, we are not prepared to reopen any matter that would exempt anyone from income taxation.

Senator Roco. Just a lowering, Mr. President. If this is feasible, I am just calling attention so that there can be appropriate computations later on.

Senator Enrile. I am sorry, Mr. President, but we feel that the royalty is in the form of a passive income. One does not exert any effort to earn it; he already has done the effort by writing his material or his book. Therefore, the degree of obsolescence of the human body is not really that much compared to the tax on the individual, who earns a living by working, using his brawn or his brain on a daily basis to earn that income.

If we tax a person who uses his brain everyday at the rate of 30 percent beyond a certain level, I see no justification in taxing someone who just received a royalty because he wrote a beautiful book, like Victor Hugo sometime in the past.

Senator Roco. But the process of creativity, Mr. President, is not something physical; it is not like the production of canned goods where we can trigger off the production of canned sardines. There is the element of inspiration, the element of long gestation sometimes and there have been authors who wrote books long after their primes. So, the total life span may have resulted in the books.

At this juncture, the Senate President relinquished the Chair to Senator Flavio.

I have thought, if the revenue losses will not really be significant just by way of helping what we refer to as the knowledge society, maybe there could be just 15 percent instead of 20 percent.

Senator Enrile. Mr. President, I am not talking of a comparative consideration of the situation of a corporate enterprise or a business enterprise as against the individual. I am talking of two individuals.

A, who wrote a book, a novel, and he is now receiving royalties and *B*, who did not write a book but must earn a living by working as a banker, as an engineer, as a newspaperman—everyday he uses that brain. The degree of physical deterioration is much higher in the case of *B* than in the case of *A*, and yet, we already considered a 10 percent differential between the tax position of *A* in comparison with *B*.

Senator Roco. With all due respect, in many instances, Mr. President, that may not necessarily be the case. I know that the lawyers, the bankers use their talent on a day-to-day basis. But authors, creations also exert on a day-to-day basis generally because this is the result of a lonely work. There are authors like Rushdie who was able to write only after he was 50 years old. Therefore, it is not altogether fair to say that authors may not be taxing themselves on a day-to-day basis, except that the process of work and creation is different from the lawyers who construct based on existing statutes. These are creations where they construct generally from nothing to something.

Senator Enrile. That is correct, Mr. President, that is why they are given royalties. And we are giving a special rate for these people, both for literary work, musical work and inventions and similar products.

Senator Roco. Yes, Mr. President. The other thing, Mr. President, that I did have occasion to write the distinguished chairman which has been touched on—at least once in interpellations—is the possible addition of tuition fees and matriculation fees as an itemized deduction.

I do appreciate, Mr. President, that the chairman has referred to the possibility of a tax credit. So I thought I would put on record appreciation that a middle way is being sought to be able to help the parents and the students and to be able to help, in general, the educational effort which is always wanting in funds and support. And so, an itemized deduction of tuition and matriculation may be suitable or a tax credit for that, subject to the figures that the technical committee has informed me they were working on will be truly helpful in the view of this representation.

Senator Enrile. Mr. President, I would like to be very

liberal about these things. I do not want to appear very insensitive about this request. But unfortunately, there is something that we have to consider here.

For every deduction or exemption that we grant, it has a very heavy impact on the revenue of the government. And considering the amount of additional and personal exemptions that we have granted, plus the deduction that we will authorize for premium on health insurance, plus the exclusion of certain types of compensation already from income taxation, I think to grant a special exemption in the form being suggested will entail a very heavy loss on the revenue of government.

Senator Roco. Yes. Maybe the distinguished chairman is ready to share some data.

Senator Enrile. If it is per family, this was already mentioned in the course of the interpellation of the distinguished gentleman from Mandaluyong. According to the finance department, the maximum possible loss of revenue, if we grant a P10,000 additional exemption, would amount to P41.5 billion. If we grant an additional exemption of P10,000 per family, we will be eroding the revenue of the government to the extent of between P3 billion to P3.5 billion. If we grant a tax credit of P3,000 for educational expenses for taxpayers with income of P50,000 and below, this will mean a minimum loss of P1 billion in revenue.

Senator Roco. Mr. President, we will try to come up at the appropriate time with a formula where it will be effectively socialized deduction, so that, for instance, only families with income less than a P100,000 can avail of a tax credit. It is combining the amount that we are looking at. So that if a family has less than a P100,000 income, then it may avail themselves of a tax credit up to P3,000. But we must look for ways of making that negotiable so that maybe the banks can buy it or some corporations can buy it and, therefore, may be able to utilize it.

We will come up with a proposal later on, Mr. President. One billion pesos, after all, in terms of the amount being mentioned, may not be significant but it can be very helpful to the poorer families. That seems to be the philosophy of the poverty alleviation program that we are all trying to work out.

We will await our turn, Mr. President, in this regard.

Senator Enrile. We will consider the proposal but, as I said, my problem is how to balance the interest of the taxpayer as against the interest of the government. We have to establish an equitable balance between these two. If I want to be popular, I will accept all the proposed amendments and I will probably be kissed by everyone on the streets. But, unfortunately, I am

not prepared to do that because I know the implications to our country if we go through deficit spending because we do not have enough revenue.

Senator Roco. We respect the distinguished sponsor for that. That is why we were seeking a middle ground by which there is, first, a ceiling on the income of the families that may avail, and second, maybe, it will be a 10 percent or a P3,000 possible deduction. It will effectively be socialized deduction if we can find a convertible feature to the tax credit. That can also mean a definite benefit for the people who just earn less than P100,000.

We have no desire to make this a popular issue. It would have been better to ask for more but now that we see the sense of the committee, this representation is precisely yielding by putting two or three ceilings to the proposal.

That being said, may we just have a final question: Could the distinguished sponsor clarify this—and if this has been answered before, I beg him to bear with me—the category of head of family appears to have been removed from the Code as proposed.

Senator Enrile. That is correct, Mr. President. We removed the distinction between single, head of family, and married. All taxpayers are treated alike. Whether one is single, head of family or married, he is entitled to an individual personal exemption of 25 percent. The distinction will lie on the additional exemption for dependents.

At this juncture, Senator Flavier relinquished the Chair to the Senate President.

Senator Roco. So, we rely now on dependents, whether single. If a single has a dependent, then that dependent will... that is very good. That is certainly an excellent improvement on the current state of law.

Senator Enrile. Mr. President, I would like to thank the gentleman for being convinced by us.

Senator Roco. Then, Mr. President, there is greater equity because we know that there are many single parents. We also know that the older children can earn for the rest of the family. It seems fair that the elder child, who is working, therefore becomes entitled to the dependents.

Senator Enrile. Mr. President, I see no distinction between *A*, a single person, whether male or female, from *B* who is head of a family and *C* who is married, as individual taxpayers from the viewpoint of entitlement to a personal exemption.

On the other hand, *A*, without any dependent, will not enjoy any additional exemption for dependents. *B*, if he or she is head of a family, will have a dependent who will be entitled to additional exemptions, in the same manner that a married person would be entitled to an additional exemption if he has children.

Senator Roco. So I take it, Mr. President, that single parents now will feel that they are treated more equitably under this proposed bill.

Senator Enrile. I think so, Mr. President.

Senator Roco. The child who is working to support his younger brothers and sisters will be treated more equitably as well.

Senator Enrile. In fact, if I may say it lightly, the government is, in effect, subsidizing their mistake. *[Laughter]*

Senator Roco. Every now and then, Mr. President, we have to do that. Mr. President, I tried to avoid as much as possible those that I have read in the records or listened to.

Thank you very much, Mr. President, and congratulations to our distinguished sponsor.

Senator Enrile. Thank you very much.

Senator Tatad. Mr. President.

The President. The Majority Leader is recognized.

Senator Tatad. Mr. President, I am under the impression that was the last interpellation, but the gentleman from Cebu would like to propose one or two questions. I ask that he be recognized.

Senator Enrile. By all means, Mr. President, from my fraternity brother and former chief justice of the Supreme Court.

The President. The gentleman from Cebu, Sen. Marcelo B. Fernan, is recognized.

Senator Fernan. Thank you, Mr. President.

Mr. President, some of my friends in the business sector have asked me to be enlightened on certain points on this comprehensive tax reform measure. To enable this representation to enlighten them, I would also like to seek enlightenment from the distinguished chairman and sponsor.

Senator Enrile. By all means, Mr. President. If we can put

light into darkness, we will do so, although we are getting a little bit hazy ourselves at this point.

Senator Fernan. We shall endeavor to shed light. There are only two points, Mr. President: the tax on dividends, and the minimum corporate tax.

With respect to tax on dividends, while in earlier discussions it has been lengthily discussed that this matter of double taxation of equity income comes into play, one as a corporate tax, and then as personal dividends, it has been the observation of some that this would discriminate against middle-class investors because while there is a provision exempting intercorporate dividends, the effect here would be to discriminate against middle-class investors since high-income investors will take advantage of exemption of intercorporate dividends.

May we be enlightened on that point, Mr. President?

Senator Enrile. Ultimately, Mr. President, the money of the corporation will reach the individual stockholders. Therefore, they will pay the tax then. It is just a question of time.

On the other hand, if we are going to impose an intercorporate dividend, the tax will be too confiscatory. Because then we will be taxing layers by layers and the resulting effective tax will be too high, and it will probably discourage pooling of capital for purposes of business.

On the other hand, there is an essential function of a corporation in its being used as a vehicle for business because it is more efficiently used for that purpose, apart from the fact that the money that will be retained by it could create additional employment.

Senator Fernan. It has been the observation of these people in the business sector that it singles out equity income for a tax rate higher than the maximum because the highest personal rate will be 30%, and the corporate tax will also be 30%. But adding 10% dividend tax to the latter makes the tax rate on equity income 40%, the highest of any category.

Senator Enrile. That is true, Mr. President. But that is a different type of income in the hands of the recipient individual. It is actually a dividend, where before that was treated as an ordinary income. It just happened that during the time of Mrs. Aquino, they imposed a total exemption on dividend which I understand ought not to have been, but we are now restoring it gradually because, truly, these are two taxpayers.

Senator Fernan. Would this not discourage equity investment and risk-taking because it tilts the balance towards

risk-free debt financing? Tax on the money market income is only 20%, but on equity, it will be 30% plus 10% or 40%.

Senator Enrile. Interest income is 20% final tax. Here, dividend tax is 20%. So, it is a much lower rate. On the other hand, as I said already, if one puts his money directly in the money market, he could lose it because the borrower could be a bankrupt company or could abscond. On the other hand, if one puts it on San Miguel shares, on Ayala shares, or in Banco de las Islas or Far East Bank, he gets not only a dividend taxable at 10% but an appreciation on his investment.

Senator Fernan. Mr. President, may I now move on to the minimum corporate tax. Under this recommended scheme, a tax rate of 0.75% based on net assets with carry forward and credibility features will be applied to corporations that do not report any taxable income.

Senator Enrile. Mr. President, may I just react. We businessmen are always complaining about taxes. We do not like to pay taxes, if possible.

Senator Fernan. So this representation would like to enlighten them, because they are always complaining.

Senator Enrile. Thank you, Mr. President.

Senator Fernan. According to them, how true is their belief that this particular scheme is an IMF idea to compensate for the weakness of local tax implementation?

Senator Enrile. Whether it is IMF or not, if the idea is good, it does not really matter. And I consider the idea good to reach the pockets of the perennial losers or tax avoiders, if not tax evaders.

Senator Fernan. Does the gentleman not think that this scheme is onerous for capital intensive businesses, such as mining, whose products may be subject to prolonged cyclical movements, and also firms whose incomes are artificially held down by law, like rent-controlled properties? Despite carry forward feature, this hits firms when they need funds most. That is when they are losing money.

Senator Enrile. The distinguished gentleman knows, Mr. President, the businessmen will always find arguments against taxation. But my answer to them is: The Secretary of Finance can suspend the application of the minimum corporate income tax in meritorious cases—when there are legitimate business reverses, *force majeure*, or prolonged labor dispute that would affect the interest of the taxpayer.

It has to be a legitimate business setback, and we address the

determination of that to the Secretary of Finance. We could not possibly write every conceivable situation in this Code.

Senator Fernan. I am grateful to the distinguished sponsor, the gentleman from Cagayan, for enlightening me on those points and I can, in turn, enlighten the friends from the business sector.

Thank you very much.

Senator Enrile. Thank you, Mr. President.

The President. Anent the just concluded debate, that is why the Chair is really not inspired to give these businessmen a corporate tax reduction from 35% to 30%. They will not appreciate it and they will try to avoid it anyway.

Senator Enrile. Mr. President, I think I know the businessmen who asked the question from my distinguished colleague from Cebu.

By and large, the corporate taxpayers appreciate the move of the Senate in gradually reducing corporate income taxation in the country, and introducing a dividend tax. Eventually, Mr. President, the Senate will be proven correct in approaching the income taxation of the country in this direction.

Senator Tatad. Mr. President.

The President. The Majority Leader is recognized.

Senator Tatad. Mr. President, before we conclude the interpellation, I was wondering if I may be allowed to ask just a couple of very short questions.

Senator Enrile. By all means, Mr. President.

The President. The Chair is hesitant to recognize the Majority Leader on that matter. But since the sponsor agrees, we will allow the Majority Leader to proceed.

Senator Tatad. On this much revisited provision concerning the authority of the commissioner to inquire into the bank accounts of taxpayers, particularly No. 4, I was wondering whether the sponsor would consider at the appropriate time, a slight modification that would allow the taxpayer against whom there is clear, direct and substantial evidence of fraud in the preparation of his return, to confront the finding of the commissioner...

Senator Enrile. Agreed, Mr. President.

Senator Tatad. ...prior to the exercise of this power?

I would like to thank the distinguished sponsor for that.

The other question is: We are vesting the commissioner with so much power. Supposing he chooses not to exercise this power in certain cases, is he liable?

All right, there is fraud where the evidence is clear, direct and substantial against a taxpayer, but he decides not to inquire. What happens?

Senator Enrile. He or she will be subject to the Anti-Graft Law.

Senator Tatad. That is very clear, Mr. President. I am satisfied.

One other issue, on additional exemption. Does it make much difference whether we grant additional exemption of P6,500 for each dependent, provided the number does not exceed four, or shall we simply say for all dependents, and the exemption should prevail.

I do not know if we have any studies. But I do not believe there are many married couples who will have more than four children just to avail of the exemption.

I see that the sponsor indicates he is amenable to an appropriate amendment at the proper time. So, I conclude my questioning, Mr. President.

There are no further questions. I move that the period of interpellations be closed.

The President. Is there any objection? *[Silence]* There being none, the motion is approved.

Senator Tatad. Mr. President, there are no committee amendments. I move that the period of committee amendments be closed.

The President. Is there any objection? *[Silence]* There being none, the motion is approved.

SUSPENSION OF CONSIDERATION OF H. NO. 9077

Senator Tatad. To allow the Chamber to prepare their individual amendments, I move that we suspend consideration of House Bill No. 9077.

The President. The Chair would like to congratulate the sponsor and all the members of the Senate for such a thorough debate on the CTRP covering about 12 session days and with 25 different interpellations.

Is there any objection? *[Silence]* There being none, the motion is approved.

BILL ON SECOND READING S. No. 2215— Amending R.A. 6975

Senator Tatad. Mr. President, I move that we consider Committee Report No. 465 on Senate Bill No. 2215 as reported out by the Committee on National Defense and Security.

The President. Is there any objection? *[Silence]* There being none, the motion is approved.

Consideration of Senate Bill No. 2215 is now in order. With the permission of the Body, the Secretary will read only the title of the bill, without prejudice to inserting in the *Record* the whole text thereof.

The Secretary. Senate Bill No. 2215, entitled

AN ACT PROVIDING FOR THE REFORM OF THE PHILIPPINE NATIONAL POLICE AND FOR OTHER PURPOSES, AMENDING REPUBLIC ACT NUMBERED SIXTY-NINE HUNDRED AND SEVENTY-FIVE ENTITLED "AN ACT ESTABLISHING THE PHILIPPINE NATIONAL POLICE UNDER A REORGANIZED DEPARTMENT OF THE INTERIOR AND LOCAL GOVERNMENT, AND FOR OTHER PURPOSES,"

The following is the whole text of the bill:

Senate Bill No. 2215

AN ACT PROVIDING FOR THE REFORM OF THE PHILIPPINE NATIONAL POLICE AND FOR OTHER PURPOSES, AMENDING REPUBLIC ACT NUMBERED SIXTY-NINE HUNDRED AND SEVENTY-FIVE, ENTITLED AN ACT ESTABLISHING THE PHILIPPINE NATIONAL POLICE UNDER A REORGANIZED DEPARTMENT OF THE INTERIOR AND LOCAL GOVERNMENT, AND FOR OTHER PURPOSES

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

TITLE I TITLE AND POLICY STATEMENTS

SECTION 1. *Title.* - This Act shall be known as

RECORD OF THE SENATE

WEDNESDAY, AUGUST 20, 1997

RESUMPTION OF THE SESSION

At 10:41 a.m., the session was resumed with Senate President Ernesto M. Maceda presiding.

The President. The session is resumed. The Chair would like to welcome those who have arrived today and survived the floods.

Senator Tatad. Mr. President.

The President. The Majority Leader is recognized.

THE JOURNAL

Senator Tatad. I move that we dispense with the reading of the *Journal* of the previous session and consider it approved.

The President. Is there any objection? *[Silence]* There being none, the motion is approved.

Senator Tatad. I move that we proceed with the reading of the Additional Reference of Business.

The President. The Secretary will read the Additional Reference of Business.

ADDITIONAL REFERENCE OF BUSINESS

MESSAGES OF THE PRESIDENT OF THE PHILIPPINES

The Secretary.

Malacañang Palace
Manila

July 21, 1997

The Honorable
Senate President Ernesto M. Maceda
Congress of the Philippines, Manila

Dear Honorable Senate President Maceda:

I have the honor to submit a copy of the "*Safety and Health and Mines Convention, 1995*," drawn up by the International Labor Organization, which prescribes preventive and protective measures at all mines through the specification of the responsibilities of employers as

well as the rights and duties of workers, to be taken in accordance with the national laws and regulations, and applied in the spirit of the cooperation among employers and workers.

The full implementation of the measures and requirements under this Convention will address the need to promote safety and health awareness among all the mining and regulatory sectors and to upgrade safety and health standards in the mining industry, given the number of fatalities and occupational accidents at certain mining operations as well as the multifarious health, sanitation and environmental problems posed to the mining population and communities.

The National Tripartite Forum on Safety and Health in Mines petitioned for the early ratification of said Convention.

Our ratification thereof will provide additional and unequivocal indication of Philippine adherence to internationally accepted labor standards, even though our current safety and health laws and regulations are already consistent with most of the provisions of ILO Convention 176.

In view of the foregoing and pursuant to Section 21, Article VII of the 1987 Constitution, I am submitting the enclosed drafts of the Instrument of Ratification and the Senate Resolution giving its concurrence in the ratification of said Convention, for the Senate's consideration.

(Sgd.) FIDEL V. RAMOS
President

The President. Referred to the Committee on Foreign Relations

The Secretary.

Malacañang Palace
Manila

July 31, 1997

The Honorable
Senate President Ernesto M. Maceda
Congress of the Philippines, Manila

Dear Honorable Senate President Maceda:

I have the honor to submit a copy of the

"Recruitment and Placement of Seafarers Convention, 1996 (ILO Convention 179)," drawn up by the International Labor Organization, which revises the *Placing of Seamen Convention of 1920*, in the context of the entry into force in 1994 of the U. N. Convention of the Law of the Sea and of the various conventions on the rights of laborers, particularly of seafarers.

It principally provides for the regulation by Member's competent authority of the private recruitment and placement services for seafarers in accordance with globally accepted standards of protection and redress, which system of regulation and standards are to be established, maintained or modified only after consultation with representative organizations of shipowners and seafarers, and which system may also be applied by the competent authority to fishermen or seafarers serving on maritime mobile offshore units, to the extent deemed practicable, after consultations with representative organizations of fishing vessel owners and fishermen or those owners of maritime offshore units and seafarers serving on such units.

This updated Convention is of particular relevance to the Philippines given its position as the country with the biggest number of seafarers serving in the world's merchant fleet and its constitutional mandate to ensure full protection to all workers which include seafarers.

Our ratification thereof will provide additional and unequivocal indication of the Philippine adherence to internationally accepted labor standards against the current backdrop of economic globalization.

In view of the foregoing and pursuant to Section 21, Article VII of the 1987 Constitution, I am submitting the enclosed drafts of the Instrument of Ratification and the Senate Resolution giving its concurrence in the ratification of said Convention, for the Senate's consideration.

(Sgd.) FIDEL V. RAMOS
President

The President. Referred to the Committee on Foreign Relations

BILLS ON FIRST READING

The Secretary. Senate Bill No. 2218, entitled

AN ACT ESTABLISHING A NEW PHILIPPINE

ENVIRONMENTAL CODE, DEFINING ITS SCOPE AND INTEGRATING ALL OTHER LAWS RELATIVE THERETO, AND FOR OTHER PURPOSES

Introduced by Senator Shahani

The President. Referred to the Committees on Environment and Natural Resources; and Constitutional Amendments, Revision of Codes and Laws

The Secretary. Senate Bill No. 2219, entitled

AN ACT GRANTING ALL QUALIFIED SENIOR CITIZENS TWENTY PERCENT (20%) DISCOUNT ON GASOLINE AND OTHER PETROLEUM PRODUCTS, AMENDING FOR THE PURPOSE SECTIONS 4 AND 10 OF REPUBLIC ACT NO. 7432, AND FOR OTHER PURPOSES

Introduced by Senator Maceda

The President. Referred to the Committee on Social Justice, Welfare and Rural Development

The Secretary. Senate Bill No. 2220, entitled

AN ACT GRANTING PHILIPPINE CITIZENSHIP TO STEPHEN KIN-SANG LO

Introduced by Senator Tatad

The President. Referred to the Committee on Justice and Human Rights

RESOLUTIONS

The Secretary. Proposed Senate Resolution No. 974, entitled

RESOLUTION DIRECTING THE SENATE COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES TO CONDUCT AN IN-DEPTH STUDY, ON THE EL NIÑO PHENOMENON AND THE EVENTUAL DROUGHT THAT HAS BEEN SWEEPING THE ENTIRE COUNTRY WITH EMPHASIS ON ITS ECOLOGICAL AND HEALTH EFFECTS, LEADING TO THE FORMULATION OF POLICIES AND LEGISLATIONS ANENT THE SAME, AND FOR OTHER PURPOSES

Introduced by Senator Magsaysay Jr.

The President. Referred to the Committees on Environment and Natural Resources; and Health and Demography

The Secretary. Proposed Senate Resolution No. 975, entitled

RESOLUTION URGING THE SENATE COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES TO INQUIRE, IN AID OF LEGISLATION, INTO THE POSSIBLE EFFECTS OF THE EL NIÑO PHENOMENON ON THE ENVIRONMENT, WITH THE END IN VIEW OF RECOMMENDING APPROPRIATE PLANS AND LAWS GOVERNING THE SAME, AND TO RECOMMEND APPROPRIATE REMEDIAL MEASURES THEREFOR

Introduced by Senator Mercado

The President. Referred to the Committees on Environment and Natural Resources; and Agriculture and Food

The Secretary. Proposed Senate Resolution No. 976, entitled

RESOLUTION DIRECTING THE SENATE COMMITTEES ON PUBLIC WORKS AND ON PUBLIC SERVICES TO INQUIRE, IN AID OF LEGISLATION, INTO THE CIRCUMSTANCES SURROUNDING THE ALLEGED DEVIATION FROM THE ORIGINAL PLAN FOR THE CONSTRUCTION SITE OF THE MASS RAIL TRANSIT (MRT) LINE 2 PROJECT IN ORDER TO DETERMINE THE CAUSE/S FOR SUCH DECISION, WITH THE END IN VIEW OF INSTITUTING APPROPRIATE MEASURES THEREFOR

Introduced by Senator Flavier

The President. Referred to the Committees on Public Works; and Public Services

The Secretary. Proposed Senate Resolution No. 977, entitled

RESOLUTION DIRECTING THE COMMITTEE ON HEALTH AND DEMOGRAPHY TO INQUIRE, IN AID OF LEGISLATION, INTO THE REPORTED NON-COMPLIANCE OF

TOBACCO FIRMS WITH THE CONSUMER ACT OF THE PHILIPPINES WHICH REQUIRES HEALTH WARNINGS IN THE ADVERTISEMENT OF CIGARETTES AND TOBACCO PRODUCTS WITH THE END IN VIEW OF CRAFTING LEGISLATION TO ADDRESS THE SAME

Introduced by Senator Flavier

The President. Referred to the Committees on Health and Demography; and Trade and Commerce

The Secretary. Proposed Senate Resolution No. 978, entitled

RESOLUTION DIRECTING THE COMMITTEE ON HEALTH TO INQUIRE, IN AID OF LEGISLATION, INTO THE REPORTED EXCESSIVE CHARGES OF AMBULANCES OWNED, OPERATED OR MAINTAINED BY PRIVATE HOSPITALS WITH THE END IN VIEW OF CRAFTING POLICIES AND LEGISLATION TO REGULATE THIS HEALTH SERVICE

Introduced by Senator Flavier

The President. Referred to the Committee on Health and Demography

The Secretary. Proposed Senate Resolution No. 979, entitled

RESOLUTION DIRECTING THE COMMITTEE ON HEALTH AND DEMOGRAPHY TO INQUIRE, IN AID OF LEGISLATION, INTO THE REPORTED NON-UTILIZATION OF GOVERNMENT HEALTH FACILITIES AND EQUIPMENT IN SPITE OF THE PREVAILING LACK OF BASIC HEALTH SERVICES IN THE COUNTRYSIDE, WITH THE END IN VIEW OF FORMULATING POLICIES TO ADDRESS THE SAME

Introduced by Senator Flavier

The President. Referred to the Committee on Health and Demography

The Secretary. Proposed Senate Resolution No. 980, entitled

RESOLUTION CITING COMMISSIONER EDGAR

L. MENDOZA OF THE BUREAU OF IMMIGRATION, MR. MARIO FAYTAREN, MR. FRANCISCO GONZALES, AND ATTY. MARYLYNDAMASANGCAY IN CONTEMPT OF THE SENATE FOR HAVING EVADED SERVICE OF THE SUBPOENAS ISSUED AGAINST THEM ON 17 JULY 1997

Introduced by Senators Coseteng, Fernan and Herrera

The President. Referred to the Committee on Justice and Human Rights

The Majority Leader is recognized.

BILL ON SECOND READING
H. No. 9077 - Tax Reform Act of 1997
(Continuation)

Senator Tatad. Mr. President, I move that we resume consideration of Senate Bill No. 9077, as reported out under Committee Report No. 454.

The President. Is there any objection? [Silence] There being none, resumption of consideration of House Bill No. 9077 is now in order.

Senator Tatad. We are now in the period of amendments. This being a substitute measure, there are no committee amendments.

Senator Roco. Mr. President.

The President. The gentleman from Camarines Sur and Bohol is recognized.

Senator Roco. Mr. President, before we do act on the motion of the Majority Leader, may we request that we call this measure this afternoon when most of our colleagues are here only because it is so urgent? I would imagine one of the first things that will be discussed will be the matter of bank secrecy. It seems more prudent, Mr. President, that we do have our colleagues with us.

The President. The suggestion is well-taken in terms of the major amendments and we will defer that. But if there are any senators who would like to present what might be called non-major amendments, then maybe there is time to take them up.

Senator Roco. My problem, Mr. President, is, right now, I cannot distinguish between a major and minor amendment, especially in view of the fact that, the Committee did say that there are no committee amendments. So I do not know what

would be a minor amendment. We will be constrained to ask that the members of the Chamber be here if this is called.

I really would request that it be called this afternoon, Mr. President.

SUSPENSION OF CONSIDERATION OF H. NO. 9077

Senator Tatad. I move that we suspend consideration of House Bill No. 9077.

The President. Is there any objection? [Silence] There being no objection, the motion is approved.

SUSPENSION OF SESSION

The President. The Chair declares a one-minute suspension of the session, if there is no objection. [There was none.]

It was 10:45 a.m.

RESUMPTION OF SESSION

At 10:50 a.m., the session was resumed.

The President. The session is resumed. The Majority Leader is recognized.

Senator Tatad. Mr. President, the sponsor is in agreement with the proposal of the distinguished gentleman from Camarines Sur and Bohol.

Senator Gonzales. Mr. President.

The President. The Minority Leader, Sen. Neptali A. Gonzales, would like to say something.

PARLIAMENTARY INQUIRY OF SENATOR GONZALES
(On the Reproduction of the Internal Revenue Code
with the Amendments)

Senator Gonzales. Parliamentary inquiry, Mr. President.

If my recollection serves me right, I think there was a suggestion of Senator Roco, which was accepted by the chairman of the Committee on Ways and Means, and which was also approved by the members of this Chamber to the effect that the provisions of this bill, which are in the nature of amendments to the Internal Revenue Code, be inserted in the National Internal Revenue Code so that what we are really acting upon is the Code itself. Especially from my point of view, we cannot delegate to a commissioner of Internal Revenue the power to codify the National Internal Revenue Code, and I think in the course of my

The President. The session is suspended for one minute, if there is no objection. *[There was none.]*

It was 4:17 p.m.

RESUMPTION OF SESSION

At 4:19 p.m., the session was resumed.

The President. The session is resumed.

BILL ON SECOND READING H. No. 9077—Tax Reform Act of 1997 (Continuation)

Senator Tatad. Mr. President, I move that we resume consideration of House Bill No. 9077 as reported out under Committee Report No. 454.

The President. Is there any objection? *[Silence]* There being none, resumption of consideration of House Bill No. 9077 is now in order.

Senator Tatad. Mr. President, we are now in the period of individual amendments. We have before us a revised working draft of the bill as of August 20, 1997. I move that we adopt this draft.

The President. Is there any objection? *[Silence]* For purposes of the period of individual amendments, this revised working draft as of August 20, 1997 is hereby adopted.

Senator Tatad. Mr. President, in the course of the interpellations, a number of ideas have come in and the Chairman of the Committee on Ways and Means, the sponsor of the measure—in consultation with the respective proponents—has decided to consolidate these and to propose the same as individual amendments, without prejudice to other amendments being proposed thereafter.

I ask that the distinguished sponsor, be now recognized.

The President. The gentleman from Cagayan, Chairman of the Ways and Means Committee, may proceed.

Senator Enrile. Thank you, Mr. President.

The President. The Minority Leader is recognized, with the permission of the gentleman from Cagayan.

Senator Gonzales. We have basically no objection to this procedure except that in fairness to the members who brought up

the amendment to be introduced, I request that their names be alluded to or made of record as the amendments are introduced.

That is all, Mr. President.

Senator Enrile. It is agreed, Mr. President. In fact, that was the intention of this representation after I have conferred with the distinguished Senator from Cebu and Bohol, Senator Herrera. I was really going to do that, because I would like the Senators who introduced the idea to get the credit for the amendment.

As indicated by the Majority Leader and approved by the Chair, Mr. President, the working draft that we are going to amend is the revised working draft as of today, August 20, 1997.

I would like to request the Body to accept this omnibus amendment, Mr. President, which I now propose.

For uniformity in style of presentation of sections, subsections and other subparts of the Senate substitute bill to House Bill No. 9077, which is still House Bill No. 9077, we adopt and use the following conventions:

1. After the section number, use letters in upper case to denominate the subsection followed by numbers again, then letters in lower case.
2. All initial letters of important words in the title and headnote must be in upper case, and said title and headnote must be in italics.
3. Renumbering of sections shall be done consecutively and automatically.
4. Finally, unless the intention is put forth more clearly by doing the contrary, deletions must precede the amendments being introduced.

May I request an adoption of this, Mr. President.

The President. Is there any objection? *[Silence]* There being none, the motion is approved.

COMMITTEE AMENDMENTS

Senator Enrile. Mr. President, on page 3, line 10, between the words "of" and "registered" insert the following phrase JOINT ACCOUNTS, ASSOCIATIONS, JOINT VENTURES OR CONSORTIA, AND. So that line 10 will read as follows: Names and addresses and financial statements of JOINT ACCOUNTS, ASSOCIATIONS, JOINT VENTURES OR CONSORTIA, AND registered partnerships, and their members.

The President. Is there any objection? [Silence] There being none, the amendment is approved.

Senator Enrile. On page 5, replace the text of subsection 4, starting with the word "any" in line 33, up to the word "exist" in line 37.

By the way, I would like to state for the record that this is an amendment that was the subject of a very intensive interpellation by a great number of the members of this Body. The replacement is as follows:

ANY TAXPAYER WHOSE RETURN HAS BEEN AUDITED BY A DULY AUTHORIZED REVENUE OFFICER OF THE BUREAU OF INTERNAL REVENUE PURSUANT TO A VALIDLY ISSUED LETTER OF AUTHORITY, AND A CLEAR, DIRECT AND SUBSTANTIAL EVIDENCE THAT SAID TAXPAYER HAS DEFRAUDED THE REVENUE OF THE GOVERNMENT BY EITHER UNDERSTATING HIS SALES, RECEIPTS OR INCOME BY AN AMOUNT EXCEEDING TWENTY PERCENT (20%) OF THE SALES, RECEIPTS OR INCOME DECLARED PER RETURN, OR BY OVERSTATING HIS DEDUCTIONS OR EXPENSES IN AN AMOUNT EXCEEDING TWENTY (20%) PERCENT OF THE ACTUAL EXPENSES OR DEDUCTIONS, OR BOTH, HAS BEEN FOUND TO EXIST: PROVIDED, HOWEVER, THAT THE RESULTING BASIC DEFICIENCY TAX AS COMPUTED IN THE AUDIT REPORT APPROVED BY THE COMMISSIONER SHALL NOT BE LESS THAN THREE HUNDRED THOUSAND (P300,000.00) PESOS; OR.

That is the end of the insertion, Mr. President.

The President. Without prejudice to subsequent amendments to delete the entire paragraph or section, the Chair suggests that we first approve this amendment so that it would be more orderly. It is clear that, subsequently, there will be some members of the Senate who are going to propose for a deletion.

Senator Gonzales. Mr. President.

The President. Senator Gonzales is recognized.

Senator Gonzales. Mr. President, I would rather propose, in the interest of an expeditious action on some other noncontroversial provisions of this Code that, first, the amendment being very substantial and quite a long one, be put in writing and distributed among the members; action on this amendment be held in abeyance.

The President. What does the sponsor say?

Senator Enrile. I have no objection to that, Mr. President.

The President. All right. So the amendment is deferred, and the sponsor will distribute written copies of the proposed amendment.

Senator Gonzales. Thank you, Mr. President.

Senator Enrile. Just for the record, Mr. President.

I would like to point out that this substitute wording is the product of the suggestion of the distinguished senator from Tarlac, Senator Romulo.

Following immediately after this insertion, Mr. President, after line 37 of page 5, a new paragraph is proposed to be inserted as a part of this entire section 6F(5) and this is the amendment to respond to the suggestion of the Chair, the Senate President.

After line 37, insert a new paragraph 5 to read as follows: (5). ANY PERSON WHO FAILS TO FILE A RETURN WHEN REQUIRED UNDER THIS CODE FOR WHOM A RETURN HAS BEEN MADE BY THE COMMISSIONER PURSUANT TO SECTION 5 HEREOF, AND WHO, ON THE BASIS OF CLEAR, DIRECT AND SUBSTANTIAL EVIDENCE, HAS BEEN FOUND BY THE COMMISSIONER TO HAVE COMMITTED FRAUD AGAINST THE REVENUE OF THE GOVERNMENT OR OTHER CRIMINAL VIOLATIONS OF THIS CODE.

The President. With the same reservation? All right.

Senator Enrile. And following this already read insertion, Mr. President, we propose to add the following paragraph under the same paragraph 5:

THE PROVISIONS OF SECTION 216 NOTWITHSTANDING, ANY PERSON WHOSE BANK DEPOSITS ARE THE SUBJECT OF INQUIRY, IN ACCORDANCE WITH SUBSECTIONS 4 AND 5 HEREOF, SHALL BE ALLOWED TO CONTROVERT THE BASIS OF THE COMMISSIONER'S DECISION OR TO SEEK APPROPRIATE REMEDIES IN COURT.

This was the product of the interpellation and suggestion of the distinguished Majority Leader.

The President. I guess we will also defer that and have copies distributed of the same series of amendments.

Senator Enrile. Now, on page 6, line 39, all the way to line 6 of page 7, we propose to replace the present subsection (C)

which begins in line 39 of page 6 with the following:

C. THE POWER TO COMPROMISE OR ABATE, UNDER SECTION 202 (A) AND (B) OF THIS CODE, ANY TAX LIABILITY: *PROVIDED, HOWEVER*, THAT ASSESSMENTS ISSUED BY THE REGIONAL OFFICES INVOLVING BASIC DEFICIENCY TAXES OF FIVE HUNDRED THOUSAND PESOS (P500,000) OR LESS, AND MINOR CRIMINAL VIOLATIONS, AS MAY BE DETERMINED BY RULES AND REGULATIONS, TO BE PROMULGATED BY THE SECRETARY OF FINANCE, UPON RECOMMENDATION OF THE COMMISSIONER, DISCOVERED BY REGIONAL AND DISTRICT OFFICIALS, MAY BE COMPROMISED BY A REGIONAL EVALUATION BOARD WHICH SHALL BE COMPOSED OF THE REGIONAL DIRECTOR AS CHAIRMAN, THE ASSISTANT REGIONAL DIRECTOR, THE HEADS OF THE LEGAL, ASSESSMENT AND COLLECTION DIVISIONS AND THE REVENUE DISTRICT OFFICER HAVING JURISDICTION OVER THE TAXPAYER, AS MEMBERS.

The President. The Minority Leader is recognized.

Senator Gonzales. Yes, Mr. President. Again, this is a very long and substantial amendment, as read by the distinguished sponsor, because it, in effect, provides an exception to the rule that the power to compromise cannot be delegated by the commissioner. Therefore, we also request that the same be put in writing and that members of the Chamber be furnished with the same before it is put to a vote.

Senator Enrile. We have no objection, Mr. President.

The President. It is so noted, Mr. President.

Will the staff of the Ways and Means Committee immediately distribute the individual amendments as are being introduced?

Senator Enrile. Mr. President, they are being xeroxed right now.

Mr. President, on page 11, line 37, delete the word "one" and replace it with the phrase A CITIZEN OF THE PHILIPPINES.

The President. Is there any objection? *[Silence]* There being none, the amendment is approved.

Senator Enrile. On the same page, line 39, after the word "citizen," insert the phrase OF THE PHILIPPINES WHO.

The President. The next word is "leaving."

Senator Enrile. I am going to change that, Mr. President.

The President. The gentleman might as well complete the whole sentence.

Senator Enrile. On the words WHO LEAVES; instead of "leaving," WHO LEAVES.

The President. Is there any objection? *[Silence]* There being none, the amendment is approved.

Senator Enrile. So that this line will read "A CITIZEN OF THE PHILIPPINES WHO LEAVES during the taxable years to reside abroad, et cetera."

The President. Is there any objection? *[Silence]* There being none, the amendment is approved.

Senator Enrile. On page 12, line 1, after the article "a" and before the word "permanent," the phrase is "more or less" so that this line will be read "either as an immigrant or for employment on a permanent basis."

The President. Is there any objection? *[Silence]* There being none, the amendment is approved.

Senator Enrile. On the same page, line 8, Mr. President, we propose to insert as paragraph (3) which shall read as follows:

(3) A CITIZEN OF THE PHILIPPINES WHO WORKS AND DERIVES INCOME FROM ABROAD AND WHOSE EMPLOYMENT THEREAT REQUIRES HIM TO BE PHYSICALLY PRESENT ABROAD MOST OF THE TIME DURING THE TAXABLE YEAR.

SUSPENSION OF SESSION

May I ask for a one-minute recess, Mr. President.

The President. The session is suspended for one minute, if there is no objection. *[There was none.]*

It was 4:40 p.m.

RESUMPTION OF SESSION

At 4:41 p.m., the session was resumed.

The President. The session is resumed.

Senator Gonzales. Mr. President.

The President. The Minority Leader is recognized.

**PARLIAMENTARY INQUIRY OF SEN. GONZALES
(Whether Amendments Are Being Made
on the Original Provisions of the Code)**

Senator Gonzales. Mr. President, before the distinguished sponsor proceed, may I ask a parliamentary question.

Are we now amending the original provisions of the Code which were not included in the bill by substitution to the House bill?

Because I see the ordinary types here that indicate provisions of the original Code, which are not really included in the bill by substitution, as reported out by the Committee and has been the subject of interpellations and debate, Mr. President.

The President. The Minority Leader is correct. This is precisely the result of the request of the Minority Leader and the gentleman from Camarines Sur and Bohol.

Senator Gonzales. I am not objecting, Mr. President. I am merely asking whether or not that is what we are doing now, and to put our colleagues on notice on what is taking place.

Senator Enrile. Mr. President, may I explain.

The President. Senator Enrile is recognized.

Senator Enrile. Mr. President, when we were dealing with the general principles of income taxation, there were problems that were raised by the distinguished senator from Cebu and Bohol with respect to seamen, OCWs, and people who are neither seamen nor OCWs.

If the Chair would remember, in paragraph B of the general principles of income taxation, we were dealing with the income tax treatment of nonresident citizens of the Philippines. Now, there is a provision of nonresident citizens in the present Section 20, which will become Section 22. We have to revise that in order to conform with what we discussed under the general principles of income taxation.

We have no intention to change any portion of this present Code, Mr. President. We are not going to alter the meaning. We are in fact improving and refining it.

Senator Gonzales. I fully understand that, Mr. President. My parliamentary inquiry is not to be interpreted to mean that I am challenging the authority of this Body to make and approve these amendments. I just want to put every member now on

notice that that is the one that is taking place now, Mr. President.

That is all, Mr. President.

Senator Enrile. Mr. President, we have to do this because we have now before us the entire Code as a part of the substitute bill. We have to go over it meticulously so that we can reform it.

Mr. President, if we are through with this point, may I request that we reconsider my proposed amendment in lines 37 and 39, and I will reintroduce my amendments myself. There was an error on the part of the staff of the committee.

The President. That is lines 37 and 39 on page 11.

Senator Enrile. Yes, Mr. President.

The President. Basically, the amendment was just to put the phrase CITIZEN OF THE PHILIPPINES.

Senator Enrile. Yes, Mr. President.

SUSPENSION OF SESSION

Mr. President, may I ask for a one-minute suspension of the session.

The President. Is there any objection? *[Silence]* There being none, the session is suspended.

It was 4:46 p.m.

RESUMPTION OF SESSION

At 4:47 p.m., the session was resumed.

The President. The session is resumed.

Senator Enrile. Mr. President, may I request a reconsideration of the amendments in line 37 of page 11, all the way to line 7 of page 12.

The President. Is there any objection? *[Silence]* There being none, the amendments are reconsidered.

Senator Enrile. May I now reintroduce the amendment, Mr. President.

On page 11, line 36, after the parenthesis, bracket the small letter "e" and insert a capital letter "E", followed by the words THE TERM "NON RESIDENT" MEANS: (1); change the

word "One" with the phrase A CITIZEN OF THE PHILIPPINES.

So that paragraph 1 will read: "A CITIZEN OF THE PHILIPPINES who establishes to the satisfaction of the commissioner the fact of his physical presence abroad with a definite intention to reside therein."

The President. That is correct. Just for the record, I do not see any difference from the previous...

Senator Enrile. I will come to that, Mr. President, because the succeeding sections will show that. That is why I asked for a reconsideration of the whole thing so that we can proceed again.

The President. So the gentleman wants ...

Senator Enrile. ... a reconsideration of the whole thing so that we can proceed again.

The President. So, the gentleman wants this individually considered now.

Senator Enrile. Yes, Mr. President.

The President. Is there any objection? *[Silence]* There being none, the amendment is approved.

Senator Enrile. Now, in line 39, paragraph 2, after the word "citizen," insert the phrase OF THE PHILIPPINES WHO and delete the word "living" and, in lieu thereof, insert the word LIVES.

May I ask for the approval of the Chair.

The President. The same as the previous amendment, reiterated.

Senator Enrile. Yes, that is correct, Mr. President.

The President. Is there any objection? *[Silence]* There being none, the amendment is approved.

At this point, Mr. Sponsor, is it not understood that when we say in the law "citizen" as contradistinguished to the use of the word "alien" in the law, that the "citizen" is already understood to refer "of the Philippines?" Do we have to specify "of the Philippines" every time we use the word "citizen?"

Senator Enrile. There are areas where we might encounter the word "citizen" in a different sense.

The President. All right.

Senator Enrile. On page 12, line 1, delete the phrase "more or less" after the article "a" and before the word "permanent."

The President. Is there any objection? *[Silence]* being none, the amendment is approved.

Senator Enrile. In the same line 1 of page 12, Mr. President, before the word "and," I propose that this be bracketed all the way to line 7 after the word "Philippines".

The President. That is all deleted then.

Senator Enrile. Yes, Mr. President.

The President. All right.

Senator Enrile. And between line 7 and line 8, insert a new paragraph...

The President. Excuse me. So, we put a period (.) after the word "basis".

Senator Enrile. Yes, Mr. President.

The President. Is there any objection? *[Silence]* There being none, the amendment is approved.

So, bracketed and deleted.

Senator Enrile. After line 7 and line 8 of the same page 12, Mr. President, we propose to insert a new paragraph (3) which will read as follows: (3) A CITIZEN OF THE PHILIPPINES WHO WORKS AND DERIVES INCOME FROM ABROAD AND WHOSE EMPLOYMENT THEREAT REQUIRES HIM TO BE PHYSICALLY PRESENT ABROAD MOST OF THE TIME DURING THE TAXABLE YEAR.

The President. Is that the end of the paragraph?

Senator Enrile. Yes, Mr. President.

The President. Is there any objection? *[Silence]* There being none, the amendment is approved.

So, shall we now renumber the old "3" to 4?

Senator Enrile. So, paragraph 3 in line 8 will now be paragraph 4; paragraph 4 in line 13 will now be paragraph 5; and, in line 16, the small letter, "s" be bracketed to be replaced by a capital S. I am dealing with the text of the present Code, Mr. President, just for the record.

The President. Is there any objection? *[Silence]* There being none, the amendment is approved as a matter of style.

SUSPENSION OF SESSION

Senator Enrile. On page 15, Mr. President...may I ask for one-minute suspension?

The President. The session is suspended if there is no objection. *[There was none.]*

It was 4:56 p.m.

RESUMPTION OF SESSION

At 4:59 p.m., the session was resumed.

The President. The session is resumed.

Senator Enrile. Mr. President, on page 12, lines 30 to 31, enclose in brackets the definition of the term "stock" starting with the article "the," in line 30 up to the word "company" in line 31, and in lieu thereof, insert a new definition to read as follows: ([1]L) the term "SHARES OF STOCK" SHALL INCLUDE SHARES OF STOCK OF A CORPORATION AS WELL AS UNITS OF PARTICIPATION IN A PARTNERSHIP (EXCEPT GENERAL PROFESSIONAL PARTNERSHIPS), JOINT STOCK COMPANIES, JOINT ACCOUNTS, JOINT VENTURES, ASSOCIATIONS, AND RECREATION OR AMUSEMENT CLUBS (SUCH AS GOLF, POLO OR SIMILAR CLUBS), AND MUTUAL FUND CERTIFICATES.

The President. Is there any objection? *[Silence]* There being none, the amendment is approved.

Senator Enrile. On page 16, line 14, delete the words "working or" after the word "Philippines".

The President. Is there any objection? *[Silence]* There being none, the amendment is approved.

Senator Enrile. After line 16 on the same page 16, add a new subsection C to read as follows: (C) AN INDIVIDUAL CITIZEN OF THE PHILIPPINES WHO IS WORKING AND DERIVING INCOME FROM ABROAD AS AN OVERSEAS CONTRACT WORKER IS TAXABLE ONLY FOR INCOME FROM SOURCES WITHIN THE PHILIPPINES: *PROVIDED*, THAT A SEAMAN WHO IS A CITIZEN OF THE PHILIPPINES AND WHO RECEIVES COMPENSATION FOR SERVICES RENDERED ABROAD AS A MEMBER OF THE COMPLEMENT OF A VESSEL SOLELY ENGAGED IN INTERNATIONAL TRADE SHALL BE TREATED AS AN OVERSEAS CONTRACT WORKER.

May I ask for a resolution of this, Mr. President.

The President. This is pursuant to the Herrera interpellation.

Senator Enrile. This is by the way, the result of the interpellation and suggestion of the distinguished senator from Cebu and Bohol, Sen. Ernesto Herrera, and also by Sen. Franklin Drilon of Iloilo.

The President. Is there any objection? There being none, the amendment is approved.

Senator Enrile. May I now request a renumbering, relettering of subsection C in line 17 to become subsection D, subsection D in line 19 as subsection E, and subsection E now as appearing in line 23 as subsection F.

The President. Is there any objection? *[Silence]* There being none, the relettering is approved.

SUSPENSION OF SESSION

Senator Enrile. Mr. President, may I ask for a one-minute suspension of the session.

The President. The session is suspended for one minute, if there is no objection. *[There was none.]*

It was 5:05 p.m.

RESUMPTION OF SESSION

At 5:06 p.m., the session was resumed.

The President. The session is resumed.

Senator Enrile. On page 21, line 8, after the colon (:) following the word "mentioned," insert a proviso between that colon (:) and the word "Provided," to read as follows: *PROVIDED, STILL FURTHER, THAT THE SAID TAX EXEMPTION CAN ONLY BE AVAILED OF ONCE EVERY TEN (10) YEARS.*

The President. Is there any objection? *[Silence]* There being none, the amendment is approved.

Senator Enrile. In line 9, I propose to delete the article "a" before the word "portion", and in lieu thereof, insert the article THE.

The President. Is there any objection? *[Silence]* There being none, the amendment is approved.

Senator Enrile. Mr. President, the available clean draft of the proposed amendments is about that much for today. May I request that we suspend the consideration of this measure until we can prepare a clean draft of the other amendments.

The President. That is so noted. However, following other bills of this nature, it is my presumption that we are going to go about this when the Minority has gone over this clean draft page by page starting with page 1. That is the usual procedure we do.

Senator Roco. Mr. President.

The President. The gentleman from Camarines Sur and Bohol, Sen. Raul S. Roco, is recognized.

Senator Roco. We have no objection to what the sponsor is saying, but I did preclear with both the Majority and the Minority Leaders that as regards the section on bank secrecy and FCDU, may we move that that be considered special orders for Tuesday, August 26, 1997 in the afternoon session so that everybody can be put on notice that whatever happens on those two points where there has been a lot of interest expressed, at least everybody, if they are interested to vote, should be here.

The President. What does the sponsor say?

Senator Enrile. I have no objection, Mr. President.

The President. With the additional understanding that having agreed to such a proposal which actually we thought we could do yesterday—we initially said yesterday was the day—as long as there is a quorum on Tuesday, we shall not entertain further requests for postponement on the same. In addition to that, the Secretary will please send written notices to all the members of the Senate that the matter of the provisions on bank secrecy and FCDUs of the CTRP are going to be put to a vote on Tuesday afternoon.

Senator Enrile. To segregate the provisions on the bank deposits.

The President. Even if we are going page by page, we can still immediately put that to a vote at any time on Tuesday, maybe in the beginning of the session, as a matter of fact.

Senator Roco. Mr. President, if it is considered special orders, the other rules can still be followed if somebody moves to modify or to postpone. But by putting it as special orders for the day, that will be very helpful for both the sponsor and the members who may have any interest on the matter.

The President. What does the Majority Leader say? Is it still necessary to put the same as special orders? It may not be

necessary. The bill is already on special orders.

Senator Tatad. Mr. President, I believe that with that very specific understanding that on Tuesday we deal with the specific points referred to by the distinguished gentleman from Camarines Sur and Bohol, there may be no need for extra special orders.

Senator Roco. The reason, Mr. President, we put it as a motion, and I precleared this with the Majority Leader and the Minority Leader, is that we are not subject to whim; so that it will be on Tuesday and not earlier because somebody says it should be earlier.

Senator Tatad. It is going to be on Tuesday, Mr. President. I believe we can all agree on that.

The President. I would like to assure the gentleman from Camarines Sur and Bohol that the Presiding Officer will not decide these matters on the matter of whim.

Senator Roco. No, Mr. President, we are only appealing to the *Rules*. We are not asking here for something that is subject to the caprice of anybody. We are concerned. We followed all the procedures. We asked for the consent of the Majority Leader and the Minority Leader. We only ask that it be on special orders.

SUSPENSION OF SESSION

Senator Tatad. Mr. President, I move that we suspend the session for one minute.

The President. Is there any objection? [*Silence*] There being none, the session is suspended for one minute.

It was 5:15 p.m.

RESUMPTION OF SESSION

At 5:16 p.m., the session was resumed.

The President. The session is resumed.

The Majority Leader is recognized.

SUSPENSION OF SESSION

Senator Tatad. Mr. President, may I ask for one small minute suspension of the session.

The President. The session is suspended, if there is no objection. [*There was none.*]

It was 5:17 p.m.

RESUMPTION OF SESSION

At 5:21 p.m., the session was resumed.

The President. The session is resumed.

Senator Tatad. May we ask our distinguished colleague to restate the motion?

MOTION OF SENATOR ROCO
(Special Order on the Provisions on Bank Secrecy and the FCDUs)

Senator Roco. Mr. President, after clearance from the Majority and Minority Leaders, we only sought that a special order be put in terms of voting for the question affecting the bank secrecy and the FCDUs, and I am under the impression that it was acceptable in principle to all concerned.

Senator Tatad. We support the motion, Mr. President.

The President. Is there any objection? *[Silence]* There being none, the motion is approved.

Senator Tatad. Mr. President, as far as the sponsor is concerned, we have come to the end for now of the clean copies available of proposed amendments.

The President. For purposes of record, are there any Senators now on the floor, since this is the period of individual amendments, who would like to exercise their right to propose individual amendments at this time?

Senator Tatad. Mr. President, an editorial amendment on page 1, just one amendment at this time.

Senator Enrile. Yes, Mr. President.

TATAD AMENDMENTS

Senator Tatad. This is purely editorial, Mr. President.

On page 1, line 6, I propose to delete the word "the" between the words "for" and "business" and thereafter, the word "community" after the word "business".

Continuing in line 7, between the words "enable" and "to", I move to delete the word "them" and in lieu thereof, insert the word FIRMS.

Senator Enrile. May I beg the distinguished gentleman's pardon?

Senator Tatad. I will complete the proposal because this is one sentence.

In the same line up to line 8, I move to delete the words "community of nations" and in lieu thereof, insert the word MARKET.

In line 8, between the words "government" and "able", I move to delete the words "will be" and in lieu thereof, insert the word IS.

So that under my amendments, the line will read, from line 6: "And to create a robust environment for business to enable FIRMS to compete better in the regional as well as the global MARKET, at the same time that the State ensures that Government IS able to provide for the needs of those under its jurisdiction and care."

At this juncture, the Senate President relinquished the Chair to Senator Mercado.

Senator Enrile. It is accepted, Mr. President.

The Presiding Officer [Sen. Mercado]. Is there any objection? *[Silence]* There being none, the amendments are approved.

Senator Drilon. Mr. President.

The Presiding Officer [Sen. Mercado]. Senator Drilon is recognized.

Senator Drilon. I have an individual amendment, Mr. President, but it is still on page 80. I do not know whether the statement of the Senate President earlier would allow us to skip some of the provisions and go directly to the pages where we propose the amendments.

Senator Maceda. The intention, Mr. President, is precisely, as there will be so many individual amendments between now and even Tuesday, and since it is already on the floor, any amendments we can dispose of at this time, we will make good use of the present time.

The Presiding Officer [Sen. Mercado]. So, Senator Drilon can proceed. The page is...

Senator Drilon. Page 80, Mr. President. This amendment is consistent and pursuant to my interpellation on the issue of withholding tax for minimum wage earners which the good sponsor graciously manifested a favorable consideration, if proposed. I am proposing that on page 80, line 34, after the

word "year" at the end of the sentence, insert the following: semicolon (;) *PROVIDED, HOWEVER, THAT NO WITHHOLDING OF A TAX SHALL BE REQUIRED WHERE THE TOTAL COMPENSATION INCOME OF AN INDIVIDUAL DOES NOT EXCEED THE STATUTORY MINIMUM WAGE OR SIX THOUSAND PESOS (P6,000) PER MONTH, WHICHEVER IS HIGHER.*

The Presiding Officer [Sen. Mercado]. What does the sponsor say?

SUSPENSION OF SESSION

Senator Enrile. May I ask for a one-minute suspension, Mr. President.

The Presiding Officer [Sen. Mercado]. The session is suspended, if there is no objection. [*There was none.*]

It was 5:26 p.m.

RESUMPTION OF SESSION

At 5:54 p.m., the session was resumed.

The Presiding Officer [Sen. Mercado]. The session is resumed.

Senator Drilon. Mr. President, after conferring with the sponsor, we would like to amend the proposed amendment on page 80, line 34. After the word "year;" insert the following:

PROVIDED, HOWEVER, THAT NO WITHHOLDING OF A TAX SHALL BE REQUIRED WHERE THE TOTAL COMPENSATION INCOME OF AN INDIVIDUAL DOES NOT EXCEED THE STATUTORY MINIMUM WAGE, OR FIVE THOUSAND (P5,000.00) PESOS PER MONTH, WHICHEVER IS HIGHER.

The Presiding Officer [Sen. Mercado]. What does the sponsor say?

Senator Enrile. It is accepted, Mr. President.

The Presiding Officer [Sen. Mercado]. Is there any objection? [*Silence*] There being none, the amendment is approved.

Senator Drilon. As a consequence of that acceptance, Mr. President, can we go back to page 75, line 36? Remove the bracket before and after the word "Sixty;" delete the words "SEVENTY-SIX"; and change the figure "76" to 60.

Senator Enrile. It is accepted, Mr. President.

The Presiding Officer [Sen. Mercado]. And also the number in parenthesis.

Senator Drilon. No, Mr. President, the number in parenthesis should be 60 instead of "76".

The Presiding Officer [Sen. Mercado]. Yes.

Senator Enrile. And line 37, Mr. President.

Senator Drilon. In line 37, we remove the brackets in the word "also".

Senator Enrile. It is accepted, Mr. President.

The Presiding Officer [Sen. Mercado]. Is there any objection? [*Silence*] There being none, the amendment is approved.

Senator Maceda. Mr. President.

The Presiding Officer [Sen. Mercado]. The Senate President is recognized.

Senator Maceda. Mr. President, would it be possible to request the sponsor? I really would like to present only three amendments at this point.

My practical difficulty, Mr. President, is: I went through all this draft which was easier to understand and annotated by amendments on this draft. In this new version which we have adopted and which includes the whole Code, I really find difficulty looking for the corresponding provisions here.

Since the amendments are going to be very easy to understand, could we use the old draft and, if the gentleman would agree to the amendments, we will just ask him or the Secretariat to incorporate it in the draft to be used by Monday or Tuesday?

Senator Enrile. I have no objection, Mr. President. I will ask the Secretariat to take note of this.

The Presiding Officer [Sen. Mercado]. All right. With the concurrence of the Body, please proceed, Mr. Senate President.

Senator Maceda. On page 11, this is with regard to Section 9 of the Code on the matter of organization of the Bureau's internal revenue regions and districts.

Senator Enrile. Yes, Mr. President.

Senator Maceda. I feel that the Commissioner, even with the approval of the Secretary of Finance, should not have an unlimited prerogative to create 1,000 districts if he wants to create.

First of all, may I know what is the present number of districts? Could we agree on a maximum number because a Commissioner and/or an administrator may suddenly want to create a district to accommodate proteges into very small ones? There is no limit here.

Senator Enrile. I understand, Mr. President, that there are 115 revenue districts right now.

MACEDA AMENDMENT

Senator Maceda. So, in line 11 which says, "into such number of revenue REGIONS AND districts", could we say "NOT EXCEEDING ONE HUNDRED FIFTY (150)"?

Senator Enrile. It is accepted, Mr. President.

The Presiding Officer [Sen. Mercado]. Is there any objection? *[Silence]* There being none, the amendment is approved.

Senator Enrile. With respect to regions, Mr. President, that should be treated differently from the district because there are 115 revenue districts and, I think, there are only 19 regions in the country.

Senator Maceda. Would the gentleman like to say "NOT MORE THAN 25 REGIONS AND NOT MORE THAN 150 DISTRICTS"?

Senator Enrile. It is accepted, Mr. President....

Senator Maceda. ...NOT MORE THAN 150 DISTRICTS?

Senator Enrile. It is accepted.

Senator Maceda. Yes.

Senator Enrile. May I ask for a restatement of the amendment? "Shall divide the Philippines..."

Senator Maceda. "With the approval of the Secretary of Finance, the Commissioners shall divide the Philippines into such number of revenue REGIONS but not exceeding 25 and..."

Senator Enrile. Not exceeding 25?

Senator Maceda. Yes..."AND REVENUE DISTRICTS BUT NOT EXCEEDING 150.

Senator Enrile. It is accepted, Mr. President, subject to style.

Senator Maceda. Subject to style.

The Presiding Officer [Sen. Mercado]. Is there any objection? *[Silence]* There being none, the amendment is approved.

Senator Maceda. Then, after the words "administrative purposes.", insert the following...

Senator Enrile. What line is that?

Senator Maceda. The next line. After the end of the sentence "administrative purposes": THE COMMISSIONER MAY ALSO ABOLISH OR COMBINE EXISTING DISTRICTS AS MAY BE NECESSARY FOR EFFICIENT AND ECONOMIC TAX ADMINISTRATION.

Senator Enrile. It is accepted, Mr. President.

The Presiding Officer [Sen. Mercado]. Is there any objection? *[Silence]* There being none, the amendment is approved.

Senator Maceda. Now, the next amendment, let me premise it on this: When it is a corporation that is paying for health insurance premiums, is it allowed to deduct the same?

Senator Enrile. That is correct, Mr. President.

Senator Maceda. Therefore, when an individual pays his own health insurance premiums, I guess he should not be discriminated upon. The purpose is the same, to accord whether an employee of that corporation or an individual for himself and he is even unlucky that he does not have a corporation to pay for himself. One should be allowed to deduct his health insurance premiums...

Senator Enrile. Mr. President, the corporation does not get sick but the ones who will get sick are its employees—

Senator Maceda. That is correct.

Senator Enrile. —and executives. So, the insurance premium paid for the health insurance of the employees of the corporation is for the benefit of the employees. It becomes a business expense deductible by the employer.

Senator Maceda. Yes.

Senator Enrile. What we are talking about in terms of insurance premium to be deducted will be for the individual taxpayers, Mr. President.

We are not engaged in business but nonetheless we are allowing them an amount of P2,000 ceiling for insurance premiums for health insurance.

Senator Maceda. Yes, Mr. President, but earlier in the distinguished sponsor's first set of amendments it has not been proposed so I thought we can formalize it now.

Senator Enrile. This is included among the amendments that will be introduced because this was the request of the Senate President.

Senator Maceda. Yes, Mr. President, that is why we might as well formally present it now.

Senator Enrile. Yes.

Senator Maceda. The amendment I would like to present would be in Section 33, in the matter of deductions from gross income...

Senator Enrile. What page, Mr. President?

Senator Maceda. Again, I do not know the—

Senator Enrile. What page?

Senator Maceda. —page but it is...

Senator Enrile. It is there, the page.

Senator Maceda. It says here page 102, line 5?

Senator Enrile. Yes, that is Section 34—Allowance of Personal Exemption...no, it cannot be.

SUSPENSION OF SESSION

May I ask for a minute suspension, Mr. President?

The Presiding Officer [Sen. Mercado]. The session is suspended if there is no objection. [Silence]

It was 6:04 p.m.

RESUMPTION OF SESSION

At 6:06 p.m., the session was resumed.

The Presiding Officer [Sen. Mercado]. The session is resumed. Senator Maceda may proceed.

Senator Maceda. Mr. President, on the previous working draft on page 102, line 5 before Section 37 which is line 6, we propose the following amendment: ADDITIONAL ALLOWANCE FOR—this is subsection or subletter capital M—PREMIUM PAYMENTS ON HEALTH AND/OR HOSPITALIZATION, INSURANCE OF AN INDIVIDUAL TAXPAYER. THE AMOUNT OF PREMIUMS—and this is where there will be a slight difference—NOT TO EXCEED P2,400 PER FAMILY OR P200 A MONTH PAID DURING THE TAXABLE YEAR FOR HEALTH AND/OR HOSPITALIZATION, INSURANCE TAKEN BY THE TAXPAYER FOR HIMSELF INCLUDING HIS FAMILY SHALL BE ALLOWED AS A DEDUCTION FROM HIS GROSS INCOME: PROVIDED, THAT SAID FAMILY HAS A GROSS INCOME OF NOT MORE THAN P250,000 FOR THE TAXABLE YEAR.

Senator Enrile. We accept it, Mr. President.

The Presiding Officer [Sen. Mercado]. Is there any objection? [Silence] There being none, the amendment is approved.

Senator Maceda. The next item, Mr. President, and I am not sure of the amendment if I have to add here. Would it not be advisable, and this would be—I am talking about page 70—on entertainment, amusement and recreation.

I was under the impression when this particular measure was still in its infancy, especially when there was a talk about the 15 percent or 30 percent rate, that one of the strong points of this Code was that, there would now be very strict limits on recreation, entertainment and amusement expenses. I do not see any indication of that in the final draft.

Senator Enrile. Mr. President, the use of the word "reasonable allowance" is a standard provision in deductions. This has a very technical meaning in income taxation. In fact, our Internal Revenue Income Tax Regulation No. 2, I think it is still No. 2, carries already a definition of this.

So that I believe, we could not put ceilings on this because there are varying types of business enterprises which may require different amounts of expenses for amusement and recreation.

Take for instance a consulting firm that engages in consultancy. It will have to entertain a lot of people, which is so unlike maybe a merchant who sells a certain

type of product. This is the reason why we grant that degree of flexibility to the tax administrator by using this time-tested terms.

Senator Maceda. Yes, Mr. President, but as the sponsor very well knows in practice, this depends very much on the examiner. If the BIR or the district officer or the examiner who is allowed to examine or audit wants to favor a taxpayer, he would be very lax in allowing all his entertainment and recreation expenses. If he wants to hit him or prop him up for some discussions, then he will also disapprove.

Even in Japan, where it is a way of life, I understand that this matter now is severely restricted. They can no longer charge all the geisha-girl parties as business expenses.

Senator Enrile. Mr. President, that is why we say "reasonable allowance" which gives enough leeway to the commissioner, if he or she knows his business, to allow or disallow the expense. That is the purpose of this provision.

In the application of income taxation, there are two things. We have income realization or recognition and we have the approval or disapproval, allowance or disallowance of deductions. These are powers in the hands of the Bureau. I am sure that they can very well, by practice, determine what is reasonable for a given industry or for a given trade.

Senator Maceda. Yes, Mr. President. We accept that fully without reservation. But even maintaining the right or discretion of the commissioner to define what is reasonable or not, there is nothing really that will prevent us if we really want to tighten up and send a message from setting what we may consider a reasonable ceiling within which the commissioner may consider things reasonable.

Just as an easy example, because I have no data to back this up. Would there be something grossly objectionable if we say, "provided, however, that for individuals it shall not be more than P1 million a year and that for corporations it should not be more than P10 million a year," and within those ceilings the commissioner still determines what is reasonable and what is not reasonable?

It is accepted by all tax administrators and tax practitioners and tax students that this is the biggest loophole as far as tax deduction is concerned. There have been so many cases, rulings, even in the IRS, whether it is a three martini lunch, or it is a two-martini lunch, or whether it is a P5,000 Furasato lunch or a P1 million Furasato lunch—I am reminded of my friend from Zambales. So I am just trying to suggest that maybe it is time to really put some limitations on this.

Senator Enrile. Mr. President, I would like to go along with that proposition but it will create unfairness. Because if all corporations are of the same size, well, we can say that P10 million will be all right. But P10 million would be advantageous to a small corporation but disadvantageous to a big corporation.

Senator Maceda. That is correct, Mr. President, but the commissioner still has to determine what is reasonable for the small corporation.

Senator Enrile. But we have to bear in mind also that the definition of a corporation here is not strictly the corporation that we know. It includes many other types of artificial persons.

The Department of Finance is suggesting 1 percent of gross revenue, Mr. President.

Senator Maceda. For both individuals and corporations?

Senator Enrile. Yes, I guess, it is fair. If one is a practicing lawyer and he makes a gross revenue of P10 million, 1 percent would be about P100,000.

Senator Maceda. What is the present rule on charitable contributions? What is the percentage per ceiling?

Senator Enrile. It is now 310. Optional is 36. We are elevating it to 510.

Senator Maceda. The concept of a ceiling is already in the law as far as charitable contributions are concerned. That is why I am saying that when it comes to recreation, entertainment, including bringing one's client to the sauna bath which is not considered immoral per se, or entertaining him at Lexus where Rosanna Roces used to come in and dance in a private room, one can spend P500,000 one night at Lexus and Pegasus and he will not even feel it. That is what I understand. I have not been there myself. *[Laughter]*

Senator Enrile. Mr. President, I do not know where Pegasus is. I know that only in the Greek mythology but not the Pegasus that is in the mind of the Senate President.

Senator Maceda. Is the charitable contribution deduction limit not on gross?

Senator Enrile. Mr. President, these are figures from the Department: Representation and entertainment expense per industry. In the case of agriculture, it is 2.06 of a percent; in the case of the mining industry, we see there in the boondocks, it is 0.10 of a percent; in the case of manufacturing, it is 0.24 of a percent; in the case of power companies, it is .44 of a percent;

in the case of construction companies—we can see they entertain very much, especially in the government agencies that are involved in construction...

Senator Maceda. Especially in Central Luzon in the lahar area.

Senator Enrile. ...they frequent Furusato, it is 1.28 of a percent; trading is 0.51 of a percent; transportation is 0.94 of a percent; communication is 0.05 of a percent. It is not even one half of a percent. Then banking, it is 0.56 of a percent; services is 2.31 of a percent. These are lawyers, doctors, masseurs, and others. I will not mention the others for services rendered. Then unclassified, it is 0.24 of a percent. The average is 0.65 of a percent.

Senator Maceda. That is very useful, Mr. President. In which case, just to shorten the proceedings, since the Department of Finance is accepting 1 percent and since the average is already .65 percent, how about one-half of a percent? One-half of 1 percent?

Senator Enrile. We will accept that, Mr. President, although perhaps to be fair to the others, because there are others who are going to howl—the construction people, the service people, and the agricultural people....

Senator Roco. Parliamentary inquiry, Mr. President.

The Presiding Officer [Sen. Mercado]. Senator Roco is recognized.

Senator Roco. I am just trying to follow the discussion. Are we referring now to the deductions on representation?

Senator Enrile. Deductions for amusement representation.

Senator Roco. Specifically amusement representation—

Senator Maceda. It says here, recreation.

Senator Roco. —and recreation. I just wanted to be clear, Mr. President.

Senator Enrile. I have been in the tax practice for a long, long time. I am quite surprised to find out that there is greater representation in agriculture than in some areas of national economic concern. If I may suggest, Mr. President, maybe we should adopt a 0.75 of a percent.

Senator Maceda. But that would be even above the

average, Mr. President. Instead of limiting, we are, in effect, expanding.

Senator Enrile. I have no objection.

Senator Maceda. For example, in the case of construction companies which have 2.6 percent or 2.2 percent, we do not have to worry about them, Mr. President. They usually overprice their materials anyway.

Senator Enrile. Mr. President, I have no problem with that. Half a percent is, I think, acceptable.

Senator Maceda. All right.

The Presiding Officer [Sen. Mercado]. Is there any objection to the amendment?

Senator Roco. Mr. President.

The Presiding Officer [Sen. Mercado]. Yes. Senator Roco is recognized.

Senator Roco. Mr. President, may we just ask for a definition of what that covers? For instance, the corporations or single proprietorships, does that include... What exactly does that include?

Senator Enrile. Mr. President, this will include visits to Pegasus, visits to Manila Golf, visit to Wack-Wack, visits to Bayside, visits to Manila Hotel, visits to place of amusement, hiring singers, hiring chorus girls, hiring dancing instructors.

Senator Maceda. May I clarify to the gentleman?

Senator Roco. Yes, Mr. President.

Senator Maceda. Our existing system is, what it includes and how much it will be allowed is really allowed to be defined by the Secretary of Finance. What I am saying is, even retaining the discretion of the Secretary of Finance to determine what is reasonable in terms of what kind and how much, I am saying that there should still be a ceiling. So that is only the extent of my amendment.

Senator Roco. That is correct, Mr. President. But in the case of some companies that we know for instance, a corporation may wish to spend for the basketball games of the employees. Will that be considered part of that?

Senator Enrile. That is part of advertisement, Mr. President.

Senator Roco. So that will be classified as advertisement.

Senator Enrile. That is not a representation.

Senator Roco. No. I am not referring to the basketball games in the PBA, but the employees themselves when they have sports olympics, whatever they call it, between divisions or sections.

Senator Enrile. That will be included in this paragraph.

Senator Roco. That will be covered by that. That is my concern, Mr. President, because it is a good practice. In fact, we should encourage companies or single proprietorships or partnerships to spend for the physical or the recreation of the employees.

Senator Enrile. Mr. President, may I point out that half a percent for the gross revenue of San Miguel Corporation will probably amount to—if their gross revenue is... How much is their gross revenue, P20 billion?

Senator Roco. I do not know. I am not worried about the big ones.

Senator Enrile. Mr. President, for every billion, that will mean about P5 million.

Senator Roco. I am not worried, Mr. President, about the big ones. It is the small and medium and average companies which make it a management orientation to support the leisure time or the recreation time of the employees. Those who can afford Pegasus can afford to pay the taxes. But this will discourage the medium and the smaller companies from...

Maybe, we can socialize, maybe we want to break it up so that beyond a certain size, we can put restrictions. But below a certain size of the companies, I think if they take it upon themselves as a management matter to support their recreation facilities, they should not be taxed for that because it will be the ordinary guys who will not be able to afford recreation elsewhere. It is the smallest employee who will really be affected.

Senator Maceda. In answer to the interpellation, Mr. President, or to the clarification, the average is 0.65 percent.

Senator Roco. Yes.

Senator Maceda. Outside of the construction and services sector, because the average is 0.65 percent, we can imagine that many sectors are even below the one-half of 1 percent ceiling that we are putting.

Senator Roco. But there may be a good point in categorizing because really even half a percent for the very big companies, if we use San Miguel Corporation or BPI as a yardstick, they will really be big, but they can very well plan that.

But the medium companies, the average sizes, where their cash flow can be very tight but they take it upon themselves to have the social responsibility of furnishing leisure and recreation facilities for the employees, it does not seem fair, Mr. President, unless we discourage these companies from precisely taking care of the recreation needs of the employees.

Senator Maceda. The problem, Mr. President, is while I see the distinguished gentleman's point, that is only a possibility. We are not saying that absolutely because we have put a ceiling of half a percent but this will be discouraged. It may not be so in most companies. In some companies, it may be so, but it probably just means a prioritization of what they would spend their budget for recreation and entertainment could be.

Now, when we had the Senate Olympics, if I recall, we did not spend too much. How much did we spend, P200,000? Our employee force is about a little less than 2,000, including the Commission on Appointments. We had about 12 or 13 teams. It does not cost too much to have sports program.

Senator Roco. Because that is a one-shot affair, Mr. President, for the year. But for the corporations or for those engaged in industry, especially for the laboring class, it may be very critical that they have a regular outlet for recreation. And that is why I am saying that it makes good management since we cannot really add to the minimum wage. Some companies keep adding in terms of recreation, in terms of similar activities, and we may discourage those prerogatives.

SUSPENSION OF SESSION

May we have a one-minute suspension of the session, Mr. President?

The Presiding Officer [Sen. Mercado]. Is there any objection? [Silence] There being none, the session is suspended for one minute.

It was 6:27 p.m.

RESUMPTION OF SESSION

At 6:29 p.m., the session was resumed.

The Presiding Officer [Sen. Mercado]. The session is resumed.

Senator Maceda. Mr. President, upon consultation with the gentlemen, I would like to amend my proposal to put a ceiling on the amount of representation, amusement and recreation expenses which, by rules and regulations, the Secretary of Finance may prescribe to 0.65 percent.

The Presiding Officer [Sen. Mercado]. What does the sponsor say?

Senator Enrile. The amendment is accepted, Mr. President, subject to style. We will have to locate where we will put that proviso.

The Presiding Officer [Sen. Mercado]. Is there any objection? *[Silence]* There being none, the amendment is approved, subject to refinements in style.

Senator Maceda. We will defer the matter of corporate rates until next time. I will just go to the last point for today. This is on page 72 on the matter of no deductions for bribes, kickbacks, and other similar payments.

Senator Enrile. That is correct, Mr. President.

Senator Maceda. Obviously, and as would be expected, this matter is directed principally and solely on government transactions and/or contracts. But we know that there are also bribes and kickbacks in private transactions, the best example of which is being the usual complaint that when one gets a loan from a private bank, many times, one has to put something under the table to get a loan from a bank.

My amendment really is to extend this allowance to even bribes, kickbacks or other similar payments involving private corporations.

Senator Enrile. It is accepted, Mr. President, subject to style.

The Presiding Officer [Sen. Mercado]. Is there any objection? *[Silence]* There being none, the amendment is approved, subject to refinement in style.

Senator Maceda. That is all for the moment, Mr. President.

The Presiding Officer [Sen. Mercado]. The Majority Leader is recognized.

SUSPENSION OF CONSIDERATION OF H. NO. 9077

Senator Tatad. Mr. President, at this point, I move that we suspend consideration of House Bill No. 9077.

The Presiding Officer [Sen. Mercado]. Is there any objection? *[Silence]* There being none, the motion is approved.

Senator Tatad. Mr. President, for the privilege hour, I ask that the distinguished Assistant Minority Leader from Quezon City, Tarlac and Bulacan, be recognized.

The Presiding Officer [Sen. Mercado]. Senator Romulo is recognized.

PRIVILEGE SPEECH OF SENATOR ROMULO (Term Limits and the Curse Against Presidential Reelection)

Senator Romulo.

TERM LIMITS AND THE CURSE AGAINST PRESIDENTIAL REELECTION

Since the issue of constitutional amendments came up late 1992, I have been expressing my clear and unequivocal opposition to any tampering or tinkering with the 1987 Constitution.

This is not true with some so-called defenders of the Constitution who chameleon-like now sing an entirely new tune. All one has to do is read the journals to know who they are.

In particular, I have expressed my strong objections to any amendment to two constitutional provisions: term limits and presidential form of government.

Four months ago, consonant with my consistent and long held opposition to any change in the Constitution, I joined 22 of my Senate colleagues in supporting and signing Senate Resolution No. 32, entitled "Resolution to Express the Deep Sense of the Senate of the Philippines Against Any Change in the Constitution Particularly a Shift in the Form of Government or Lifting of Term Limits of the President, the Vice President, the Senators and the Congressmen at this Time."

Excerpts of the resolution read:

Whereas, the presidential system of government, with the checks and balances between co-equal departments, strengthens republicanism and has been the basis for the political and economic stability of the Philippines;

Whereas the restrictions to the terms of office of the Executive and Legislative will bring about the optimum opportunity for new political leaders for the 21st century;

RECORD OF THE SENATE

THURSDAY, AUGUST 21, 1997

RESUMPTION OF THE SESSION

At 10:11 a.m., the session was resumed with Senate President Maceda presiding.

The President. The session is resumed. The Majority Leader is recognized.

THE JOURNAL

Senator Tatad. Mr. President, I move that we dispense with the reading of the *Journal* of Session No. 10 and consider it approved.

The President. Is there any objection? [*Silence*] There being none, the motion is approved.

Senator Tatad. I ask that the Secretary read the Second Additional Reference of Business.

The President. The Secretary will read the Second Additional Reference of Business.

SECOND ADDITIONAL REFERENCE OF BUSINESS

MESSAGE FROM THE HOUSE OF REPRESENTATIVES

The Secretary, reading:

August 15, 1997

Mr. President:

I have been directed to inform the Senate that the House of Representatives on August 13, 1997 elected Representatives Rogelio M. Sarmiento and Bellaflor J. Angara-Castillo as additional members of the Bicameral Conference Committee on the disagreeing provisions of House Bill No. 7658, entitled

AN ACT LIBERALIZING THE INVESTMENT HOUSE INDUSTRY, FURTHER AMENDING FOR THE PURPOSE PRESIDENTIAL DECREE NUMBERED ONE HUNDRED TWENTY-NINE

and Senate Bill No. 1490, entitled

AN ACT LIBERALIZING THE PHILIPPINE INVESTMENT HOUSE INDUSTRY, AMENDING CERTAIN SECTIONS OF

PRESIDENTIAL DECREE NO. 129, AS AMENDED, OTHERWISE KNOWN AS THE INVESTMENT HOUSES LAW.

Very truly yours,

(Sgd.) ROBERTO P. NAZARENO
Secretary General

The Honorable
ERNESTO M. MACEDA
President of the Senate
Financial Center
Pasay City 1308

The President. Referred to the Committee on Rules

RESOLUTIONS

The Secretary. Proposed Senate Resolution No. 982, entitled

RESOLUTION DIRECTING THE SENATE COMMITTEE ON ACCOUNTABILITY OF PUBLIC OFFICERS AND INVESTIGATIONS (BLUE RIBBON) TO INVESTIGATE, IN AID OF LEGISLATION, THE ALLEGED RAMPANT ANOMALOUS DEALINGS BEING ORCHESTRATED BY THE BUREAU OF EQUIPMENT (BOE) OF THE DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS (DPWH) SUCH AS MANIPULATION OF MAINTENANCE FUNDS THRU SPLITTING OF SUB-ALLOTMENT ADVICE (SAS) SO THAT THE REQUIRED PUBLIC BIDDING CAN BE DONE AT THE REGIONAL LEVEL TO BENEFIT FAVORED DEALERS/CONTRACTORS AND THE OVERPRICING ON CERTAIN ITEMS AT PRICES REVOLTING TO CONSCIENCE FOR BEING GROSSLY DISADVANTAGEOUS TO THE GOVERNMENT FOR THE PURPOSE OF ENACTING APPROPRIATE LEGISLATIVE MEASURES, AND FOR OTHER LEGISLATIVE PURPOSES

Introduced by Senator Maceda

The President. Referred to the Committee on Accountability of Public Officers and Investigations

The Secretary. Proposed Senate Resolution No. 983, entitled

RESOLUTION DIRECTING THE COMMITTEES

RECORD OF THE SENATE

MONDAY, AUGUST 25, 1997

RESUMPTION OF THE SESSION

At 11:14 a.m., the session was resumed with Senate President Maceda presiding.

The President. The session is resumed. The Majority Leader is recognized.

BILL ON SECOND READING

H. No. 9077 - The Tax Reform Act of 1997 (Continuation)

Senator Tatad. Mr. President, I move that we resume consideration of House Bill No. 9077, as reported out under Committee Report No. 454.

The President. Is there any objection? *[Silence]* There being none, resumption of consideration of House Bill No. 9077 is now in order.

Senator Tatad. Mr. President, we are still in the period of individual amendments.

I invite attention to the latest version of the bill as of August 20, 1997. I move that this be adopted as the working draft for purposes of the amendments. I ask that the distinguished sponsor, the chairman of the Committee on Ways and Means, Sen. Juan Ponce Enrile, be recognized.

The President. The chairman of the Committee on Ways and Means is recognized.

Just for the record to explain that the latest version of the working draft is different in the sense that all the approved amendments presented in the last few days....

Senator Enrile. That is correct, Mr. President. All the approved amendments so far, up to this day, that we have considered are now embodied in this amended copy as of....

SUSPENSION OF SESSION

May I ask for a one-minute suspension of the session.

The President. Is there any objection? *[Silence]* There being none, the session is suspended for one minute.

It was 11:15 a.m.

RESUMPTION OF SESSION

At 11:16 a.m., the session was resumed.

The President. The session is resumed.

Senator Enrile. Mr. President, I was told that all the amendments approved last week are already embodied in this Senate substitute bill on House Bill No. 9077. The amended copy as of August 20, 1997 is the most current copy to be used in our deliberations.

The President. Does the committee have any individual amendments to add at this time?

Senator Enrile. We have, Mr. President. May I just get my copy?

The President. Yes.

Senator Enrile. Mr. President, I would like to propose an omnibus amendment. I move that for uniformity in style of presentation, all figures and rates must be written in words and figures except those pertaining to tax schedules.

The President. Is there any objection? *[Silence]* There being none, the amendment is approved. A matter of style.

Senator Enrile. On page 5, line 18, after the figures "1405" but before the comma (,), we propose to insert the phrase AND OTHER GENERAL OR SPECIAL LAWS.

The President. Is there any objection? *[Silence]* There being none, the amendment is approved.

Senator Enrile. On the same page 5, replace the text of subsection (4) starting with the word "any" in line 33 of the original text up to the word "exist" with the following:

ANY TAXPAYER WHOSE RETURN HAS BEEN AUDITED BY A DULY AUTHORIZED REVENUE OFFICER OF THE BUREAU OF INTERNAL REVENUE PURSUANT TO A VALIDLY ISSUED LETTER OF AUTHORITY, AND A CLEAR, DIRECT AND SUBSTANTIAL EVIDENCE THAT SAID TAXPAYER HAS DEFRAUDED THE REVENUE OF THE GOVERNMENT BY EITHER UNDERSTATING HIS SALES, RECEIPTS OR INCOME BY AN AMOUNT EXCEEDING TWENTY PERCENT (20%) OF THE SALES, RECEIPTS OR INCOME DECLARED PER RETURN, OR BY OVERSTATING HIS DEDUCTIONS OR EXPENSES IN AN AMOUNT EXCEEDING TWENTY PERCENT (20%) OF THE ACTUAL EXPENSES OR DEDUCTIONS, OR BOTH, HAS BEEN FOUND TO EXIST: PROVIDED, HOWEVER, THAT THE RESULTING BASIC DEFICIENCY TAX AS COMPUTED IN THE AUDIT REPORT APPROVED BY THE COMMISSIONER SHALL NOT BE LESS THAN THREE HUNDRED THOUSAND PESOS (P300,000.00); OR.

The President. May the Chair be enlightened as to what is the difference between this version and the old version? It appears to be exactly the same.

Senator Enrile. This is a more comprehensive provision. Under the old version, if the Chair will permit me, I will read it.

The President. Because there is an existing request on the part of the Minority and other senators to defer all of those substantial matters with regard to this section.

Senator Enrile. We can defer this item at the moment.

The President. Yes, until we get to this as the last point to be debated upon. So, that is deferred in the meantime.

Senator Enrile. On page 6, line 16, we propose to insert the words OR UNDER OTHER GENERAL OR SPECIAL LAWS between the number "1405" and the comma (,).

The President. Is there any objection? *[Silence]* There being none, the amendment is approved.

That is just a clarificatory amendment.

Senator Enrile. On page 7, line 29, insert the words AND SECTION 6(F)(5).

The President. Is there any objection? *[Silence]* There being none, the amendment is approved.

Senator Enrile. Mr. President, on page 8, line 9, this is just a matter of correcting the number "150". Instead of "150", this should be 115. This was the proposal of the Chair.

The President. Yes. And as a matter of style, the words TWENTY FIVE (25) and ONE HUNDRED FIFTEEN (115) should be in words and figures with parentheses for the figures.

Senator Enrile. That is covered by our omnibus amendment. Nevertheless, we agree.

The President. All right. Is there any objection to the amendment? *[Silence]* There being none, the amendment is approved.

SUSPENSION OF SESSION

The session is suspended, if there is no objection. *[There was none.]*

It was 11:26 a.m.

RESUMPTION OF SESSION

At 11:28 a.m., the session was resumed.

The President. The session is resumed.

Senator Enrile. Mr. President, on the same page 8, line 17, may I propose to insert the phrase WITH THE APPROVAL OF THE SECRETARY OF FINANCE after the word "Commissioner" and before the comma (,).

The President. Is there any objection to the amendment? *[Silence]* There being none, the amendment is approved.

Senator Enrile. Mr. President, on page 12, line 13, I propose to put a bracket () after the word "leaving" and remove the bracket after the word "Philippines" in order to reflect the true intent and meaning of the sentence.

"A citizen OF THE PHILIPPINES WHO LEAVES the Philippines during the taxable year to reside abroad."

The President. We just limit the deletion to the word "leaving".

Senator Enrile. Yes, Mr. President.

The President. Is there any objection? *[Silence]* There being none, the amendment is approved.

Senator Enrile. On page 13, line 8, may I correct the spelling of the word "SIMILAR"--there is a missing letter "i"--in order to clean up this whole material.

The President. Is there any objection? *[Silence]* There being none, the amendment is approved. It is a matter of style.

Senator Enrile. On page 15, lines 9 to 14, we propose to delete the entire definition of "SHARES OF STOCK", beginning with the letters (BB) in line 9 all the way to the period (.) in line 14.

The President. Deletion of the paragraph without any substitution.

Senator Enrile. The deletion is proposed because a prior definition of the term "SHARES OF STOCK" on page 13, lines 4 to 10, has already been inserted.

The President. Is there any objection? *[Silence]* There being none, the amendment is approved.

Senator Enrile. On page 16, line 34, may I propose that the

word "FOR" be deleted and in lieu thereof, the word ON be inserted.

The President. Is there any objection? *[Silence]* There being none, the amendment is approved.

Senator Enrile. On the same page, line 37, may I propose to change the position of the words "SOLELY ENGAGED" in the sense that instead of the word "SOLELY" preceding the word "ENGAGED", it should follow the word "ENGAGED". So that this phrase would then read: "ENGAGED SOLELY IN INTERNATIONAL TRADE."

The President. Is there any other parliamentary substitute for the word "SOLELY"?

Senator Enrile. EXCLUSIVELY, Mr. President.

The President. Yes, EXCLUSIVELY.

Senator Enrile. We accept the amendment of the Chair. Instead of the words "SOLELY ENGAGED," it should be ENGAGED EXCLUSIVELY IN INTERNATIONAL TRADE.

The President. Is there any objection? *[Silence]* There being none, the amendment is approved.

Senator Enrile. On page 17, line 16, we propose to replace the phrase "ALIEN RESIDENT" with RESIDENT ALIEN.

The President. As matter of style, the amendment is approved.

Senator Enrile. On the same page 17, Mr. President, line 30, we propose to delete the words "WORKING OR" before "RESIDING."

The President. Is there any objection? *[Silence]* There being none, the amendment is approved.

Senator Enrile. On the same line 30, we propose to insert after the word "PHILIPPINES" but before the semicolon (;) the phrase INCLUDING OVERSEAS CONTRACT WORKERS REFERRED TO IN SUBSECTION (C) OF SECTION 23 HEREOF.

The President. Is there any objection? *[Silence]* There being none, the amendment is approved.

Senator Enrile. On page 18, lines 20 to 28, we propose to replace the words "IN EXCESS OF" with the phrase OF THE EXCESS OVER.

The President. Will the gentleman read the sentence as it will read now?

Senator Enrile. From line 20, the word "IN EXCESS OF P15,000" should read, OF THE EXCESS OVER P15,000. That goes true with line 22, line 24, line 26, and line 28. All these words "IN EXCESS OF" should be replaced with the phrase OF THE EXCESS OVER.

The President. Is there any objection? *[Silence]* There being none, the amendment is approved.

Senator Enrile. On page 19, line 19, Mr. President, we propose to insert the phrase CASH AND/OR PROPERTY in order to clarify the point that this provision will cover only CASH AND/OR PROPERTY DIVIDENDS.

The President. That would be after the word "DIVIDENDS"?

Senator Enrile. Between the figure "(2)" and before the word "DIVIDENDS" in line 19.

The President. Is there any objection? *[Silence]* There being none, the amendment is approved.

Senator Enrile. In line 20 before the word "dividends", insert the same phrase, CASH AND/OR PROPERTY. That will be the wording.

The President. Is there any objection? *[Silence]* There being none, the amendment is approved.

Senator Enrile. In the same line 20, we propose to delete the word "EARNED" and in lieu thereof, insert the phrase ACTUALLY OR CONSTRUCTIVELY RECEIVED.

The President. Is there any objection? *[Silence]* There being none, the amendment is approved.

Senator Enrile. So that this provision will then read: "A FINAL TAX AT THE FOLLOWING RATES SHALL BE IMPOSED UPON THE CASH AND/OR PROPERTY dividends ACTUALLY OR CONSTRUCTIVELY RECEIVED BY AN INDIVIDUAL from a domestic corporation..."

SUSPENSION OF SESSION

Senator Enrile. May I have a one-minute suspension of the session, Mr. President?

The President. Is there any objection? *[Silence]* There

being none, the session is suspended for one minute.

It was 11:41 a.m.

RESUMPTION OF SESSION

At 11:42 a.m., the session was resumed.

The President. The session is resumed.

Senator Enrile. Mr. President, on page 22, line 32, the same proposal is being made to insert the phrase CASH AND/OR PROPERTY between the figure "(2)" and the word "Dividends."

The President. Is there any objection? [*Silence*] There being none, the amendment is approved.

Senator Enrile. On the same page, line 37, Mr. President, we propose to insert the phrase CASH AND/OR PROPERTY between the hyphen (-) and the word "Dividends."

The President. Is there any objection? [*Silence*] There being none, the amendment is approved.

SUSPENSION OF SESSION

Senator Enrile. May I ask for a one-minute suspension of the session, Mr. President?

The President. Is there any objection? [*Silence*] There being none, the session is suspended for one minute.

It was 11:42 a.m.

RESUMPTION OF SESSION

At 11:43 a.m., the session was resumed.

The President. The session is resumed.

Senator Enrile. On page 23, line 29, Mr. President, insert the phrase CASH AND/OR PROPERTY between the comma "(,)" after the word "interest" and the word "dividends."

The President. Is there any objection? [*Silence*] There being none, the amendment is approved.

Senator Enrile. On the same page 23, line 34, Mr. President, replace the words and figures "TWENTY PERCENT (20%)" with the words and figures TWENTY-FIVE PERCENT (25%).

The President. Is there any objection? [*Silence*] There

being none, the amendment is approved.

Senator Enrile. On the same page 23, line 35, Mr. President, insert the word INDIVIDUAL between the word "alien" and the phrase "not engaged in trade or business."

The President. Is there any objection? [*Silence*] There being none, the amendment is approved.

Senator Enrile. On page 25, line 34, Mr. President, replace the figure "24" with the figure 22.

The President. Is there any objection? [*Silence*] There being none, the amendment is approved.

Senator Enrile. Mr. President, this amendment deals with the income taxation of the expanded foreign currency deposit. I understand that this was also one of those deferred the last time. So I would like to leave this for later amendment.

Mr. President, on page 28, line 26, we propose to insert the word DOMESTIC between the words "on" and "corporations."

The President. Is there any objection? [*Silence*] There being none, the amendment is approved.

Senator Enrile. On the same page 28, line 27, Mr. President, insert the word CORPORATE between the words "minimum" and "income."

The President. Is there any objection? [*Silence*] There being none, the amendment is approved.

Senator Enrile. On the same page, Mr. President, delete the phrase starting with the word "three-fourths" in line 27 up to the word "depreciation" in line 29. Replace the words and figures....

SUSPENSION OF SESSION

Mr. President, I ask for a one-minute suspension of the session.

The President. The session is suspended, if there is no objection. [*There was none.*]

It was 11:48 a.m.

RESUMPTION OF SESSION

At 11:49 a.m., the session was resumed.

The President. The session is resumed.

Senator Enrile. May I repeat. On the same page 28, Mr. President, we propose to delete the phrase starting with the word "three-fourths" in line 27 to the word "depreciation" in line 29, and these deleted words be replaced with the words and figure ONE PERCENT (1%).

The President. Is there any objection? *[Silence]* There being none, the amendment is approved.

Senator Enrile. So this will now read "A MINIMUM CORPORATE INCOME TAX OF ONE PERCENT (1%) OF THE NET ASSETS AS DEFINED HEREIN," et cetera.

On the same page 28, line 29, insert the phrase AS OF THE END OF THE TAXABLE YEAR after the word "assets".

The President. Is there any objection? *[Silence]* There being none, the amendment is approved.

Senator Enrile. On the same page 28, line 29, insert a comma (,) after the word "year", and another comma (,) after the word "herein".

The President. Is there any objection? *[Silence]* There being none, the amendment is approved.

Senator Enrile. On the same page 28, insert the word TAXABLE between the words "fourth" in line 30, and "year" in line 31.

The President. Is there any objection? *[Silence]* There being none, the amendment is approved.

Senator Enrile. On the same page 28, lines 31 and 32, replace the phrase "the start up of business operations of the corporation has commenced", with the phrase SUCH CORPORATION COMMENCED ITS BUSINESS OPERATIONS.

The President. SUCH CORPORATION COMMENCED... Do we delete the word "the" or do we keep that?

Senator Enrile. The proposal, Mr. President, is: On the same page 28, lines 31 and 32, replace the phrase "the start up of business operations of the corporation has commenced", with SUCH CORPORATION COMMENCED ITS BUSINESS OPERATIONS.

The President. Is there any objection? *[Silence]* There being none, the amendment is approved.

Senator Enrile. On the same page 28, lines 32 and 33, replace the words "provided, however, that" with the word WHEN. So it will read: "WHEN THE MINIMUM INCOME TAX IS GREATER THAN THE TAX COMPUTED UNDER SUBSECTIONS A AND C OF THIS SECTION."

The President. Is there any objection? *[Silence]* There being none, the amendment is approved.

Senator Enrile. On page 29, line 15, insert the phrase THE BOOK VALUE OF ALL between the words "mean" and "assets."

The President. Is there any objection? *[Silence]* There being none, the amendment is approved.

Senator Enrile. On the same page 29, line 16, insert the words THE FOLLOWING after the word "excluding."

The President. Is there any objection? *[Silence]* There being none, the amendment is approved.

Senator Enrile. On page 30, immediately after line 4, insert a new paragraph "(2)" of subsection A, to read as follows:

(2) MINIMUM CORPORATE INCOME TAX ON RESIDENT FOREIGN CORPORATIONS. - A MINIMUM CORPORATE INCOME TAX OF ONE PERCENT (1%) OF NET ASSETS, AS PRESCRIBED UNDER SECTION 27 (f) OF THIS CODE, SHALL BE IMPOSED, UNDER THE SAME CONDITIONS, ON A RESIDENT FOREIGN CORPORATION TAXABLE UNDER PARAGRAPH (1) OF THIS SECTION: PROVIDED, HOWEVER, THAT ASSETS OWNED BY THE RESIDENT FOREIGN CORPORATION SITUATED OUTSIDE THE PHILIPPINES SHALL BE EXCLUDED IN DETERMINING THE TAXABLE NET ASSETS.

The President. Is there any objection? *[Silence]* There being none, the amendment is approved.

Senator Enrile. On the same page 30, line 5, renumber the present paragraph "(2)" as paragraph (3), and the present paragraph "(3)" in line 36 as paragraph (4), and, thereafter, renumber the other paragraphs accordingly.

The President. Is there any objection? *[Silence]* There being none, the amendment is approved.

Senator Enrile. Mr. President, the next amendment that I am going to deal with is the tax treatment of offshore banking units, but I would defer that at a later time because we have agreed to discuss this after we have dealt with the other provisions.

On page 32, line 2, insert the phrase FINAL INCOME TAX AT THE RATE OF between the article "a" and the word "twenty".

The President. Is there any objection? [Silence] There being none, the amendment is approved.

SUSPENSION OF SESSION

Senator Enrile. On the same page 32, line ... by the way, excuse me, Mr. President. Just a one-minute suspension of the session.

The President. Is there any objection? [Silence] There being none, the session is suspended for one minute.

It was 11:58 a.m.

RESUMPTION OF SESSION

At 11:59 a.m., the session was resumed.

The President. The session is resumed.

Senator Enrile. On the same page 32, line 3, we propose to bracket the word "tax" and add the words OF SUCH INTEREST immediately thereafter. In other words, in lieu of the word "tax," insert the words OF SUCH INTEREST.

The President. Is there any objection? [Silence] There being none, the amendment is approved.

Senator Enrile. On page 34, Mr. President, line 9, insert between the article "the" in brackets and the word "dividends" the phrase CASH AND/OR PROPERTY.

The President. Is there any objection? [Silence] There being none, the amendment is approved.

Senator Enrile. On page 37, line 24, insert the phrase RECEIVED UNDER REPUBLIC ACT NO. 7641 AND THOSE between the words "benefits" and "received".

The President. Is there any objection? [Silence] There being none, the amendment is approved.

Senator Enrile. And then bracket the word "received" before the word "by".

The President. Is there any objection? [Silence] There being none, the amendment is approved.

Senator Enrile. On page 39, line 17, replace the period

(.) with a colon (:), and insert a proviso to read as follows: *PROVIDED, FURTHER, THAT THE CEILING OF THIRTY THOUSAND PESOS (P30,000.00) MAY BE INCREASED THROUGH RULES AND REGULATIONS ISSUED BY THE SECRETARY OF FINANCE UPON RECOMMENDATION OF THE COMMISSIONER, AFTER CONSIDERING, AMONG OTHERS, THE EFFECT ON THE SAME OF THE INFLATION RATE.*

The President. Is the authority to adjust to be based solely on considering the inflation rate, or among others?

Senator Enrile. When there is undue rise in our inflation rate, Mr. President, in order to assist the economic condition of our low-income groups, especially the fixed-salaried people.

The President. Yes. I am just clarifying. Having clarified that, when does the gentleman reckon the determination of the undue rise in the inflation rate? Is it the last quarter of the year?

Senator Enrile. This was the proposal of the Chair, if I remember correctly.

The President. No. I am asking when does the gentleman determine the increase in the inflation rate? For the last quarter or for the last year?

Senator Enrile. At the end of the taxable year, Mr. President.

The President. At the end of the taxable year.

Is there any objection? [Silence] There being none, the amendment is approved.

Is that going to be just in the record or that will be part of the amendment--INFLATION RATE AT THE END OF THE TAXABLE YEAR?

Senator Enrile. That will be a part of the amendment.

The President. Is there any objection? [Silence] There being none, the amendment is approved.

Senator Enrile. Mr. President, on page 41, line 3, relating to the new Section 33 on "Deductions from Gross Income", we propose to bracket the word "In" and insert at the start of the section after the headnote and before the word "computing" the following: EXCEPT FOR TAXPAYERS EARNING COMPENSATION INCOME ARISING FROM PERSONAL SERVICES RENDERED UNDER AN EMPLOYER-EMPLOYEE RELATIONSHIP WHERE NO DEDUCTIONS

SHALL BE ALLOWED UNDER THIS SECTION OTHER THAN THE DEDUCTION PROVIDED IN SUBSECTION (M) HEREOF, in...

The President. The last word is "in"?

Senator Enrile. Yes, Mr. President. In other words, this sentence will then read: "EXCEPT FOR TAXPAYERS EARNING COMPENSATION INCOME ARISING FROM PERSONAL SERVICES RENDERED UNDER AN EMPLOYER-EMPLOYEE RELATIONSHIP WHERE NO DEDUCTIONS SHALL BE ALLOWED UNDER THIS SECTION OTHER THAN THE DEDUCTION PROVIDED IN SUBSECTION (M) HEREOF, in computing taxable income subject to income tax," et cetera.

The President. So, we are retaining the word "in", not deleting it. I am just making it a small "i", not capital "I."

Senator Enrile. That is correct.

The President. Is there any objection? [Silence] There being none, the amendment is approved.

SUSPENSION OF SESSION

Senator Enrile. Mr. President, may I request for a one-minute suspension of the session?

The President. Is there any objection? [Silence] There being none, the session is suspended.

It was 12:08 p.m.

RESUMPTION OF SESSION

At 12:09 p.m., the session was resumed.

The President. The session is resumed.

Senator Enrile. Mr. President, on page 42, line 35, add a subtitle to Section 33 (A)(1)(B) by inserting between the letter (B) and the words "NO DEDUCTION" the subtitle "SUBSTANTIATION REQUIREMENTS. -

The President. Is there any objection? [Silence] There being none, the amendment is approved.

Senator Enrile. On page 44, line 7, Mr. President, insert the subheading OPTIONAL TREATMENT OF INTEREST EXPENSE. - between number "(3)" and the phrase "at the option of the taxpayer".

The President. Is there any objection? [Silence] There being none, the amendment is approved.

SUSPENSION OF SESSION

Senator Enrile. May I have a one-minute suspension of the session, Mr. President?

The President. Is there any objection? [Silence] There being none, the session is suspended.

It was 12:10 p.m.

RESUMPTION OF SESSION

At 12:11 p.m., the session was resumed.

The President. The session is resumed.

Senator Enrile. On page 59, line 32, insert the subheading IN GENERAL. - between the letter "(a)" and the words "for purposes of."

The President. Is there any objection? [Silence] There being none, the amendment is approved.

Senator Enrile. On page 80, Mr. President, line 23, insert the subheading REGISTRATION WITH REGISTER OF DEEDS. - after the letter "(e)" but before the words "no registration of any document."

The President. Is there any objection? [Silence] There being none, the amendment is approved.

May the Chair know if the gentleman still has many of these subheadings because the last three amendments were just insertions of subheadings?

Senator Enrile. Yes, we are just finishing the subheadings and we will go back, Mr. President.

The President. But if he still has many subheadings, we could just accept an omnibus amendment. This is a matter of style-to approve all the subheadings that the sponsor wants to add.

Senator Enrile. There are two more subheadings, Mr. President.

On page 96, line 19, Mr. President, insert the subheading DEDUCTIONS ALLOWED TO THE ESTATE OF A CITIZEN OR A RESIDENT after the letter "([a]A)" but before the phrase "In the case of a citizen or resident".

The President. The Chair would like to call the gentleman's attention to the fact that at the end of line 18, it is not a complete paragraph. I wonder if there is a need for a subheading for subsection A. The subheading, to begin with, is in line 17, "Computation of Estate". It may not be necessary to have a subheading in line 19.

SUSPENSION OF SESSION

Senator Enrile. May we have a one-minute recess, Mr. President?

The President. The session is suspended, if there is no objection. *[There was none.]*

It was 12:15 p.m.

RESUMPTION OF SESSION

At 12:16 p.m., the session was resumed.

The President. The session is resumed.

Senator Enrile. I understand that there is a subheading on page 98, line 30, Mr. President. We are just putting a subheading now to clarify this and distinguish it with the subheading on page 98.

The President. All right. Is there any objection? *[Silence]* There being none, the amendment is approved.

Senator Enrile. On page 174, Mr. President--and this is the last subheading--line 2, insert a subheading *REQUIREMENTS*, before the phrase "every person subject to any internal revenue".

The President. Is there any objection? *[Silence]* There being none, the amendment is approved.

Senator Enrile. Mr. President, may we go back now to page 44.

SUSPENSION OF SESSION

May we have a one-minute suspension of the session, Mr. President.

The President. The session is suspended, if there is no objection. *[There was none.]*

It was 12:18 p.m.

RESUMPTION OF SESSION

At 12:19 p.m., the session was resumed.

The President. The session is resumed.

Senator Enrile. On page 48, Mr. President, "NET OPERATING LOSS CARRY-OVER," line 11, delete the word "aggregate," Mr. President.

The President. Is there any objection? *[Silence]* There being none, the amendment is approved.

Senator Enrile. On the same page 48, line 12, insert between the word "business" and the word "for" the phrase OR ENTERPRISE.

The President. Is there any objection? *[Silence]* There being none, the amendment is approved.

Senator Enrile. On the same page 48, line 12, delete the phrase "the three (3) consecutive" in words and figure and thereafter insert the word ANY.

The President. Is there any objection? *[Silence]* There being none, the amendment is approved.

Senator Enrile. On the same page 48, line 14, between the word "income" and the colon (:), insert the phrase SHALL BE CARRIED OVER AS A DEDUCTION FROM GROSS INCOME FOR THE NEXT THREE (3) CONSECUTIVE TAXABLE YEARS IMMEDIATELY FOLLOWING THE YEAR OF SUCH LOSS.

I repeat. Insert the phrase SHALL BE CARRIED OVER AS A DEDUCTION FROM GROSS INCOME FOR THE NEXT THREE (3), in words and figure, CONSECUTIVE TAXABLE YEARS IMMEDIATELY FOLLOWING THE YEAR OF SUCH LOSS.

The President. Is there any objection? *[Silence]* There being none, the amendment is approved.

Senator Enrile. On the same page, page 48, line 19, insert between the words "business" and "in", the words OR ENTERPRISE.

The President. Is there any objection? *[Silence]* There being none, the amendment is approved.

Senator Enrile. On page 53, line 21, insert the word ACCREDITED between the words "to" and "domestic".

The President. Is there any objection? *[Silence]* There being none, the amendment is approved.

Senator Enrile. On the same page 53, Mr. President, delete the phrase starting with the word "duly" in line 25 up to the word "agency" in line 26.

The President. Is there any objection? *[Silence]* There being none, the amendment is approved.

Senator Enrile. On page 59, Mr. President, enclose in brackets ([]) subsection "m" on "Exemption and deduction allowable from foreign source income derived by nonresident citizens.", from lines 19 to 20.

The President. Is there any objection? *[Silence]* There being none, the amendment is approved.

Senator Enrile. May I go back to page 56, Mr. President? On page 56, line 33, enclose in brackets ([]) the word "allowable" and replace it with the word ALLOWED in order to conform with the grammar.

The President. Is there any objection? *[Silence]* There being none, the amendment is approved.

Senator Enrile. On page 76, Mr. President, bracket ([]) lines 19 to 24 starting with the letter "(d)" enclosed in open and close parentheses in line 19, and ending with the period (.) in line 24 and insert a new subsection (d) to Section 51, to read as follows:

(d) RETURN ON CAPITAL GAINS REALIZED FROM SALE OF SHARES OF STOCK. - (1) RETURN ON CAPITAL GAINS REALIZED FROM THE SALE OF SHARES OF STOCK LISTED AND TRADED IN THE LOCAL STOCK EXCHANGE. IT SHALL BE THE DUTY OF EVERY STOCKBROKER WHO EFFECTED THE SALE SUBJECT TO THE TAX IMPOSED HEREIN TO COLLECT THE TAX AND REMIT THE SAME TO THE BUREAU OF INTERNAL REVENUE WITHIN FIVE (5)—in word and figure—BANKING DAYS FROM THE DATE OF COLLECTION THEREOF AND TO SUBMIT ON MONDAYS OF EACH WEEK TO THE SECRETARY OF THE STOCK EXCHANGE OF WHICH HE IS A MEMBER A TRUE AND COMPLETE RETURN WHICH SHALL CONTAIN A DECLARATION OF ALL THE TRANSACTIONS EFFECTED THROUGH HIM DURING THE PRECEDING WEEK AND OF TAXES COLLECTED BY HIM AND TURNED OVER TO THE BUREAU OF INTERNAL REVENUE.

The President. The Chair would like to know whether or not there are other businesses where they are obligated to turn over the tax after five days. It seems to be a difficult

accounting and paperwork imposition to the brokers to submit after only five days.

Senator Enrile. I understand this is an existing provision in the Tax Code, in the Republic Act. It is just being incorporated now.

Under Sections 1, 2, 4(a) of the Code it is being transposed, Mr. President. I stand corrected.

The President. All right. Is there any objection? *[Silence]* There being none, the amendment is approved.

SUSPENSION OF SESSION

The President. The Chair declares a one-minute suspension of the session, if there is no objection. *[There was none.]*

It was 12:28 p.m.

RESUMPTION OF SESSION

At 12:29 p.m., the session was resumed.

The President. The session is resumed. Senator Enrile may proceed.

Senator Enrile. Mr. President, after the approved paragraph, insert another paragraph which reads as follows:

(2) RETURN ON CAPITAL GAINS REALIZED FROM THE SALE OF SHARES OF STOCK NOT TRADED IN THE LOCAL STOCK EXCHANGE. - EVERY CORPORATION DERIVING CAPITAL GAINS FROM THE SALE OR EXCHANGE OF SHARES OF STOCK AS PRESCRIBED UNDER SECTIONS 24(D), 25(E)(4), 27(E)(3), 28(E)(6)(C), and 28(B)(5)(D) SHALL FILE A RETURN WITHIN THIRTY (30) DAYS AFTER EACH TRANSACTION AND A FINAL CONSOLIDATED RETURN OF ALL TRANSACTIONS DURING THE TAXABLE YEAR ON OR BEFORE THE 15TH DAY OF THE FOURTH MONTH FOLLOWING THE CLOSE OF THE TAXABLE YEAR.

The President. Is there any objection? *[Silence]* There being none, the amendment is approved.

Senator Enrile. After that paragraph, Mr. President, a new paragraph will also be inserted which reads as follows:

(3) RETURN ON PUBLIC OFFERINGS OF SHARES OF STOCK. - IN CASE OF PRIMARY OFFERING, THE CORPORATE ISSUER SHALL FILE THE RETURN AND PAY THE

CORRESPONDING TAX WITHIN THIRTY (30) DAYS FROM THE DATE OF LISTING OF THE SHARES OF STOCK IN THE LOCAL STOCK EXCHANGE. IN THE CASE OF SECONDARY OFFERING, THE PROVISION OF SUBSECTION (D)(1) OF THIS SECTION SHALL APPLY AS TO THE TIME AND MANNER OF PAYMENT OF THE TAX.

The President. Is there any objection? *[Silence]* There being none, the amendment is approved.

Senator Enrile. On page 81, line 1, insert the phrase OR CONDOMINIUM CERTIFICATE OF TITLE between the words "title" and "of".

The President. Is there any objection? *[Silence]* There being none, the amendment is approved.

May we know if the committee still have more than 10 amendments or so?

Senator Enrile. Many more, Mr. President.

The President. Then I guess, due to the lateness of the hour, we can suspend.

Senator Enrile. Thank you.

SUSPENSION OF CONSIDERATION OF H. NO. 9077

Senator Tatad. Mr. President, at this point, I move that we suspend consideration of House Bill No. 9077.

The President. Is there any objection? *[Silence]* There being none, the motion is approved.

ADJOURNMENT OF SESSION

Senator Tatad. Mr. President, I move that we adjourn the session until four o'clock this afternoon.

The President. The session is adjourned until four o'clock this afternoon, if there is no objection. *[There was none.]*

It was 12:32 p.m.

RECORD OF THE SENATE

MONDAY, AUGUST 25, 1997

OPENING OF THE SESSION

At 4:09 p.m., the Senate President, Hon. Ernesto M. Maceda, called the session to order.

The President. The 12th session of the Third Regular Session of the Tenth Congress is hereby called to order.

Let us all stand for the opening prayer to be led by Sen. Gloria M. Macapagal.

After the prayer, the Philippine Ambassadors of Goodwill to the 24th Ship for Southeast Asian Youth Program will lead us in the singing of the national anthem, after which it will render a medley of the songs Magsimula Ka, and Isang Dugo.

Everybody rose for the prayer.

PRAYER

Senator Macapagal.

Heavenly Father, we gather once again for this very important task of enacting the laws of the land. Allow us to yield this opportune moment to thank You, count our blessings and reflect on what lies ahead.

We pray for the people affected by the recent floods and rains.

Most especially, however, thank you, dear Father, for your Son. It was your merciful Savior who showed us how it is to give in the midst of selfishness, to serve in the midst of anger, and to love in the midst of indifference.

Where the hand of man legislates and enacts the laws of this land, help us to remember that we, as duly elected representatives of your people, are merely instruments of your divine guidance. Your words spoken through the voice of our people shall not be suppressed and manipulated to serve the interests of a few.

Help us, O Lord, to resist current moves to amend our Constitution if its motives are founded on the disregard of your people's will and which will endanger our hard-fought democracy.

Dear Father, grant us the gift of discernment that we may realize where personal goals end and where selfless service to your people begins. This is the role which

You have commissioned us to play. Let us not fail You in this regard. We are but mere instruments of the providential care and concern You hold for your people.

We are humbled by your greatness. We are enlivened by Your love. Your will shall forever be done.

Amen.

NATIONAL ANTHEM

Everybody remained standing for the singing of the national anthem.

The President. On behalf of the Senate, we would like to thank the Ambassadors of Goodwill and wish them von voyage on their Southeast Asian Youth Program. [Applause]

ROLL CALL

The Secretary will please call the roll.

The Secretary, reading:

- Senator Heherson T. Alvarez **
Senator Edgardo J. Angara Present
Senator Anna Dominique M.L. Coseteng .. Present
Senator Franklin M. Dilon Present
Senator Juan Ponce Enrile Present
Senator Marcelo B. Fernan Present
Senator Juan M. Flavier Present
Senator Neptali A. Gonzales Present
Senator Ernesto F. Herrera Present*
Senator Gregorio B. Honasan Present
Senator Gloria M. Macapagal Present
Senator Ramon B. Magsaysay Jr. Present
Senator Orlando S. Mercado Present
Senator Blas F. Ople Present*
Senator Sergio R. Osmeña III Present
Senator Ramon B. Revilla Present
Senator Raul S. Roco Present*
Senator Alberto G. Romulo Present
Senator Miriam Defensor Santiago Present
Senator Leticia R. Shahani Present
Senator Vicente C. Sotto III Present
Senator Francisco S. Tatad Present
Senator Freddie N. Webb Present
The President Present

* Arrived after the roll call
** On official mission

Ople	
Osmeña III	Yes
Revilla	
Roco	
Romulo	
Santiago	Yes
Shahani	Yes
Sotto III	Yes
Tatad	Yes
Webb	Yes
The President	Yes

Enrile	Yes
Fernan	Yes
Flavier	Yes
Gonzales	Yes
Herrera	
Honasan	Yes
Macapagal	
Magsaysay Jr.	
Mercado	Yes
Ople	
Osmeña III	Yes
Revilla	
Roco	
Romulo	
Santiago	Yes
Shahani	Yes
Sotto III	Yes
Tatad	Yes
Webb	Yes
The President	Yes

APPROVAL OF H. NO. 6693 ON THIRD READING

The President. With 16 affirmative votes, no negative vote, and no abstention, House Bill No. 6693 is approved on Third Reading.

BILL ON THIRD READING

H. No. 6927 - Dungawan National High School Guinyangan, Quezon

Senator Tatad. Mr. President, I move that we vote on Third Reading on House Bill No. 6927. Copies of the bill were distributed to the members on August 21, 1997.

The President. Is there any objection? *[Silence]* There being none, voting on Third Reading on House Bill No. 6927 is now in order.

The Acting Secretary will please read only the title of the bill.

The Acting Secretary [Atty. Raval]. House Bill No. 6927, entitled

AN ACT CONVERTING DUNGAWAN BARANGAY HIGH SCHOOL IN THE MUNICIPALITY OF GUINYANGAN, PROVINCE OF QUEZON, INTO A NATIONAL HIGH SCHOOL TO BE KNOWN AS THE DUNGAWAN NATIONAL HIGH SCHOOL, AND APPROPRIATING FUNDS THEREFOR

The President. We shall now vote on the bill and the Acting Secretary will call the roll.

The Acting Secretary [Atty. Raval]. Senators

Alvarez	
Angara	Yes
Coseteng	Yes
Drilon	Yes

APPROVAL OF H. NO. 6927 ON THIRD READING

The President. With 16 affirmative votes, no negative vote, and no abstention, House Bill No. 6927 is approved on Third Reading.

SUSPENSION OF SESSION

Senator Tatad. May I ask for a one-minute suspension of the session, Mr. President?

The President. The session is suspended for one minute, if there is no objection. *[There was none.]*

It was 4:37 p.m.

RESUMPTION OF SESSION

At 4:38 p.m., the session was resumed.

The President. The session is resumed. The Majority Leader is recognized.

BILL ON SECOND READING

H. No. 9077 — Tax Reform Act of 1997
(Continuation)

Senator Tatad. Mr. President, I move that we resume consideration of House Bill No. 9077 as reported out under Committee Report No. 454.

The President. Is there any objection? [*Silence*] There being none, resumption of consideration of House Bill No. 9077 is now in order.

Senator Tatad. We are still in the period of amendments. When we last suspended, the chairman of the Committee on Ways and Means and sponsor of the measure was on the floor proposing individual amendments.

The President. The gentleman from Cagayan is recognized to propose individual amendments.

Senator Enrile. Thank you, Mr. President. With the indulgence of the Senate, may I request that we go back to page 16 just so we can clean up this whole thing.

These are the general principles of income taxation. I just want to simplify these provisions so that there will be no misunderstanding about them.

On page 16, line 26, Mr. President, replace the article "an" with the article A and delete the word "individual." So that this will read "A CITIZEN OF THE PHILIPPINES RESIDING THEREIN."

Then on the same page 16, line 27, replace the word "for" with the word ON.

The President. Is there any objection? [*Silence*] There being none, the amendment is approved.

Senator Enrile. On the same page 16, line 29, replace the article "an" with the article A and delete the word "individual." Immediately thereafter, add the word NON-RESIDENT, so that it would now read, "A NON-RESIDENT OF THE PHILIPPINES."

The President. How would the sponsor treat the word "residing" at the end of the sentence?

Senator Enrile. It should be deleted, Mr. President. May I first request for an approval of the previous amendment and then I will come to that?

The President. The proposed amendment is A NON-RESIDENT CITIZEN.

Senator Enrile. Yes, Mr. President.

On the same page 16, from lines 29 to 30, having previously deleted the words "working or," delete the entire phrase "of the Philippines residing outside the Philippines." So this will now

read, "A NON-RESIDENT OF THE PHILIPPINES IS TAXABLE ONLY FOR INCOME DERIVED FROM SOURCES WITHIN THE PHILIPPINES."

The President. Is there any objection? [*Silence*] There being none, the amendment is approved.

Senator Enrile. On the same page 16, line 30, replace the word "for" with the word ON.

The President. Is there any objection? [*Silence*] There being none, the amendment is approved.

Senator Enrile. Mr. President, for purposes of record, paragraph B of Section 23 will read: "A NON-RESIDENT CITIZEN IS TAXABLE ONLY ON INCOME DERIVED FROM SOURCES WITHIN THE PHILIPPINES."

If this Chamber will recall, we adopted previously subsection C which reads as follows:

C. AN INDIVIDUAL CITIZEN OF THE PHILIPPINES WHO IS WORKING AND DERIVING INCOME FROM ABROAD AS AN OVERSEAS CONTRACT WORKER IS TAXABLE ONLY FOR...

May I propose that instead of "for," we use the word ON. It would read: "ONLY ON INCOME FROM SOURCES WITHIN THE PHILIPPINES; PROVIDED, THAT A SEAMAN WHO IS A CITIZEN OF THE PHILIPPINES AND WHO RECEIVES COMPENSATION FOR SERVICES RENDERED ABROAD AS A MEMBER OF THE COMPLEMENT OF A VESSEL ENGAGED EXCLUSIVELY IN INTERNATIONAL TRADE SHALL BE TREATED AS AN OVERSEAS CONTRACT WORKER."

This was the wording of the Senate President.

Subsection D will then read:

D. AN ALIEN INDIVIDUAL WHETHER A RESIDENT OR NOT OF THE PHILIPPINES IS TAXABLE ONLY ON INCOME DERIVED FROM SOURCES WITHIN THE PHILIPPINES.

On page 17, Mr. President, line 1, may I propose that we replace the words "individual alien" with the words ALIEN INDIVIDUAL.

The President. Is there any objection? [*Silence*] There being none, the amendment is approved.

Senator Enrile. Letter (E)—I think this was already amended this morning—will read: “A DOMESTIC CORPORATION IS TAXABLE ON ALL INCOME DERIVED FROM SOURCES WITHIN AND WITHOUT THE PHILIPPINES.”

We have not approved this. In order to accomplish the cleaning up of this paragraph E, on the same page 17, line 4, insert the word DOMESTIC between the article “a” and the word “corporation.”

The President. Is there any objection? *[Silence]* There being none, the amendment is approved.

Senator Enrile. On the same page 17, delete the entire phrase starting with the word “as” in line 4 all the way to word “Philippines” in line 6.

The President. Is there any objection? *[Silence]* There being none, the amendment is approved.

Senator Enrile. On the same page 17, line 6, replace the word “for” with the word ON.

The President. Is there any objection? *[Silence]* There being none, the amendment is approved.

Senator Enrile. On the same page 17, line 8, insert the word FOREIGN between the article “a” and the word “corporation.”

The President. Is there any objection? *[Silence]* There being none, the amendment is approved.

Senator Enrile. On the same page 17, delete the phrase starting with the word “as” in line 8, all the way to the word “country” in line 9.

The President. Is there any objection? *[Silence]* There being none, the amendment is approved.

Senator Enrile. Thank you, Mr. President.

May I go now to page 130, lines 17 to 18. I propose that we replace the phrase “fifteen (15) days from the date of removal thereof from the place of production” with the following: TEN (10) DAYS FROM THE DATE OF REMOVAL OF SUCH PRODUCTS FOR THE PERIOD FROM JANUARY 1, 1998 TO JUNE 30, 1998; WITHIN FIVE (5) DAYS FROM THE DATE OF REMOVAL OF SUCH PRODUCTS FOR THE PERIOD FROM JULY 1, 1998 TO DECEMBER 31, 1998; AND, BEFORE REMOVAL FROM THE PLACE OF PRODUCTION OF SUCH PRODUCTS FROM JANUARY 1, 1999 AND THEREAFTER.

The President. Is there any objection? *[Silence]* There being none, the amendment is approved.

Senator Enrile. On the same page 130, line 33, delete the colon (:) after the word “custody” and the proviso starting with the word “provided” in the same line 33 up to the word “production” in line 36. In other words, we go back to the old system of requiring the payment of taxes on sin products before removal from the place of manufacture.

The President. May I know what text the sponsor is using?

Senator Enrile. This is the text of amended copy as of 21 August 1997.

The President. In the old text, it is in line 26.

SUSPENSION OF SESSION

Senator Enrile. May I ask for a one-minute suspension of the session, Mr. President.

The President. The session is suspended for one minute, if there is no objection. *[There was none.]*

It was 4:50 p.m.

RESUMPTION OF SESSION

At 4:52 p.m., the session was resumed.

The President. The session is resumed.

Senator Enrile. Mr. President, I was made to understand by my staff that we are supposed to be using an August 21 copy which was prepared by the Bills and Index Service, and that is what I have here. I assumed that this was the material given to the members.

The President. As of this morning, the Majority Leader moved to have the August 20 draft as the working document.

Senator Enrile. I would not be able to find the lines. I have prepared these amendments.

The President. The Secretary should provide the sponsor with the August 20 draft.

Senator Enrile. I have it, Mr. President.

SUSPENSION OF SESSION

The President. The session is suspended, if there is no objection. *[There was none.]*

It was 4:53 p.m..

RESUMPTION OF SESSION

At 4:58 p.m., the session was resumed.

The President. The session is resumed. The gentleman from Cagayan is recognized.

Senator Enrile. Mr. President, in order not to delay the proceedings, maybe it is already time to deal with the amendments of the provisions on FCDUs.

Senator Tatad. Mr. President.

The President. The Majority Leader is recognized.

Senator Tatad. Mr. President, we would very much like to proceed right there. But I believe there is a standing request from the Minority Leader, put into motion and subsequently approved, that this matter be taken up tomorrow afternoon.

The President. I agree with the Majority Leader on that matter. If the Chair could suggest, and it might be helpful, I think there are just a few amendments left that are on individual page amendments. The sponsor may just read these individual pages, and then the Secretariat will integrate it from there.

Senator Enrile. Precisely, Mr. President, I am using a supposed August 21st version, and that is where the problem is because this version is not available.

The President. What I am saying is, let us not use that version or the August 20 version. The gentleman may just read this separate listing of individual page amendments just for purposes of approving them. The staff of the sponsor and the Secretariat will just integrate it.

Like this one I am holding. It states: On page 130, delete the colon, et cetera, up to the word "production" in line 36, and we will approve the amendment based on this.

Senator Enrile. With that understanding, Mr. President, I will proceed.

The President. Please proceed. After all, these are mostly matters of style and similar amendments.

Senator Enrile. Thank you, Mr. President.

On page 130, Mr. President, I propose for the deletion of the colon (:) and the proviso starting with the word "provided" in line

33 up to the word "production" in line 36.

The President. Is there any objection? [*Silence*] There being none, the amendment is approved.

Senator Enrile. On page 142, line 33, I propose that the figure "15 percent" be bracketed and in lieu thereof, insert the figure "20".

Mr. President, the reason for this is that there was a suggestion that we should lower the tax on this type of vehicle. But the Department of Finance suggested, to which this representation has agreed, to maintain the status quo for automobiles pending a comprehensive revision of the motor vehicle taxation.

The President. Is there any objection? [*Silence*] There being none, the amendment is approved. That is up to 1600, up to 1800 diesel. Only the first category.

Senator Enrile. Only the figure 15 percent in line 33 bearing on up to 1600 for gasoline and up to 1800 for diesel.

The President. All right. The amendments were already approved.

Senator Enrile. On page 144, Mr. President, line 34, delete the phrase "natural gas and liquefied natural gas" including the comma (,) after the word "gas."

The President. Is there any objection? [*Silence*] There being none, the amendment is approved.

Senator Enrile. On the same page, enclose in brackets the phrase starting with the word "within" in line 37, up to the word "purchaser" in line 38, and in lieu thereof, insert the phrase BEFORE REMOVAL FROM THE PLACE OF PRODUCTION.

The President. Is there any objection? [*Silence*] There being none, the amendment is approved.

Senator Enrile. Mr. President, still on page 144, lines 38 to 39, delete the sentence, "in case said products are exported, the tax shall be paid by the seller/exporter".

The President. Is there any objection? [*Silence*] There being none, the amendment is approved.

Who pays the tax then? May the Chair be clarified?

Senator Enrile. The buyer, Mr. President.

The President. The buyer will pay the tax.

Senator Enrile. The buyer or the seller.

Mr. President, on page 160, line 1, bracket ([]) the word "and" and insert the word OR so that the sentence will read: All criminal violations may be compromised except: those already filed in court, OR (b) those involving fraud.

I so move, Mr. President.

The President. Is there any objection? [Silence] There being none, the amendment is approved.

Adjust, a matter of style.

Senator Enrile. On page 167, lines 9 and 10, enclose in brackets ([]) the phrase, "the provincial or city fiscal, or the Solicitor General, or by the".

The President. So, it will be exclusively the officers of the BIR who will do this.

Senator Enrile. That is correct, Mr. President.

The President. Is there any objection? [Silence] There being none, the amendment is approved.

Senator Enrile. In the same page 167, lines 10 and 11, enclose in brackets ([]) the phrase, "deputized by the Secretary of Justice."

The President. Is there any objection? [Silence] There being none, the amendment is approved.

Senator Enrile. On the same page 167, line 11, bracket ([]) the word "and" and insert the word OR.

The President. Is there any objection? [Silence] There being none, the amendment is approved.

Senator Enrile. On the same line and page, bracket ([]) the letter "s" from the word "actions".

The President. Is there any objection? [Silence] There being none, the amendment is approved.

Senator Enrile. In the same line and page, bracket ([]) the word "began" and insert the words FILED IN COURT after the bracketed word "began".

The President. Is there any objection? [Silence] There

being none, the amendment is approved.

Senator Enrile. On page 167, line 13, insert a colon (:) after the word "Commissioner" and add the following proviso: *PROVIDED, THAT IN THE CASE OF A CRIMINAL ACTION AGAINST A TAXPAYER FOR FRAUD, OR ANY WILLFUL ACT TO EVADE OR DEFEAT ANY TAX, OR OTHER VIOLATIONS OF THE PROVISIONS OF THIS CODE, THE ISSUANCE OF AN ASSESSMENT NOTICE FOR THE TAX LIABILITY SHALL NOT BE A REQUISITE TO THE INSTITUTION OR CONTINUATION OF THE SAME.*

The President. Is there any objection? [Silence] There being none, the amendment is approved.

Senator Enrile. On page 184, Mr. President, line 13, insert a colon (:) after the word "years," and the following proviso thereafter: *PROVIDED, THAT THE CONVICTION OR ACQUITTAL OBTAINED UNDER THIS SECTION SHALL NOT BE A BAR TO THE FILING OF A CIVIL SUIT FOR THE COLLECTION OF TAXES.*

The President. Is there any objection? [Silence] There being none, the amendment is approved.

Senator Enrile. May I go back to page 161, Mr. President? Delete the words "Revenue Regional Director" from page 161, line 21 to line 30, and in lieu thereof, insert the phrase: *COMMISSIONER OR HIS DULY AUTHORIZED REPRESENTATIVE.*

The President. That would be Section 205?

Senator Enrile. Yes, Mr. President.

The President. Is there any objection? [Silence] There being none, the amendment is approved.

So, there is no jurisdiction left to the revenue regional director?

Senator Enrile. It will be the commissioner.

The President. The commissioner.

Senator Romulo. Mr. President.

The President. The gentleman from Tarlac, Quezon City and Bulacan is recognized.

Senator Romulo. Mr. President, therefore, with that amendment and deletion from line 29, the sentence would read: "any delinquent tax or delinquent revenue to pay the same, at the

time required, the COMMISSIONER OR HIS DULY AUTHORIZED REPRESENTATIVE IF THE AMOUNT INVOLVED IS IN EXCESS OF ONE MILLION PESOS (P1,000,000.00)." Is that correct?

SUSPENSION OF SESSION

Senator Enrile. May I ask for a minute suspension, Mr. President?

The President. The session is suspended if there is no objection. *[There was none.]*

It was 5:14 p.m.

RESUMPTION OF SESSION

At 5:15 p.m., the session was resumed.

The President. The session is resumed. The Majority Leader is recognized.

SUSPENSION OF CONSIDERATION OF H. NO. 9077

Senator Tatad. Mr. President, to allow the Bills and Index Services time to integrate the individual amendments that have been proposed by the sponsor in a new working draft for the guidance of the entire Chamber, I move to suspend consideration of House Bill No. 9077.

The President. Is there any objection? *[Silence]* There being none, the motion is approved.

SUSPENSION OF SESSION

Senator Tatad. Mr. President, I ask for a minute suspension of the session.

The President. Is there any objection? *[Silence]* There being none, the session is suspended for one minute.

It was 5:15 p.m.

RESUMPTION OF SESSION

At 5:16 p.m., the session was resumed.

The President. The session is resumed. The Majority Leader is recognized.

Senator Tatad. Mr. President, I ask the Secretary to read

the Additional Reference of Business.

The President. The Secretary will read the Additional Reference of Business.

ADDITIONAL REFERENCE OF BUSINESS

COMMITTEE REPORTS

The Secretary. Committee Report No. 497, submitted by the Committee on Constitutional Amendments, Revision of Codes and Laws on House Bill No. 3791, introduced by Representative Cesar, *et al.*, entitled

AN ACT DECLARING THE TWELFTH DAY OF JULY OF EACH YEAR AS A SPECIAL NONWORKING HOLIDAY IN THE MUNICIPALITY OF LAGUINDINGAN, PROVINCE OF MISAMIS ORIENTAL,

recommending its approval without amendments.

Sponsor: Senator Santiago

The President. To the Calendar for Ordinary Business

The Secretary. Committee Report No. 498, submitted by the Committee on Constitutional Amendments, Revision of Codes and Laws on Proposed Senate Resolution No. 947, introduced by Senator Santiago, entitled

RESOLUTION EXPRESSING THE SENSE OF THE SENATE THAT JOURNALISTS DEEDEE SIYTANGCO AND LUCHI CRUZ VALDES IN EXPOSING A DEFICIENCY IN OUR ELECTORAL PROCESS BY SHOWING HOW EASY IT IS TO REGISTER TWICE DURING THE RECENT GENERAL REGISTRATION OF VOTERS, DESERVE COMMENDATION INSTEAD OF CONDEMNATION BY BEING PROSECUTED BY THE COMMISSION ON ELECTIONS FOR VIOLATION OF THE PROVISIONS OF THE OMNIBUS ELECTION CODE,

recommending its adoption with amendments.

Sponsor: Senator Santiago

The President. To the Calendar for Ordinary Business

The Secretary. Committee Report No. 499, submitted

RECORD OF THE SENATE

WEDNESDAY, AUGUST 27, 1997

RESUMPTION OF SESSION

At 10:50 a.m., the session was resumed with Senate President Maceda presiding.

The President. The session is resumed.

Senator Tatad. Mr. President.

The President. The Majority Leader is recognized.

Senator Tatad. Mr. President, may I ask that the Secretary read the Additional Reference of Business.

The President. The Secretary will read the Additional Reference of Business.

ADDITIONAL REFERENCE OF BUSINESS

MESSAGE OF THE PRESIDENT OF THE PHILIPPINES

The Secretary.

27 August 1997

HON. ERNESTO MACEDA
Senate President
Senate, Manila

Dear Senate President Maceda:

Pursuant to the provision of Section 26 (2), Article VI of the Constitution, I hereby certify to the necessity of the immediate enactment of House Bill No. 9077 (as contained in Senate Committee Report No. 454), entitled

AN ACT AMENDING THE NATIONAL INTERNAL REVENUE CODE, AS AMENDED, AND FOR OTHER PURPOSES,

in order to meet the public emergency consisting of the urgent need to overhaul/correct the regressive income tax system and thereby achieve both vertical and horizontal equity in taxation, as well as strengthen tax administration in the country.

With best wishes.

(Sgd.) FIDEL V. RAMOS

cc. Hon. Jose de Venecia, Jr.
Speaker
House of Representatives
Quezon City

The President. Referred to the Committee on Rules

BILL ON SECOND READING— H. No. 9077 - Tax Reform Act of 1997 (Continuation)

Senator Tatad. Mr. President, I move that we resume consideration of House Bill No. 9077 as reported out under Committee Report No. 454.

The President. Is there any objection? *[Silence]* There being none, resumption of consideration of House Bill No. 9077 is now in order.

Senator Tatad. Mr. President, we are still in the period of amendments.

The President. The distinguished gentleman from Cagayan, Sen. Juan Ponce Enrile, is recognized; and the distinguished gentleman from Quezon, Aurora and Pampanga, Sen. Edgardo J. Angara, is recognized to propose individual amendments.

Senator Tatad. Mr. President, before the gentleman from Aurora, Quezon and Pampanga proposes his amendments, may I manifest that we are now using the working draft as of August 26, 1997.

Senator Enrile. Thank you, Mr. President.

Senator Angara. Thank you, Mr. President. Will the distinguished sponsor accept a couple of amendments which I believe will improve and strengthen this Code?

Senator Enrile. Mr. President, I would gladly hear the proposed amendment of the distinguished gentleman from Aurora, Quezon and Pampanga who may implement this and benefit out of this tax measure. This will provide him with the wherewithal to run the government.

Senator Angara. Thank you, Mr. President. The distinguished sponsor and author can be assured that when becoming president, we will implement this impartially and objectively.

Senator Enrile. Thank you very much.

The President. The gentleman from Aurora, Quezon and

Pampanga will certainly improve his chances if he can get all his fraternity brothers to support him. *[Laughter]*

ANGARA AMENDMENTS

Senator Angara. Thank you, Mr. President.

Mr. President, my proposed amendment is on page 2 of the August 26, 1997 draft, lines 36 to 37. My proposal is to delete the phrase beginning with the word "or" in line 36 until the word "collection" in line 37.

Mr. President, let me just explain very briefly the reason for my proposing the deletion of this phrase.

Under the present law, the BIR can examine documents and records of third parties related to a taxpayer under investigation. But under this proposal, Section 5, the power of the BIR to examine, subpoena and compel records from third parties has been expanded to the extent that such data, cost, volume of production, et cetera, can be compelled by the BIR from a third party in some way related to a taxpayer under investigation. The criteria used are quite clear, except for this phrase "or in improving the efficiency of internal revenue tax collection." This seems to be a very broad and undefined purpose and could very well be a roving commission and unwarranted.

Senator Enrile. Mr. President, we are ready to consider the proposed amendment.

Senator Angara. Thank you very much, Mr. President.

Senator Enrile. Is the gentleman proposing an amendment?

Senator Angara. Yes, Mr. President, I am proposing the deletion of the phrase "or in improving the efficiency of internal revenue tax collection."

Senator Enrile. Including the comma (,) after the word "collection" in line 37?

Senator Angara. That is correct, Mr. President.

Senator Enrile. Mr. President, it is accepted.

The President. Is there any objection to the amendment? *[Silence]* There being none, the amendment is approved.

Senator Angara. Thank you very much, Mr. President. The second amendment is on page 56 of the latest draft, Mr. President.

TATAD/ENRILE AMENDMENTS

Senator Tatad. Mr. President, I have an anterior amendment on page 5. In lines 26 to 27, I would like to move for the deletion of these lines because as stated in the opening paragraph, line 18, the content therein is precisely provided for under R. A. No. 1405 already.

Senator Enrile. The amendment is accepted, Mr. President.

May I suggest to the distinguished Majority Leader that an amendment be introduced in line 25. Delete the semicolon (;) and the word "and" and in lieu thereof, put a comma (,) after the word "liability".

In line 22, the word "or" be changed to AND.

Senator Tatad. I accept the proposed amendment to my amendment, Mr. President.

Senator Enrile. The amendment is accepted, Mr. President.

The President. Is there any objection? *[Silence]* There being none, the amendment is approved.

Senator Gonzales. Mr. President.

The President. The Minority Leader is recognized.

Senator Fernan. Mr. President.

Senator Gonzales. I think there is an anterior amendment on the part of the senator from Cebu, Mr. President.

The President. Senator Fernan is recognized.

Senator Fernan. Thank you, Mr. President.

FERNAN AMENDMENTS

I refer to page 26 of the August 26, 1997 draft. May we request the distinguished sponsor to consider the amendment affecting the provisions found in lines 35, 36, 37, 38, 39, all the way up to the end of that page? Then on page 27, lines 1, 2, and 3.

I refer to the inclusion of the Social Security System and the Government Service Insurance System in the enumeration of corporations subject to income tax. It is my proposal that these two government corporations be exempt from the payment of income tax for the reasons that I be allowed to state briefly.

The reason for this proposal is that the tax imposition on the GSIS and the SSS will adversely affect their capability to regularly increase benefits, unless the rates of contributions are increased. It will jeopardize the actuarial viability of their funds, substantially increase the cost beyond their resources, and eventually hasten their bankruptcy. Since the government is the ultimate guarantor of these programs, in the future, GSIS and SSS benefits will therefore be paid out of taxes.

Furthermore, government social security institutions worldwide are tax-exempt, and in some cases are supported by government revenues from general taxes, since social security is basically a safety net for the poor and the disadvantaged.

It will be worth noting that not a single centavo of government fund is contributed to the SSS. The contributions come from the members and the employers. A tax on the SSS will be perceived as a tax on its members. SSS members and beneficiaries, as well as those of the GSIS, are mostly poor, old, disabled and orphans.

The SSS does not operate as a business and whatever earnings it generates from its investments are plowed back to its members in the form of additional or increased benefits. Its investment function is necessary to improve its financial condition and to ensure that funds will always be available to pay the benefits of members.

This representation, Mr. President, believes that the proposed amendment to exclude GSIS and SSS will be for the greater interest of their present and future members who stand to gain if we maintain the status quo of GSIS and SSS as nontaxable social insurance institutions.

In fact, it will be recalled that not too long ago, on May 1, Labor Day, we reiterated this tax exemption in Republic Act No. 8282, the Social Security Act of 1997, that was signed into law.

So for the reasons stated, Mr. President, we hope that this amendment will be favorably considered by the distinguished sponsor.

Senator Enrile. Mr. President, I regret I cannot accept this proposed amendment for the following reasons:

First, the basic rationale in this proposed measure before us is to reflect in this document all possible incomes that are generated within the nation and that only those incomes that are specifically exempted as so authorized under Section 27 of this Code would be exempted. This is to attain a degree of equity in the entire nation for incomes to bear a proportionate share in raising revenue to finance the needs of society and government.

Second, Mr. President, SSS and GSIS and all other government-owned or controlled corporations are engaged in economic activities in competition with the private sector, and I cannot find any rational basis to distinguish between a mutual insurance company required under this Code to pay income tax as compared to the SSS or the GSIS.

Now, with respect to upsetting their actuarial computations, Mr. President, I have been involved in lawyering for insurance companies. Actuarial computations can be reworked anytime. There are many brilliant, bright and young mathematicians especially in the modern age who can rework their actuarial computations.

And the third reason, Mr. President—and I think this has not been really studied well by those who are opposing it—the fact that we are introducing this concept is beneficial to the members of the systems involved. Why? Because now we have somebody who will look into the expenditures of income of these institutions in order to see to it that management becomes responsible in the utilization of the funds of the members, where now there is no such entity to look into as to whether the expenses are legitimate or necessary. With this inclusion, the Bureau of Internal Revenue can now determine whether the amusement, representation, recreational expenses or other perquisites of high officials of these institutions or their expenditures are relatively frugal or inordinately wasteful.

So therefore, to that extent, it will benefit the members of the system rather than injuring their interest.

SUSPENSION OF SESSION

Senator Fernan. Mr. President, before I comment on the remarks of the distinguished sponsor, may I ask for a few minutes' suspension of the session.

The President. The session is suspended, if there is no objection. *[There was none.]*

It was 11:05 a.m.

RESUMPTION OF SESSION

At 11:12 a.m., the session was resumed.

The President. The session is resumed.

Senator Enrile. Mr. President, after hearing the two senators from Cebu and Bohol, Senator Fernan and Senator Herrera, and having been convinced by their very cogent and strong argumentation, I am willing to reconsider the position of

the Committee on Ways and Means with respect to the GSIS and the SSS only. I would like to hear the pleasure of the distinguished gentleman from Cebu.

Senator Fernan. Mr. President, this representation is deeply grateful for the acceptance of the amendment with respect to the GSIS and the SSS. I am sure there are several million members of the GSIS and the SSS who will benefit from this.

Senator Enrile. May I ask a question, Mr. President?

Is it the pleasure of the distinguished senator that we delete the word "Government" in line 36, page 26, all the way to the comma (,) after the close parenthesis in line 37 following the letters "SSS"?

Senator Fernan. Yes. It is either that phraseology or, if this phraseology that I propose would be clearer. Whichever is clearer is acceptable to this representation. We propose to specify "EXCEPT THE GOVERNMENT SERVICE AND INSURANCE SYSTEM (GSIS) AND THE SOCIAL SECURITY SYSTEM (SSS), all corporations, agencies or instrumentalities owned or controlled by the Government, including THE PHILIPPINE CHARITY SWEEPSTAKES OFFICE (PCSO) AND THE PHILIPPINE AMUSEMENT AND GAMING CORPORATION (PAGCOR), NOTWITHSTANDING ANY PROVISION TO THE CONTRARY IN THEIR RESPECTIVE SPECIAL CHARTERS, shall pay such rate of tax upon their taxable income as are imposed by this Section upon associations or corporations engaged in a similar business, industry, or activity."

Senator Enrile. Mr. President, I would rather not accept the provision as presently written.

Senator Fernan. The deletion, therefore, would be acceptable.

SUSPENSION OF SESSION

Senator Enrile. May I ask for a one-minute suspension of the session?

The President. Is there any objection? *[Silence]* There being none, the session is suspended for one minute.

It was 11:16 a.m.

RESUMPTION OF SESSION

At 11:17 a.m., the session was resumed.

The President. The session is resumed.

Senator Roco. Mr. President, may I make an inquiry.

The President. The gentleman from Camarines Sur and Bohol, Sen. Raul S. Roco, is recognized.

Senator Roco. I am sorry, Mr. President, to be a little late. But could the gentleman who is asking for the amendment just explain the impact of that thing in terms of revenue or in terms of the impact on the GSIS or SSS?

Senator Fernan. As pointed out earlier, Mr. President, the reason for this proposal is that a tax imposition on the GSIS and the SSS will adversely affect their capability to regularly increase benefits unless the rates of contributions are increased. It will jeopardize the actuarial viability of their funds, substantially increase the cost beyond their resources and eventually hasten their bankruptcy. Since the government is the ultimate guarantor of these programs, in the future, GSIS and SSS benefits will, therefore, be paid out of taxes.

The SSS is not operating a business, but is basically performing a governmental function by providing meaningful protection to its members and beneficiaries but without government support or appropriations.

There were instances in the past where the SSS' viability was threatened due to an increase in the amount of benefits without an increase in the rates of contribution and just keeping steady the amount of contribution. And therefore, if we still add tax against the SSS, it will jeopardize the actuarial viability of its fund and then adversely affect the government in the long run.

Senator Roco. Mr. President, it looks as though this is an old law, a present law.

Senator Fernan. The present law is that the SSS is tax-exempt. In fact, we just approved it and it was signed into law on Labor Day, May 1, 1997.

Senator Roco. I am just looking at the form, and it looks as though it is an old law that is why I am wondering why come out with this proposal. Maybe, Mr. President, the senator wants to discuss this when there are more people in the hall because it seems to be an important issue.

The President. But it is already accepted by the sponsor.

Senator Fernan. Yes. It is just the phraseology now.

Senator Enrile. Mr. President, I accept the deletion of the words "the Government" in line 36, page 26 all the way to line 37, including the comma (,) after the letters "SSS" which are enclosed in parentheses.

In other words, we are deleting the phrase "the Government Service and Insurance System (GSIS) and the Social Security System (SSS)."

Hand in hand with this deletion, may I suggest a further refinement of this particular subsection (C), in that in line 33, bracket the word "without," and then bracket the letters "ion" before the close parenthesis, and insert before the close parenthesis the phrase THE GOVERNMENT SERVICE AND INSURANCE SYSTEM (GSIS) AND THE SOCIAL SECURITY SYSTEM (SSS).

Line 33 will then read: "all corporate taxpayers EXCEPT THE GOVERNMENT SERVICE INSURANCE SYSTEM (GSIS) AND THE SOCIAL SECURITY SYSTEM (SSS)."

The President. Is there any objection? [Silence] There being none, the amendment is approved.

For the record, the Chair would like to know from the sponsor if at some time in the future the GSIS and SSS will be privatized, then automatically they will be subject to income taxation?

Senator Enrile. No, Mr. President, because they have a charter which grants them tax exemption, and with this provision, they will be exempted.

The President. I just want to raise that question.

Senator Fernan. Mr. President.

The President. Senator Fernan is recognized.

Senator Fernan. For the record, Mr. President, we would like to mention that this proposed amendment is cosponsored by Senators Angara, Herrera, Gonzales, Ople, Magsaysay, Mercado, Flavio, Drilon and the Majority Leader.

Senator Roco. Mr. President.

The President. Senator Roco is recognized.

Senator Roco. Just an inquiry also, Mr. President. I take it that this exemption was not granted in the House version. Is this exemption in the House version?

Senator Enrile. No, Mr. President.

Senator Roco. Can somebody then explain, Mr. President, how we can grant an exemption here in the Senate? If we look at the Constitution, tax exemptions must be granted I think by a majority vote of the members of the House of Representatives.

The President. The situation is, the exemption is already pursuant to an existing law. This is an attempt to change existing laws. Since the existing law is not changed, then the exemption continues under an already approved existing law.

Senator Roco. Yes, Mr. President. Thank you very much.

Senator Enrile. I just want to put into the *Record*, Mr. President,--so that we are informed about this--that the income tax that we will forego with the amendment that has been proposed and accepted is P3.8 billion.

Senator Herrera. Mr. President.

The President. Senator Herrera is recognized.

Senator Herrera. May I just put into the *Record* that as of today, the national government is indebted to the GSIS to the tune of P13 billion. This is for failure to pay the government's share of the GSIS contribution, Mr. President.

Senator Fernan. Mr. President.

The President. The gentleman may proceed.

Senator Fernan. May I just comment on the earlier manifestation of our distinguished colleague, Senator Roco. While all these tax bills emanate from the House of Representatives, it does not preclude the Senate from making any changes. And if it decides to delete, modify or amend, the same can be done by the Senate.

The President. Next amendment, please?

Senator Roco. Mr. President.

The President. The gentleman from Camarines Sur and Bohol is recognized.

Senator Roco. Mr. President, have we modified page 19, on the 20 percent interest imposed on currency bank deposits? Because I was not here, and we are already on page 26. Has that been modified?

Senator Enrile. Which one, Mr. President?

Senator Roco. As I understand it, this was explained to me by the staff that the final tax at the rate of 20 percent is hereby imposed on the amount of currency bank deposits and yield or any other monetary benefit from deposit substitutes.

The President. No, this has not been modified.

Senator Roco. So, if nobody has an antecedent amendment, Mr. President, may we suggest an amendment here?

SUSPENSION OF SESSION

The President. The session is suspended for one minute, if there is no objection. *[There was none.]*

It was 11:26 a.m.

RESUMPTION OF SESSION

At 11:27 a.m., the session was resumed.

The President. The session is resumed.

Senator Roco. Mr. President, may we suggest that the 20 percent be also made 10 percent? This is pursuant to the manifestation of the gentleman from Cebu and Bohol, and from the lady Senator from Pampanga.

I also believe that when we lowered the tax on the foreign currency deposits unit, it stands to reason that the same tax should be imposed at the very least on the same basis for local currency deposits, otherwise, we shall be taxing our people higher than those who have foreign currency deposits.

Senator Enrile. Mr. President, I regret I cannot accept that proposed amendment. In fact, this representation, if it is to be recalled, was against lowering the income tax rate on foreign currency deposits. Otherwise, government will lose tremendously on this, especially when we consider the fact that there are so many requests now to favor certain groups. I regret I cannot accept that proposed amendment.

The government will lose approximately P10 billion if we are going to accept that proposed amendment.

Senator Roco. May I then speak in favor of the proposed amendment? These are not just groups; this is the rest of the Filipino people.

If we are willing to tax foreign currency deposits, dollars at 10 percent, why in heaven's name do we want to tax our people with peso deposits who cannot afford to buy dollars at 20 percent? It is absolutely incredible, Mr. President.

That is why, we are asking, as a matter of principle and as a matter of equity, how can we tax our people higher than those who

have dollars who can afford to pay higher taxes? This must be resolved.

QUESTION OF QUORUM

I see that there are only 11 senators. I think this should be discussed when there is a quorum on the floor. I am asking for a quorum, Mr. President.

Senator Enrile. That was the argument that I used yesterday, Mr. President. I am supporting a 20 percent tax on currency deposits ...

The President. Point of order. Is the question of quorum formally raised?

Senator Roco. Yes, Mr. President.

ROLL CALL

The President. The Secretary will please call the roll.

The Secretary. Senators

- Heherson T. Alvarez.....
- Edgardo J. Angara Present
- Anna Dominique M. L. Coseteng
- Franklin M. Drilon
- Juan Ponce Enrile..... Present
- Marcelo B. Fernan Present
- Juan M. Flavier Present
- Neptali A. Gonzales Present
- Ernesto F. Herrera Present
- Gregorio B. Honasan.....
- Gloria M. Macapagal
- Ramon B. Magsaysay Jr. Present
- Orlando S. Mercado Present
- Blas F. Ople
- Sergio R. Osmeña III
- Ramon B. Revilla
- Raul S. Roco..... Present
- Alberto G. Romulo
- Miriam Defensor Santiago
- Leticia R. Shahani.....
- Vicente C. Sotto III
- Francisco S. Tatad Present
- Freddie N. Webb
- The Senate President Present

The President. With 11 senators present, there is no quorum.

The Majority Leader is recognized.

ADJOURNMENT OF SESSION

SUSPENSION OF CONSIDERATION
OF H. NO. 9077

Senator Tatad. Mr. President, I move that we suspend consideration of House Bill No. 9077.

The President. Is there any objection? *[Silence]* There being none, consideration of House Bill No. 9077 is suspended.

Senator Tatad. Mr. President, I move pursuant to Section 39, Rule XIV of the Rules of the Senate, that we adjourn the session until four o'clock this afternoon.

The President. Is there any objection? *[Silence]* There being none, the session is adjourned until four o'clock this afternoon.

It was 11:31 a.m.

Senate Archives (LRAS)

The President. Is there any objection? *[Silence]* There being none, the reading of the Reference of Business is deferred.

BILL ON SECOND READING
H. No. 9077—Tax Reform Act of 1997
(Continuation)

Senator Tatad. Mr. President, I move that we resume consideration of House Bill No. 9077 as reported out under Committee Report No. 454.

The President. Is there any objection? *[Silence]* There being none, resumption of consideration of House Bill No. 9077 is now in order.

Senator Tatad. Mr. President, we are still in the period of amendments.

Senator Gonzales. Mr. President.

The President. The gentleman from Cagayan is recognized. And following the tradition, where the Minority Leader asked for the floor and is given preference, the Minority Leader is recognized.

Senator Gonzales. I will just propose two amendments.

Senator Osmeña. Mr. President, with the permission of the Minority Leader, may I propound a clarificatory question?

The President. Please proceed.

Senator Roco. Parliamentary inquiry in the meantime, Mr. President.

The President. May we allow the gentleman from Cebu to finish his question. He still has the floor.

Senator Osmeña. Mr. President, yesterday, the distinguished chairperson accepted the amendment lowering his proposed 20 percent withholding tax on foreign currency deposits paid by banks to depositors to 10 percent. That was the subject of a prolonged discussion during a suspension of the session. There are several paragraphs and provisions in this 200-page bill which would require amendments. May I ask the distinguished gentleman?

The President. The gentleman from Cebu is correct.

Senator Osmeña. Excuse me, Mr. President. The distinguished chairperson has graciously agreed to an amendment for the removal of brackets. So I will withhold my amendment until

after the Minority Leader will have finished with his amendments.

The President. Yes, the Minority Leader, I think, has another appointment. He has just two minor amendments to take care of. Perhaps, we can give him that privilege to do so.

Senator Gonzales. I would like to thank the Chair for that. I have only two amendments to be offered. But before I do so, in order that there can be no lapses here, may we know the parliamentary status of the proposed amendment of Senator Roco so it may not be interpreted later that he has waived his right to pursue the amendment that he has proposed?

The President. There is no waiver because Senator Roco may still raise the same.

Senator Gonzales. So I will then proceed with my amendments without prejudice to the Roco amendment.

The President. That is correct.

Senator Gonzales. Thank you then, Mr. President, for having clarified it.

GONZALES AMENDMENT

May I propose an amendment on page 39, Mr. President, line 6. We propose to change the words and figure "Thirty thousand pesos (P30,000)" to FORTY THOUSAND PESOS (P40,000).

Senator Enrile. It is accepted, Mr. President.

The President. Is there any objection? *[Silence]* There being none, the amendment is approved.

Senator Gonzales. On the same page, lines 17 and 17A, we propose to change the words and figure "Thirty thousand pesos (P30,000) to FORTY THOUSAND PESOS (P40,000).

Senator Enrile. It is accepted, Mr. President.

The President. Is there any objection? *[Silence]* There being none, the amendment is approved.

Senator Gonzales. On pages 60 and 61, this would be with respect to the personal exemptions, Mr. President. I understand—I wish the sponsor will correct me if I am wrong—that under this bill the basic personal exemption from income tax of an individual taxpayer with a family of six is as follows: That it would be P25,000 per taxpayer—

Senator Enrile. That is correct, Mr. President.

Senator Gonzales. —and P6,500 per dependent.

Senator Enrile. That is correct, Mr. President.

Senator Gonzales. So that there is a maximum of P76,000, and that with respect to benefits received by him, at least to the extent of a maximum of P40,000, the same will not be included in the computation of his gross income.

Senator Enrile. That is correct, Mr. President, plus P2,400 which is the...

Senator Gonzales. Yes, Mr. President.

Senator Enrile. Plus interests for Pag-IBIG, GSIS, and SSS loans.

Senator Gonzales. I thank the gentleman for that clarification then. May we propose, in the place deemed proper by the committee, an additional exemption of P10,000 for each head of family or married individual with income of less than P150,000 for health and/or hospitalization expenses to be supported by receipts.

Senator Enrile. Mr. President, we have studied this proposal in the course of our debate and, as I have indicated in the *Record*, it will mean a tremendous loss to the government. It will amount to some P41 billion. So, I regret I could not accept the amendment.

Senator Gonzales. So that it would appear in the *Record* that we have made the proposal but somehow it was not accepted, I request that it be put to a vote without any further debate or discussion.

The President. There is a proposal to increase the exemptions to how much?

Senator Enrile. Additional P10,000.

Senator Gonzales. Additional P10,000 for medical and hospital expenses for taxpayers with income of less than P150,000 with the further requirement that said exemption shall be supported by receipts.

Senator Enrile. May I just explain that we already granted P2,400 as premium for health insurance.

Senator Gonzales. That is correct, Mr. President. I have noticed that, too, and I understand that that is the proposed amendment of the Senate President. But most people do not have health insurance coverage and, therefore, this relief will not

really be available to most taxpayers who have to spend much for hospitalization. I feel that medical and hospitalization expenses are actually essential as basic needs of people.

Senator Romulo. Mr. President.

The President. The gentleman from Quezon City, Tarlac and Bulacan is recognized.

Senator Romulo. Mr. President, with the permission of the Minority Leader and the sponsor, just so it is understood perfectly what is the exemption before we vote. May I restate what I just heard the exemption would total.

It would be a total of P50,000 for each of the pair—

Senator Enrile. For each family, Mr. President.

Senator Romulo. —so that it is P25,000 and P25,000 for a total of P50,000 plus P6,500 for four. Therefore, that is P26,000 and that will be a total of P76,000.

In addition to that, there is a P2,400 deductible for those who have health insurance. Is that correct?

Senator Enrile. That is correct, Mr. President. Incidentally, the P26,000 will probably go up to P32,500 because there is a pending proposal to increase the number of dependents from four to five.

Senator Romulo. I see. So that the P26,000 would go up to P32,500—

Senator Enrile. That is correct.

Senator Romulo. —and plus P2,400 so that is roughly P35,000?

Senator Enrile. So that will mean an additional P34,900...

Senator Romulo. And P34,900.

Senator Enrile. So that will be P84,900 plus the P40,000. That would be the total free income.

Senator Romulo. So that would be a total of P125,000?

Senator Enrile. Yes, Mr. President.

Senator Romulo. That would be a total of P125,000 exemption from the gross income of all taxpayers?

Senator Enrile. Yes, Mr. President. In fact, that will be

deducted as a free income per family. I would like to appeal that in order not to erode too much the income of government, I think for every P5,000 of exemption, it is already a big quantum leap of loss.

Senator Romulo. Yes. So, the total as we have it there now is P125,000.

Senator Enrile. Yes, P100 less than...

Senator Romulo. The P125,000.00?

Senator Enrile. The P125,000.00. But if we include here union dues plus the Pag-IBIG interest that will offset gross income, then this will probably go up to almost P130,000.

Senator Romulo. That is correct. So that under the proposed amendment of the distinguished Minority Leader for those with income of P150,000 or less if the P10,000 is approved, that would mean, actually, almost P140,000. So that, those with income of P150,000 will pay income tax only on the remaining P10,000 if this P10,000 additional proposal of the Minority Leader is approved.

Senator Enrile. That is correct.

Senator Romulo. I am clarified, Mr. President. Thank you.

Senator Gonzales. Mr. President.

The President. The Minority Leader is recognized.

Senator Gonzales. I do not know, I mean, *hindi ho naman ito tawaran ng bangus, ano?* But I wonder whether the sponsor would change his position if I reduce the P10,000 to P5,000, Mr. President.

SUSPENSION OF SESSION

The President. The session is suspended for one minute if there is no objection. *[There was none.]*

It was 7:43 p.m.

RESUMPTION OF SESSION

At 7:46 p.m., the session was resumed.

The President. The session is resumed. The Minority Leader is recognized.

Senator Gonzales. Mr. President, there may be a

possibility of avoiding any vote on this particular matter. Can we further reduce this personal exemption for hospital and/or medical services from P5,000 to P2,600?

The President. That is of actual expenses.

Senator Gonzales. Yes, Mr. President.

Senator Enrile. This is of actual medical expenses and this will be limited to taxpayers with gross income of not more than P150,000.

Senator Gonzales. That is correct, Mr. President.

Senator Enrile. We accept it, Mr. President, subject to style.

The President. Is there any objection? *[Silence]* There being none, the amendment is approved.

The gentleman from Cebu, Camarines Sur and Bohol is recognized.

Senator Roco. Mr. President,...

The President. Is the gentleman from Mandaluyong through?

Senator Gonzales. No more, Mr. President. I just want to know if I am through—I am done with.

The President. Is the gentleman through with his...?

Senator Gonzales. I am, Mr. President, but there has been an interruption. Thank you, Mr. President. I also thank Senator Enrile.

SUSPENSION OF SESSION

Senator Roco. May we have a break, Mr. President?

The President. The session is suspended for one minute, if there is no objection. *[There was none.]*

It was 7:47 p.m.

RESUMPTION OF SESSION

At 7:48 p.m., the session was resumed.

The President. The session is resumed.

Senator Roco. Mr. President.

Senator Roco. No, no. That is correct, Mr. President. But it was the announcement of the Senate President that I am just calling attention to, because the Senate President did say he is voting one way just to be able to reconsider.

Effectively, it thwarts the will of the majority now. And that does not seem fair, Mr. President. There must be a way of respecting the majority now. I mean, it is so rare that we will win. Why? Why thwart us now when it happens, and it is not our fault the others are absent?

The President. Well, as the gentleman said earlier, it is not also fair that this matter was forced to a vote now when other members—Senators Drilon, Mercado—had left not knowing that there would be a vote.

So when everybody is here, as the gentleman has suggested with his other amendment—

Senator Roco. That is correct.

The President. —let us reconsider it so that there would be an appropriate expression of the will of the Chamber.

Senator Roco. That is absolutely correct, Mr. President.

The President. Right.

Senator Roco. We share that goal. In fact, this morning, on an important vote, I thought precisely of raising quorum just so everybody is here. I mean, I grant that. And if that is the desire, then maybe the Chair would want to adjourn until tomorrow—

The President. That is correct.

Senator Roco. —so that we can proceed.

Senator Tatad. Mr. President.

The President. The Majority Leader is recognized.

SUSPENSION OF CONSIDERATION OF H. NO. 9077

Senator Tatad. Mr. President, I move to suspend consideration of House Bill No. 9077.

The President. Is there any objection? *[Silence]* There being none, the motion is approved.

Senator Tatad. Mr. President, I move to suspend the session until ten o'clock tomorrow morning.

Senator Shahani. Mr. President.

The President. The lady senator from Pangasinan, Sen. Leticia R. Shahani, is recognized.

Senator Shahani. Do I take it, Mr. President, that we will continue proposing our individual amendments tomorrow?

The President. That is a matter between the Majority Leader and especially the Minority Leader, who has always been calling our attention to the fact that unless the Minority agrees, Thursdays are only for local bills.

Senator Enrile. Mr. President.

Senator Gonzales. Mr. President.

The President. The Minority Leader is recognized.

Senator Gonzales. The records would show, Mr. President, that there have been instances where we did not object to the consideration of bills of general application on Thursdays.

The President. So, is the answer yes?

Senator Gonzales. Yes, Mr. President.

Senator Shahani. Thank you, Mr. President.

The President. As far as the Majority is concerned, we are happy to take every opportunity to finish this bill. I think in this matter, where both sides of the aisle are unanimous, the last thing we would like to see is a call for a special session on the CTRP.

Senator Tatad. I reiterate my motion, Mr. President.

The President. The gentleman from Cagayan wanted to say something.

Senator Enrile. No, Mr. President, I thought that this is an administration measure. I am just doing a favor to the administration. I am a Liberal Party member to sponsor this, and I am quite amazed that the members of the administration party are the ones who are defeating the provisions that are intended to support the position of the administration.

I just want to put that into the *Record*, Mr. President.

SUSPENSION OF SESSION

The President. The session is suspended until ten o'clock tomorrow morning, if there is no objection. *[There was none.]*

It was 8:06 p.m.

RECORD OF THE SENATE

MONDAY, SEPTEMBER 1, 1997

RESUMPTION OF THE SESSION

At 10:40 a.m., the session was resumed with Senate President Ernesto M. Maceda presiding.

The President. The session is resumed. The Majority Leader is recognized.

BILL ON SECOND READING H. No. 9077 - Tax Reform Act of 1997 (Continuation)

Senator Tatad. Mr. President, I move that we resume consideration of House Bill No. 9077 as reported out under Committee Report No. 4541.

The President. Is there any objection? *[Silence]* There being none, the motion is approved.

Resumption of consideration of House Bill No. 9077 is now in order.

Senator Tatad. We are still in the period of individual amendments, Mr. President. I ask that the distinguished sponsor, the chairman of the Committee on Ways and Means, be recognized.

The President. The chairman of the Committee on Ways and Means, Senator Enrile, is recognized.

May I know who is scheduled to take the floor? The senator from Pangasinan, I think, has just two amendments.

Senator Enrile. May I know what copy we are going to use, Mr. President?

Senator Tatad. Mr. President, we have before us the amended copy as of 28 August 1997. I move that we adopt this draft.

Senator Roco. Just an inquiry, Mr. President.

The President. The gentleman from Camarines Sur is recognized.

Senator Roco. I need help from the Secretariat, Mr. President, because I left all my notes together with the bundle here. Apparently, it must have been redistributed. So all my notes in the CTRP are somewhere else.

The President. Will the Secretariat assist the staff of

Senator Roco in locating his bundle of notes?

The senator from Pangasinan may proceed.

Senator Shahani. Thank you, Mr. President.

Senator Osmeña. Mr. President.

The President. The gentleman from Cebu is recognized.

Senator Osmeña. Prejudicial question, Mr. President. May we request, if it is not too difficult for the distinguished sponsor, to use the August 26 amended copy, seeing as we just got the August 28 copy this minute. There should not be that much difference because I believe that the new amendments will not be amended again.

So if it is of no difference to the distinguished sponsor, we would appreciate using the August 26 copy, otherwise we would have to ask for a few hours to take a look at the August 28 copy.

Senator Enrile. Not at all, Mr. President. We can use both. We can look for the item to be amended.

The President. I guess we can leave that to the individual member of the Senate to indicate, because what is really being updated are the amendments as these are approved on the floor and are being inputted into the amended copy. So we can treat it that way—use both, depending on the senator's choice. I understand that the pages are retained as is in both copies.

The lady senator from Pangasinan is recognized.

Senator Shahani. Thank you, Mr. President.

Senator Enrile. Before we proceed, Mr. President, with the indulgence of the lady senator from Pangasinan, may I propose an amendment, if the Chamber will approve.

With respect to the amendment of Senator Roco, my understanding was that he was suggesting a deduction for tuition fees.

Senator Roco. Mr. President, if I may.

The President. The senator from Camarines Sur is recognized.

Senator Roco. In last Wednesday's session, there was in fact an approval of a motion to modify, so that there is an additional, I think—and I am working on memory—letter N to the deductions and a parallel provision to the health deduction will now be put in.

I was under the impression that P2,400 for actual tuition shall be allowed as itemized deduction.

Senator Enrile. Precisely, that is the reason because what was inserted in the August 28 version of the CTRP is that instead of "tuition fees," "educational expenses." I am just trying to suggest that this be corrected.

Senator Roco. In terms of actual tuition?

Senator Enrile. Yes.

Senator Roco. Yes, because considering the amount, Mr. President, it is more measurable by objective documents if we refer to "tuition." That was the...

Senator Enrile. If there is no objection, Mr. President, may I propose an amendment in line...

The President. That is with regard to the approved Roco amendment?

Senator Enrile. Yes.

The President. Now, if there is already an agreement between the gentleman from Camarines Sur and the sponsor, then maybe we can now give the honor to the gentleman from Camarines Sur to ask for a reconsideration of his amendment to reflect the agreement.

Senator Roco. No, Mr. President. I think we can refer to the records because actually this may be a very good way because the original motion would have been P10,000 for deductions on educational expenses. But in the course of the discussion, we yielded and we just followed the pattern for health. This is good if we just put it back the way the committee chairman is suggesting—without...

The President. So, in effect, the distinguished gentleman is saying that what is reflected in the approved version now is not an accurate reflection of his amendment as he presented it? Because if not, then it will be purely similar to a matter of style correcting a typographical error but if, in effect, there has been a substantial clarification of the amendment, then it would require a reconsideration of the amendment which is just procedural.

Senator Roco. We are referring to what page, Mr. President?

Senator Enrile. Page 57, Mr. President.

SUSPENSION OF SESSION

May I ask for a one-minute recess, Mr. President.

The President. The session is suspended for one minute, if there is no objection. *[There was none.]*

It was 10:47 a.m.

RESUMPTION OF SESSION

At 10:50 a.m., the session was resumed.

The President. The session is resumed. What is the pleasure of the gentleman from Camarines Sur?

Senator Roco. At the Wednesday session when the motion to amend was presented, it was really subject to the styling of the staff.

Now, Mr. President, since the agreement was really to apply parallel treatment to the tuition deduction, in the same way that we treated the health deduction, I guess this should be modified to reflect that understanding between the chairman and this representation.

So when it was transcribed by the committee, the interpretation of the staff should be modified so that it should be: "The amount of actual tuition not to exceed Two Thousand Four Hundred Pesos (P2,400) per family paid during the taxable year for himself including his family shall be allowed as deduction from his gross income: *Provided*, That said family has a gross income of not more than *One Hundred Fifty Thousand Pesos (P150,000) for the taxable year.*"

The President. What does the sponsor say?

Senator Enrile. I accept that modification. The amount is Two Thousand Four Hundred Pesos (P2,400) with an income level of One Hundred Fifty Thousand Pesos (P150,000) per family, and it is limited to tuition fees, subject to style.

The President. Is there any objection? *[Silence]* There being none, the modification is approved.

Senator Roco. Thank you, Mr. President.

The President. The lady senator from Pangasinan may now proceed.

Senator Shahani. Thank you, Mr. President. Before

proceeding, I would like to make a further clarification on the comments of the distinguished chairman, Mr. President, on the debate on the 27th of August when he said he wanted to put on record that some Lakas members of the Chamber were not upholding the administration position in relation to the voting on the Roco amendment as discussed now.

I would like to place on record, Mr. President, that this representation has been fully supportive of the CTRP every step of the way, and I think my behavior in the Senate reflects that.

I believe, however, that we cannot *in toto*, accept everything. I looked at the merits of the Roco proposal, Mr. President, and to my mind, it had merit. So, I would like to place that on record.

It is in this spirit that I am presenting some amendments not because this is the party position, but because I have a right to raise the concerns of certain sectors of our society as a senator. If, in the process, the distinguished chairman approves it or not, I think that is what is important to look at.

This amendment which I would be presenting should not be a surprise. I raised this during the period of interpellations. We wrote a letter to the chairman on this, and his chief consultant, Mr. Toledo, replied to my query.

So, Mr. President, I would like to propose the following amendments.

We will recall that I did refer to the special circumstances on solo-parents. Our research reveals that the National Statistical Coordinating Board states that there are 1.5 million solo parent households in the Philippines. Their average income per household, whether female- or male-headed, amounted merely to P68,132.00 annually.

I believe this amendment would not have such a major impact on revenue collections, Mr. President. I propose the following, Mr. President:

On page 59, line 35, we propose that the following sentence be added after the period (.) AN ADDITIONAL PERSONAL EXEMPTION IN THE AMOUNT OF FIFTEEN THOUSAND PESOS (P15,000.00) SHALL BE GRANTED FOR EVERY UNMARRIED, *DE FACTO* SEPARATED OR WIDOWED TAXPAYER, OR ONE WHOSE MARRIAGE HAS BEEN JUDICIALLY ANNULLED OR DECLARED VOID WITH ONE OR MORE DEPENDENTS AS DEFINED UNDER SUBSECTION (B) HEREOF.

Senator Enrile. Mr. President, that is already taken care of

by the exemption granted to a head of a family.

Second, may I point out that to grant a P15,000 additional exemption to the taxpayers contemplated by the proposed amendment would mean an additional P15-billion revenue loss to the government. The total revenue loss as of today is P22.5 billion, plus P15 billion, that will be P37.5 billion. I am not about ready to sponsor a bill that will wreck the government.

If there is any way by which the Senate could find another chairman of the Ways and Means Committee to pass a measure like this that will create havoc on the revenue of the government, I would be willing to relinquish my chair.

Senator Shahani. Mr. President, I share the concerns of the chairman and I would like to assure him that this representation's intention is not to wreak havoc on the government. Nevertheless, this, I believe, is a new amendment and this is a new group which has been ignored or not given importance in the past.

If that is the concern of the chairman, in the spirit of party unity, this representation regretfully withdraws this amendment.

Senator Enrile. Thank you.

Senator Shahani. But it is my hope that in the future, those involved in revenue collection will be able to appreciate the situation of single households, Mr. President.

Senator Enrile. Thank you, Mr. President. Thank you, Madam Senator. I hope the Chamber will understand my position.

I was tasked to craft a measure through the Ways and Means Committee of this Chamber that will benefit the country and not myself. It is so difficult to sponsor a measure like this. Not that I shy away from it, but it affects a lot of people, a lot of interests, and a lot of relations, so I am very frank about my position.

I cannot, in conscience, accept a measure that I know will affect the lives of the people that we are supposed to help and that is the low-income group.

A loss of P37.5 billion in the revenue of the government will mean a high-inflation economy and the people who will be affected will not be people like us but the low-income groups, especially the wage earners and the salaried employees of the government.

Senator Shahani. Mr. President, I think the principle of getting the right revenues for the government is not what is being

in question here. What I am trying to say is, there could be other groups that should be taxed heavily in relation to these groups who do contribute to the economy, but because of their personal circumstances, do have a double burden placed on them. Although this may not be possible right now, I believe the issue of households with single heads is an increasingly emerging problem in our society.

Mr. President, again, on the same page 59, it refers to the status of homeworking but non-income earning spouse. I also raised this during the period of interpellations.

Mr. President, on page 59, I also propose that we add the following sentence after the period (.) in line 38: THE LATTER SHALL BE ENTITLED TO CLAIM AN ADDITIONAL PERSONAL EXEMPTION IN THE AMOUNT OF FIVE THOUSAND (P5,000.00) PESOS FOR HIS OR HER NON-INCOME EARNING BUT HOMEWORKING SPOUSE.

I would like to put on record that housework rendered by women have never been formally recognized in our economy. Yet, if the same were to be quantified, the contribution of the home-working spouse—not just to the household but to the entire economy as well—would be enormous. In practical terms, housework rendered by the wife enables the spouse to participate in the formal labor sector. At least we have a minimum wage for domestic helpers now in the amount of P2,000.00 per month. So why not pay attention to the non-income earning spouse?

Women spend an average of 183.2 hours per month on unpaid housework. On a micro-level, the same would translate about P250.00 per month if computed at the 1984 wage level of P500.00 a month for domestic help.

On a macro-level, the ratio of such foregone income to the gross national product would be around 29.4%. Mr. President, this amendment is proposed if only to grant a modicum of recognition to this neglected contribution of women to the economy.

Senator Enrile. Mr. President, as I said in the course of our debate, if we are going to accept the proposition that we will recognize the value of the services of the housewife or the nonworking husband in performing household chores, then we should impute that as a taxable income of the family in order to entitle the family to an additional exemption. But we are not precisely doing that. There is no income imputation.

Therefore, if we are going to accept this proposal now, it will mean an additional loss of revenue of P5 billion. Because of that, I regret that this representation cannot accept the amendment.

Senator Shahani. I would like to thank the chairman, Mr. President. But I just would like to place on record the sentiments of this representation on the matter which I have discussed.

Thank you, Mr. President.

Senator Angara. Mr. President.

The President. Senator Angara is recognized.

ANGARA AMENDMENT

Senator Angara. Thank you, Mr. President. My amendment, is on page 55, on Valuation of Charitable Contribution Other than Cash. May I propose that the basis for valuation be the fair market value rather than the historical or acquisition cost of said property.

Senator Enrile. It is accepted, subject to style, Mr. President.

The President. Is there any objection? *[Silence]* There being none, the amendment is approved.

Senator Angara. Thank you very much.

Senator Herrera. Mr. President.

The President. Senator Herrera is recognized.

HERRERA AMENDMENTS

Senator Herrera. Thank you, Mr. President.

On page 44, line 14, between the words "institution" and "to", insert the phrase UNDER THE SOCIALIZED HOUSING PROGRAM, so that it will read: "The amount of interest paid or incurred during the taxable year by an individual taxpayer on loans contracted with an accredited financial institution UNDER THE SOCIALIZED HOUSING PROGRAM...."

Senator Enrile. It is accepted, Mr. President, subject to style.

The President. Is there any objection? *[Silence]* There being none, the amendment is approved.

Senator Herrera. Mr. President, I still have additional amendments.

The President. Please proceed.

Senator Herrera. On page 28, Mr. President, line 25, after

the hyphen (-), insert the clause SUBJECT TO RULES AND REGULATIONS, THE SECRETARY OF FINANCE...

Senator Enrile. Just a minute, Mr. President. This is on what page?

Senator Herrera. This is on page 78, line 25. After the hyphen, insert the clause SUBJECT TO RULES AND REGULATIONS THE SECRETARY OF FINANCE MAY PROMULGATE UPON THE RECOMMENDATION OF THE COMMISSIONER REQUIRING THE FILING OF THE INCOME TAX RETURN BY CERTAIN INCOME PAYEES.

Senator Enrile. It is accepted, Mr. President, subject to style.

The President. Is there any objection? *[Silence]* There being none, the amendment is approved.

Senator Herrera. On the same page 78, line 25, replace the capital letter "T" of the word "the" with the small letter t.

Senator Enrile. It is accepted, Mr. President.

The President. Is there any objection? *[Silence]* There being none, the amendment is approved.

Senator Herrera. In line 28 of the same page, between the figure 24 (C) (2) and the semicolon, insert the figures and commas—COMMA (,) 24 (D), COMMA (,) 24 (E) (1).

Senator Enrile. It is accepted, Mr. President.

The President. Is there any objection? *[Silence]* There being none, the amendment is approved.

Senator Herrera. On the same page, line 29, before figure "25 (B)", add the figure 25 (A) and (4).

Senator Enrile. It is accepted, Mr. President.

The President. Is there any objection? *[Silence]* There being none, the amendment is approved.

Senator Herrera. And a comma (,) immediately thereafter.

Senator Enrile. It is accepted, Mr. President.

The President. Is there any objection? *[Silence]* There being none, the amendment is approved.

Senator Herrera. Still in the same line 29, between the

figure "27 (E) (2)" and the semicolon, insert the figures and the corresponding punctuation marks—COMMA (,) 27 (E) (3) COMMA (,) 27 (E) (4) and COMMA (,) 27 (E) (C).

Senator Enrile. It is accepted, Mr. President, subject to style.

The President. Is there any objection? *[Silence]* There being none, the amendment is approved.

Senator Herrera. Still on page 28, line 29 after the comma (,) following the figure 28 (A) (4), add the figures and comma (,) 28 (A) (5), COMMA (,) 28 (A) (6) COMMA (,).

Senator Enrile. It is accepted, Mr. President.

The President. Excuse me, would the "28 (A) (6)" already include "26 (A) (6) (b)"?

Senator Herrera. It will be on the next amendment, Mr. President.

The President. No, because the gentleman said "28 (A) (5), 28 (A) (6)", which is the whole Section 6. Now, there is "28 (a) (6), subsection (B)." It is in line 29 at the end.

Senator Herrera. No, it is only "28 (A) (5)" and "28 (A) (6)". *Nagkamali ito.* It should be "5". After the "28 (A) (4)", it should be 28 (A) (5).

The President. That is correct. We accept that. That is approved. But how about the "28 (A) (6)"?

Senator Herrera. Delete the "(B)".

The President. I just want to bring to the attention of the gentleman that there are three 28 (A) (6) (a); 26 (A) (6) (b); and 26 (A) (6) (c). If we will put an amendment just to limit it to "26 (A) (6)", it is understood that all the subsections under 26 (A) (6) would be included.

Senator Herrera. Yes.

Senator Enrile. Mr. President.

The President. Senator Enrile is recognized.

Senator Enrile. May I suggest that this matter of fitting all these figures—these are references to established text and provisions of the Code—be done by the technical staff so that the referred sections will be reflected accurately.

Senator Herrera. I have no objection, Mr. President,

provided that we should also include lines 29 to 30 because there are some figures later to be adjusted.

Senator Enrile. That is correct.

The President. Is there any objection? *[Silence]* There being none, the amendment is approved.

The gentleman from Camarines Sur is recognized.

Senator Roco. Mr. President, just to call attention to a pending vote on the proposed amendment we made last week, and it is pending on the table when we adjourned the session. I thought we could act on it now.

The proposed amendment then before we suspended its consideration was on page 19, line 12. Instead of "20%", it should be 10%, so that there is the same rate of tax for foreign currency deposits or peso deposits.

Senator Enrile. Is there a proposal?

Senator Roco. Yes, from 20% to 10%. This was already presented.

Senator Enrile. Mr. President, I regret to state that I cannot accept the proposed amendment in view of the fact that the loss of revenue of government will be quite substantial.

Apart from this, the 10% on FCDUs was based on an accommodation of the claim that there would be a flight of capital from the country if we impose a 20%. The preference of this representation is to impose a 20% rate of income tax on all interest income in the country, not to lower it.

Senator Roco. Mr. President, we will not argue, but we would prefer that it be voted upon, because it seems inequitable that we should have a different treatment for the peso deposit as against the foreign currency deposit under the present situation.

DIVISION OF THE HOUSE

The President. All those who are in favor of the amendment will please raise their right hands. *[Three senators raised their right hands.]*

All those who are against will please raise their right hands. *[Seven senators raised their right hands.]*

It is three (3) votes in favor and seven (7) against. The amendment is lost.

Next amendment, please. The Majority Leader has amendments.

Senator Enrile. May I propose one final amendment, Mr. President.

The President. Excuse me, the Majority Leader has his own amendments.

TATAD AMENDMENTS

Senator Tatad. Mr. President, on page 60, line 2, may I propose that "Four (4)" in words and in numbers be deleted and in lieu thereof, insert the word FIVE (5) in words and in numbers. I am joined by the Senate President in this amendment.

Senator Enrile. It is accepted, Mr. President.

The President. Is there any objection? *[Silence]* There being none, the amendment is approved.

Senator Tatad. In line 11, after the word "legitimate" and before the word "or", I propose the deletion of the words "recognized natural" and in lieu thereof, insert the word ILLEGITIMATE to make it conform with the provisions of the Family Code.

Senator Enrile. It is accepted, Mr. President.

The President. Is there any objection? *[Silence]* There being none, the amendment is approved.

Senator Enrile. Mr. President, may I propose an amendment on page 59, line 34. The amendment being proposed is to bracket the word [five] and that the enclosed figure "(5)" be changed to ZERO.

The President. Is there any objection? *[Silence]* There being none, the amendment is approved.

Senator Flavio. Mr. President.

The President. The gentleman from the Cordilleras is recognized.

Senator Flavio. Mr. President, these are really amendments of Senator Santiago which she requested me to present.

The President. May the Chair know where Senator Santiago is at this time, if the gentleman knows.

Senator Flavio. I do not know, Mr. President, but I know

she will be here this afternoon. There are only three relatively minor amendments.

The President. Any amendments proposed by Senator Santiago will not be considered minor by her.

Senator Flavier. Thank you, Mr. President.

SANTIAGO AMENDMENTS

No. 1, Mr. President, on page 51, line 28, between the words "Aliens" and "or" insert the following phrase: ENGAGED IN TRADE OR BUSINESS. Then, between the words—

Senator Enrile. Just a minute, Mr. President.

Senator Flavier. "Aliens" and "or"...

The President. "Nonresident aliens ENGAGED IN TRADE OR BUSINESS." That is how it will read.

Senator Flavier. That is right.

Senator Enrile. It is accepted, Mr. President.

The President. Is there any objection? [Silence] There being none, the amendment is approved.

Senator Flavier. Between the words "or" and "foreign", insert the word RESIDENT.

The President. That is line 29.

Senator Enrile. Mr. President, when an alien corporation is engaged in business, it is a resident corporation.

Senator Flavier. So what the gentleman is saying, Mr. President, is that such is already understood to be a resident?

Senator Enrile. May I get an explanation of the proposed amendment, Mr. President.

Senator Flavier. Honestly, Mr. President, I am not sure. I just did it out of accommodation and the desire to have this approved early.

The President. In view of the explanation of the chairman, the amendment has been accommodated and need not be made.

Next amendment.

Senator Flavier. On the same page, line 29, between the

words "individual" and "or", insert the following phrase: ENGAGED IN TRADE OR BUSINESS—

The President. The same.

Senator Flavier. —and also between the words "or" and "foreign", insert the word RESIDENT.

Senator Enrile. Well, if that is the explanation, Mr. President, I accept both amendments.

The President. Is there any objection? [Silence] There being none, the amendments are approved.

Senator Flavier. The third amendment is on page 74, line 32, after the word "alien", add the following phrase: ENGAGED IN TRADE OR BUSINESS IN THE PHILIPPINES so that it will read: "D) A nonresident alien ENGAGED IN TRADE OR BUSINESS IN THE PHILIPPINES on his income derived from sources within the Philippines."

Senator Enrile. It is accepted, Mr. President.

The President. Is there any objection? [Silence] There being none, the amendment is approved.

Senator Flavier. The fourth and last amendment on page 158, line 18, at the end add the following sentence: *PROVIDED, THE PURCHASE AND ACTUAL AFFIXTURE, OR THE IMPRINTING OF THE STAMPS THROUGH A DOCUMENTARY STAMP METERING MACHINE, MAY ONLY BE RESORTED TO IF THE APPLICABLE DOCUMENTARY STAMP TAX DUE DOES NOT EXCEED ONE HUNDRED (P100.00) PESOS.*

Senator Enrile. Mr. President, I regret I cannot accept the amendment.

Senator Flavier. Thank you very much, Mr. President.

The President. The Majority Leader is recognized.

Senator Tatad. Mr. President, there are no further amendments. I move that the period for amendments be closed.

Senator Osmeña. Excuse me, Mr. President. I was interrupted the other day; I gave way to everybody's turn for amendments.

Senator Tatad. I withdraw that motion, Mr. President.

The President. The gentleman from Cebu may proceed with his amendments.

Senator Osmeña. Thank you, Mr. President.

With the permission of the distinguished sponsor, on page 152, line 5—using the August 26 amended copy—after the word “note” and the colon (:), insert the following: *PROVIDED, THAT FOR INSTRUMENTS WITH A TENOR OF LESS THAN THREE HUNDRED SIXTY-FIVE (365) DAYS SAID DOCUMENTARY STAMP TAX SHALL BE ADJUSTED ON A PRO RATA BASIS ACCORDING TO THE ACTUAL TENOR OF THE INSTRUMENT OVER A THREE HUNDRED SIXTY-FIVE-DAY YEAR;*

Senator Enrile. Mr. President, documentary stamps are not based on periods but based on amounts. So, this is on a per document basis, I regret that I could not accept the amendment.

Senator Osmeña. Mr. President, the reason for this proposed amendment is that the Documentary Stamp Tax has been increased by fivefold from P0.30 to P1.50.

Now, on behalf of the small businessmen in this country and the housewives, those who are engaged in livelihood, Mr. President, when they go to the bank and they do not have a strong credit to merit, say, a P200,000.00 loan over a 360-day term, what usually happens is that the bank will probably cut the term to one month or 30 days but allow them to renew it every month.

On that arrangement, Mr. President, there will be a cascading effect on the tax. The poor small businessman or entrepreneur who borrows on a 30-day basis because that is all the bank will give him credit for, will be adding roughly 9% per year to his interest costs because every time that he renews or rolls over that note, he will have to pay the 3/4 of 1% documentary stamp tax.

I do not think that this was the intention of the distinguished sponsor when he raised that stamp tax fivefold. I believe that with the cooperation of the sponsor, there must be some way to pro-rate this so that there will not be that terrible cascading effect which will increase the costs of borrowing of the small businessmen by 9% a year or even more if, like for example if there are notes that are issued by banks on a daily basis or on a weekly basis and every time the borrower renews, he has to pay 3/4 of 1%.

Senator Enrile. Mr. President.

The President. The chairman is recognized.

Senator Enrile. May I just correct the statement of the distinguished gentleman that we did not raise the documentary stamp tax. These are existing laws and there is a plan to review the documentary stamp tax separately from this measure now,

and I would like to suggest that we will wait for that time so that we can go over this entire tax, not to deal with it in isolation with respect to certain groups. I regret that I cannot accept the proposed amendment.

Senator Osmeña. Mr. President, because of the insertion on page 150 of the documentary stamp tax section—again, I am using the amended August 26 copy—the distinguished sponsor will notice that in line 19 of page 150 which was corrected to be Section 172, there was inserted here the phrase DEPOSIT SUBSTITUTE DEBT INSTRUMENTS which will henceforth pay a documentary stamp tax of P1.50 when heretofore, it had been only P0.30. That is a new provision.

Senator Enrile. Mr. President, this is not new. The definition of “Deposit Substitute Instrument” is an old term used in the Code. We are just clarifying this because the practice now is to impose the documentary stamp tax on deposit substitute instruments.

So, this is not really new. We just provided it here. It is by ruling and regulation of the Bureau of Internal Revenue that these instruments are subject to documentary stamp tax.

The President. May I ask for clarification? Is the gentleman from Cebu saying that these deposit substitute debt instruments now under the new Section 172 at P1.50 used to be classified under the old Section 178 at P0.30 and, in effect, it is being transferred from the P0.30 section to the P1.50 section?

Senator Osmeña. That is correct. That is my understanding, Mr. President.

The President. The chairman will please respond to that.

Senator Enrile. I understand that that is not the case, Mr. President.

The President. So, for the record, gentleman from Cebu, the deposit substitute debt instruments even before today are already paying P1.50, that is what the answer is supposed to be?

Senator Osmeña. Mr. President, the Bankers Association pointed this out to me and they should know because they are the ones issuing these “deposit substitutes.”

In fact, Mr. President, I was going to ask for an amendment that the phrase “deposit substitute debt instruments” be bracketed from Section 172 and inserted into Section 178.

Mr. President, perhaps, we should hear from the Department of Finance what its definition of “deposit substitutes” is,

but I take this to mean commercial papers, government securities, et cetera. The problem is, government securities sometimes are just overnight securities, and there will be a misunderstanding.

Senator Enrile. Mr. President, may I call attention to the fact that under Section 22 (y), page 14, the term "deposit substitutes" has been defined and I understand during the hearing, in fact, some of the financial people in the private sector were the ones who suggested this definition, so much so that they suggested that we bracket the phrase appearing in lines 27 to 30, which says, "as may be authorized by the Central Bank of the Philippines, for banks and nonbank, financial intermediaries or by the Securities and Exchange Commission of the Philippines for commercial, industrial, finance companies and other nonfinancial companies."

We did not invent, Mr. President, the term "deposit substitutes." We simply accepted the clarification of this term as is now being implemented by the tax authorities.

Senator Osmeña. Mr. President, that puzzles me, and perhaps, the distinguished sponsor can tell us which private resource person suggested that amendment because, precisely, the bankers are asking for the retention of the bracketed portion in line 27, page 14, and the removal of the new insertion which includes repurchase agreements entered into by and between the Bangko Sentral ng Pilipinas and any authorized agent bank. They cannot be telling us two different things at the same time.

Senator Enrile. Mr. President, I would like to appeal to the record. If the gentleman does not believe this representation, I refer him to the transcripts.

Senator Osmeña. Well, Mr. President, it will be too time-consuming; we want this bill to pass now. All I am asking the distinguished sponsor is that he takes into consideration what I am trying to explain: the cascading effect of a P1.50 tax even on a monthly bill that is renewed every month for one year.

I think regardless of the terminology employed, Mr. President, a P1.50 tax on a P200 face value, amounts to 3/4 of 1% and I think the Senate President is sophisticated enough in finance to realize that 3/4 of 1% renewed monthly amounts to an additional 9% per annum, and that little businessmen cannot afford 9% per annum.

Right now, if we only keep it at P0.30, it will be an additional 1.8% a year if the rate is rolled over 12 times.

Now, Mr. President, regardless of how this is worded,

I think that the concept that I am trying to introduce will, I hope, merit the kind consideration of the distinguished chairperson as this will affect the little guy.

Senator Enrile. It will affect the bankers, Mr. President, and they can probably help the economy if they will compress their margins. We see, they pay a miniscule amount of interest to their depositors but they turn around and lend their deposit liability at a high interest rate with a spread sometimes of at least 6%.

The President. In view of the explanation, would it be possible, gentleman of Cebu, to come out with some sort of a poor man's exemption that on debt instruments of P10,000 or P5,000 and below, there will be no documentary stamp tax on every renewal?

Senator Enrile. If that is suggested by the Chair, Mr. President.

The President. No, I am suggesting it to the gentleman from Cebu.

Senator Osmeña. That would be nice, Mr. President. I would like to see the effects of that because normally a bank will lend out about a P100,000 to P200,000 to a small businessman. I think the 10,000 units are not even going to be considered by a bank.

The President. No. What I am saying is the P1.50 on P100,000 is a very miniscule amount.

Senator Osmeña. What if we bracket this into quarterly payments, Mr. President? So that if the maturity date or the tenor of the note is less than 90 days, it will only be taxed four times in one year so that the cascading effect will only be four times and not 12 times if it is a monthly rate.

Senator Enrile. Mr. President, if we want to help the small people, then we should put a provision based on their capacity to borrow and service their loan. And so, if that is the intention, we will accept the suggestion of the Chair.

SUSPENSION OF SESSION

Senator Osmeña. May I ask for a one-minute suspension of the session, Mr. President.

The President. Is there any objection? *[Silence]* There being none, the session is suspended for one minute.

It was 11:31 a.m.

COMMITTEE REPORTS

The Secretary. Committee Report No. 527, prepared and submitted jointly by the Committees on Economic Affairs; Ways and Means; and Government Corporations and Public Enterprises on Senate Bill No. 2238 with Senators Enrile, Angara and the Members of the Committees as authors thereof, entitled

AN ACT AMENDING CERTAIN PROVISIONS OF REPUBLIC ACT 7922, OTHERWISE KNOWN AS THE "CAGAYAN SPECIAL ECONOMIC ZONE ACT OF 1995," AND FOR OTHER PURPOSES,

recommending its approval in substitution of Senate Bill No. 1906

Sponsors: Senators Enrile and Angara

The President. To the Calendar for Ordinary Business

The Secretary. Committee Report No. 528, prepared and submitted jointly by the Committees on Public Information and Mass Media; Ways and Means; Finance; and Local Government on Senate Bill No. 2239 with Senators Shahani, Macapagal and Revilla as authors thereof, entitled

AN ACT CREATING THE FILM DEVELOPMENT BOARD OF THE PHILIPPINES, DEFINING ITS POWERS AND FUNCTIONS, ABOLISHING FOR THIS PURPOSE, THE FILM DEVELOPMENT FOUNDATION OF THE PHILIPPINES, INC., AND THE FILM RATINGS BOARD AND FOR OTHER PURPOSES,

recommending its approval in substitution of Senate Bill Nos. 1454, 1545, 1581 and 1959, taking into consideration House Bill No. 8582

Sponsors: Senators Revilla, Enrile, Herrera and Sotto III

The President. To the Calendar for Ordinary Business

The Secretary. Committee Report No. 529, prepared and submitted by the Committee on Foreign Relations on Proposed Senate Resolution No. 1003, entitled

RESOLUTION CONCURRING IN THE RATIFICATION OF THE CONVENTION CONCERNING MINIMUM AGE FOR ADMISSION TO EMPLOYMENT (ILO CONVENTION NO. 138),

recommending its adoption without amendments.

Sponsors: Senator Ople

The President. To the Calendar for Ordinary Business

Senator Tatad. Mr. President.

The President. The Majority Leader is recognized.

SPECIAL ORDERS

Senator Tatad. Mr. President, I move to transfer from the Calendar for Ordinary Business to the Calendar for Special Orders, Committee Report No. 529 on Proposed Senate Resolution No. 1003.

The President. Is there any objection? *[Silence]* There being none, the motion is approved.

BILL ON THIRD READING

H. No. 9077—Tax Reform Act of 1997

Senator Tatad. Mr. President, I move that we vote on Third Reading on House Bill No. 9077, as amended by the Senate.

The President. Is there any objection? *[Silence]* There being none, voting on Third Reading on House Bill No. 9077 is now in order.

The Secretary will please read only the title of the bill.

The Acting Secretary [Atty. Raval]. House Bill No. 9077, entitled

AN ACT AMENDING THE NATIONAL INTERNAL REVENUE CODE AS AMENDED, AND FOR OTHER PURPOSES.

Senator Tatad. Mr. President, this is a certified measure. I ask that the Secretary read the certification from the Office of the President.

Senator Osmeña. Mr. President.

The President. The gentleman from Cebu is recognized.

Senator Osmeña. We just received the final corrected copy. May we have an hour and a half to go through it just to check on the accuracy and validity of the amendments therein, and hopefully, to be able to approve this on Third Reading before the session is over today.

The President. May we make that a little shorter in the

sense that other senators might have other engagements to go after an hour and a half.

Senator Osmeña. Mr. President, since the bill has 196 pages, I do not think we might be able to go that fast. But we will try to, and come back to the floor when we are finished.

The President. All right.

Senator Tatad. That is a reasonable request, Mr. President. I withdraw my motion.

The President. The motion is withdrawn.

Senator Romulo. Mr. President.

The President. The Assistant Minority Leader is recognized.

Senator Romulo. Mr. President, to provide something substantial to our yes vote to the CTRP when it is considered an hour or an hour and a half from now, may we ask the Department of Finance Secretariat to provide us with the table of the incremental revenues that would be generated as a result of the CTRP, and where they will come from. In fact, I would like them to provide us with the gross minus the losses and the exemptions so that the net would actually be incremental revenue to the existing revenues that we have now.

If they can produce that before we approve the bill on Third Reading, it would help us put meat and substance to our yes vote.

Thank you, Mr. President.

Senator Tatad. Mr. President.

The President. Thank you. The Majority Leader is recognized.

**RESOLUTION ON THIRD READING
S. Jt. Res. No. 12—Creating a Congressional Commission
on the State of Philippine Labor**

Senator Tatad. Mr. President, I move that we vote on Third Reading on Senate Joint Resolution No. 12. Copies of the resolution were distributed to the members on August 26, 1997.

The President. Is there any objection? [Silence] There being none, voting on Third Reading on Senate Joint Resolution No. 12 is now in order.

The Acting Secretary will please read only the title of the resolution.

The Acting Secretary [Atty. Raval]. Senate Joint Resolution No. 12, entitled

JOINT RESOLUTION CREATING A CONGRESSIONAL COMMISSION TO REVIEW AND ASSESS THE STATE OF PHILIPPINE LABOR IN THE LIGHT OF THE IMPLEMENTATION OF THE MANILA ACTION PLAN OF THE ASIA-PACIFIC ECONOMIC COOPERATION (APEC) AND RECOMMEND POLICY, INSTITUTIONAL AND INFRASTRUCTURAL MEASURES TO ENSURE THE PROTECTION OF THE RIGHTS AND PROMOTION OF THE WELFARE OF THE WORKERS, AND APPROPRIATING FUNDS THEREFOR.

The President. We shall now vote on the resolution and the Acting Secretary will call the roll.

The Acting Secretary [Atty. Raval]. Senators

- Alvarez
- Angara Yes
- Coseteng
- Drilon..... Yes
- Enrile Yes
- Fernan Yes
- Flavier Yes
- Gonzales Yes
- Herrera Yes
- Honasan Yes
- Macapagal
- Magsaysay Jr.
- Mercado Yes
- Ople
- Osmeña III
- Revilla Yes
- Roco Yes
- Romulo Yes
- Santiago Yes
- Shahani Yes
- Sotto III.....
- Tatad Yes
- Webb
- The President..... Yes

**APPROVAL OF S. JT. RES. NO. 12 ON
THIRD READING**

The President. With 16 affirmative votes, no negative vote, and no abstention, Senate Joint Resolution No. 12 is approved on Third Reading.

Body in 1966, when the Congress voted to meet as a constituent assembly for the purpose of proposing amendments to the 1935 Constitution.

We will note, Mr. President, that there had been three instances under which the Congress met for the purpose of proposing amendments to the Constitution. The first was in 1940 and which resulted in 1940 amendments consisting of three main features: one, returning the Legislature into a bicameral Congress of the Philippines since the 1935 Constitution had provided for a unicameral National Assembly; second, changing the term of the President from a single term of six years to a term of four years, with a permissible immediate reelection; and third, the creation of a new constitutional body known as the Commission on Election.

The second was in 1966 when the Senate approved House Concurrent Resolution No. 2 calling Congress to a constituent assembly for the purpose of proposing amendments to the Constitution. The amendment that was proposed was to enable the senators and congressmen to run for and serve as delegates to a Constitutional Convention without forfeiting their seat. The third was in 1970 when the Congress called a Constitutional Convention which resulted in the 1973 Constitution.

I do not want to put into the *Record* or as a part of the *Journal* of our proceedings the contents of this report or answer to me by the Secretary of the Senate. Because, first, I consider it still as a private communication; and second, I am not really persuaded by the report. Until it is adopted as a document of the Senate itself, I do not want to put it into the *Record*.

Nonetheless, if any member of this Body may want to avail of this memorandum for their own personal purposes, I am giving the Senate Legal Counsel my authority to furnish copies of the same to them.

Thank you, Mr. President.

At this juncture, Senator Mercado relinquished the Chair to Senate President Maceda.

Senator Tatad. Mr. President.

The President. The Majority Leader is recognized.

MOTION OF SENATOR TATAD
(Referral of His Speech and Interpellations to
the Constitutional Amendments, Revision
of Codes and Laws Committee)

Senator Tatad. May I thank the Minority Leader for that statement.

Mr. President, I move that my speech and the interpellations thereto be referred to the Committee on Constitutional Amendments, Revision of Codes and Laws.

The President. Is there any objection? [*Silence*] There being none, the motion is approved.

Senator Osmeña. Mr. President.

The President. The gentleman from Cebu is recognized.

Senator Osmeña. Mr. President, I have reviewed the final copy of House Bill No. 9077, and we are ready to consider it for Third Reading.

The President. The Majority Leader is recognized.

BILL ON THIRD READING
H. No. 9077—Tax Reform Act of 1997

Senator Tatad. Mr. President, I move that we vote on Third Reading on House Bill No. 9077, as amended. Copies of the bill have been distributed to the members.

The President. Is there any objection? [*Silence*] There being none, voting on Third Reading on House Bill No. 9077 is now in order.

The Acting Secretary will first read the Certification.

The Acting Secretary [Atty. Raval].

27 Aug 1997

HON. ERNESTO MACEDA
Senate President
Senate, Manila

Dear Senate President Maceda:

Pursuant to the provision of Section 26 (2), Article VI of the Constitution, I hereby certify to the necessity of the immediate enactment of House Bill No. 9077 (as contained in Senate Committee Report No. 454), entitled

AN ACT AMENDING THE NATIONAL INTERNAL
REVENUE CODE, AS AMENDED, AND FOR
OTHER PURPOSES,

in order to meet the public emergency consisting of the urgent need to overhaul/correct the regressive income tax system and thereby achieve both vertical and

horizontal equity in taxation, as well as strengthen tax administration in the country.

With best wishes.

(Sgd.) FIDEL V. RAMOS

cc: Hon. Jose de Venecia, Jr.
Speaker
House of Representatives
Quezon City

The President. The Secretary will please read the title of the bill. But it is already read as part of the Certification.

We shall now vote on the bill and the Acting Secretary will call the roll.

The Acting Secretary [Atty. Raval]. Senators

Alvarez
Angara Yes

The President. The gentleman from Baler, Quezon is recognized.

EXPLANATION OF VOTE OF SENATOR ANGARA

Senator Angara. Mr. President, I vote yes to this tax reform measure. I believe this bill is good for the country and to our people because it has changed the reward and incentive system of this country. It will now begin to reward the enterprising sector and the businessmen. And the ordinary citizen will have a good fair shake out of this bill.

I reserve, Mr. President, a lengthier explanation of my vote.

Thank you very much, Mr. President.

The President. The reservation is so noted.

**Editor's Note: As of press time, no written explanation of vote has been submitted by the office of Sen. Edgardo J. Angara.*

The Acting Secretary [Atty. Raval]. Senators

Coseteng
Drilon Yes
Enrile Yes
Fernan Yes

Flavier Yes
Gonzales Yes
Herrera Yes
Honasan Yes
Macapagal
Magsaysay Jr. Yes
Mercado Yes
Ople Yes
Osmeña III Yes
Revilla Yes
Roco Yes
Romulo Yes

Senator Romulo. Mr. President.

The President. The Assistant Minority Leader is recognized.

EXPLANATION OF VOTE OF SENATOR ROMULO

Senator Romulo. As I said, Mr. President, I am voting Yes. But I would like to reserve my right to submit the extended explanation of my vote. Part of the discussion then is what I have asked the Department of Finance on the incremental taxes that would be collected as I have described it earlier.

I vote yes, Mr. President.

The President. The reservation is noted.

**Editor's Note: As of press time, no written explanation of vote has been submitted by the office of Sen. Alberto G. Romulo.*

The Acting Secretary [Atty. Raval]. Senators

Santiago Yes
Shahani
Sotto III
Tatad Yes
Webb Yes

Senator Webb. Mr. President.

The President. The Senator from Paranaque, Las Piñas and Batangas is recognized.

EXPLANATION OF VOTE OF SENATOR WEBB

Senator Webb. Mr. President, I vote yes. May I be allowed to submit my written explanation of vote.

The President. The reservation is noted.

The following is the whole text of the written explanation of vote of Senator Webb:

I would like to cast my vote of "yes" for the proposed measure, the National Internal Revenue Code of 1997. the reasons therefor are apparent and comprehensible.

Introduction

It has been the collective wisdom of this chamber that this government essentially needs to improve its tax generation measures and place the primary source of government's income on a more stable, continuous and sustainable basis. the government's medium and long term strategic development plan should finally resolve its weakness in the revenue mobilization strategy through the implementation of an efficient equitable and effective tax reform measure which will serve as a catalyst for a major restructuring of the tax system of the country.

The Filipino people have long awaited for the government to institute a tax reform measure that is reasonable to the changes in the national economy and the competitive global economic environment. People have long clamored for a proactive and equitable tax system that will provide relief to a greater number of taxpayers and improve their levels of disposable income.

Basis For The Affirmative Vote

This tax reform measure is probably the most painstakingly studied, dissected and scrutinized package in the legislative history this country has even known, and understandably so.

It is my conviction, therefore, founded by calculated scrutiny, that we have a system that encourage and does not deter the vigor of business enterprise in our country. It is my firm belief that many elements of the proposed measure are legitimately "pro-poor." For one, the increase in the income tax exemption level, as proposed, will remove many of the low income classes (particularly those below poverty line) from the tax net altogether. As important as sustaining economic growth, the new income tax system strives to enhance the welfare of the citizenry through the increase of personal relief from

taxation and the promotion of urban renewal. Additionally,

- * the measure has provided for the enlargement of the income tax base by bringing all individual citizens and corporations, who should be paying taxes, within the ambit of government tax administration;
- * it has defined clearly and explicitly the primary objective of the Bureau of Internal Revenue and empowered the same to assess and collect all national internal revenue taxes, fees and charges for the efficient and effective implementation of its mandated function;
- * it has smoothen the process of divorcing the fiscal program of the government from its heavy dependence on privatization proceeds by generating a more suitable, sustainable and pro-poor tax sources; and finally,
- * this structural reform, being the missing piece in the government's overall economic structural reform program, has provided a more solid base for budgetary financing and simplifies the tax structure to minimize leakages from undeclared revenues, overstated deductions and corruptions.

Concluding Remarks

At the close of day, however, when everything has been said and done, the debate must end, a decision must be made, and the tax package must be implemented. It is time that we cut through the biases and misconceptions and came up with a policy that would truly serve the paramount interest of the nation. The coming years may well be years which will serve as a "litmus test" for innovativeness and ingenuity of fiscal authorities to effectively implement the provisions of this measure. It is with great hope, as it is strategically fashioned, that the best interest of our country and people will be served through this measure.

The Acting Secretary [Atty. Raval].

The President Yes

RESULT OF VOTING

The President. With 19 affirmative votes, no negative

vote, and no abstention, House Bill No. 9077, as amended, otherwise known as the CTRP is approved on Third Reading. [Applause]

SUSPENSION OF SESSION

Senator Tatad. Mr. President, may I ask for a short suspension of the session.

The President. Before we suspend the session, we would like to formally congratulate the sponsor, as well as those who interpellated assiduously and intelligently for the last three weeks. Considering all the other matters that have been brought to the fore, the approval of this measure indicates the resolve of the Senate to stick to its original priority legislative agenda.

The session is suspended, if there is no objection. [There was none.]

It was 5:56 p.m.

RESUMPTION OF SESSION

At 5:57 p.m., the session was resumed.

The President. The session is resumed.

The Majority Leader is recognized.

CONFERENCE COMMITTEE ON H. NO. 9077 (Tax Reform Act of 1997)

Senator Tatad. Mr. President, I move that we constitute the Senate panel on the disagreeing provisions of House Bill No. 9077 and the Senate version thereof. I hereby nominate the following: Senator Enrile as chairman; Senators Herrera, Mercado, Flavio, Honasan, Roco and Osmeña as members.

The President. Is there any objection? [Silence] There being none, the motion is approved.

Senator Tatad. Mr. President, on a question of personal privilege, I ask that the distinguished lady senator from Iloilo be recognized.

The President. The distinguished lady presidentiable from Iloilo is recognized.

QUESTION OF PRIVILEGE OF SENATOR SANTIAGO (Against a Committee of the Whole)

Senator Santiago. Mr. President, in view of the sudden

death of an internationally beloved personality, my personal energy level is very low and therefore, I cannot promise that there will be no emotional content to this speech.

The title of the speech is: "Against a Committee of the Whole"

Ladies and gentlemen of the Senate:

Last week, one of our colleagues announced his intention to file a resolution calling for a constituent assembly, as well as a motion to create a Committee of the Whole. He said that the intention is to bypass the committee which I chair, referring to the Committee on Constitutional Amendments, Revision of Codes and Laws. He announced this intention because of my declared opposition to the proposed constituent assembly.

Should a Committee of the Whole be used as a technique for divesting a standing committee of its jurisdiction on a national policy issue of the highest importance? I submit that the answer is a resounding "no," based on legislative history and practice.

The *Rules of the Senate* does not include a provision on a Committee of the Whole. Instead, Rule 50 provides for the application of supplementary rules, including Philippine legislative precedents, and the *Manual of Parliamentary Practice* by Thomas Jefferson, which was adopted by the US Senate in 1837. Since there is only a week left of our current session, and in order to set at rest the mind of the public on this technical subject and on my own views as chairperson of the committee concerned, I wish to place on record my vigorous objection to a Committee of the Whole, if the main intent is merely to emasculate and render impotent the Committee on Constitutional Amendments, Revision of Codes and Laws.

The practice of parliamentary procedure is at the heart of the legislative process. At the political level, parliamentary maneuvering can mean the life or death of the present campaign to amend the Constitution and lift term limits. Therefore, it is useful to begin with the history of the legislative practice known as the Committee of the Whole.

History

The eminent parliamentary institution known as the Committee of the Whole began in Britain. At that time, Parliament was engaged in a struggle with the Crown. Since the speaker of the House of Commons was an appointee of the King, the Committee of the Whole was devised, so that the members of the House could select a chairman of their own, and assembly in informal session. Thus, at the origin of this practice, the main objective was to take power away from the henchmen of the

King, so that the legislators could be independent of the King.

Since this is the rationale provided by history, it is logical to argue that in today's Senate, the Committee of the Whole should be used only if the Senate President and Majority Leader belong to the political party of the President of the Philippines. But since they do not, and if there is no danger that the Senate officials would fall under the improper influence of Malacañang, then there is no justification for a Committee of the Whole. This is one reason.

In the 18th century, the practice was adopted in America. At that time, the salient issue was whether important policy issues should be decided by the Legislature on the one hand, or by the Judiciary on the other hand. Jefferson argued in favor of the Legislature, while Marshall argued for the Judiciary. In the end, it was Marshall who won, after he asserted the principle of judicial review.

This is the reason why democracies patterned after America, including our country, refer all great constitutional issues to the Supreme Court. In the Congress, constitutional issues are no longer settled by a Committee of the Whole, but by a standing committee, in our case, the Senate Committee on Constitutional Amendments. Thus, the principle of judicial review renders minimal the deliberations of a legislative Committee of the Whole on constitutional issues. This is the second reason.

The *raison d'être* of the practice itself is sourced from Jefferson's view that the Committee of the Whole should be a general committee where the members could engage in free and informal debate, conducive to the exploration and clarification of consensus. Jefferson's expectation was that the Committee of the Whole would only be a preliminary step, *preliminary to a committee hearing*—please let me repeat—Jefferson's expectation was that the Committee of the Whole would only be a preliminary step, *preliminary to a committee hearing* and the preparation of the resulting bill.

Hence, it is error to argue that a Committee of the Whole can be used to bypass a standing committee. That was not the view of Jefferson, and that is not the legislative precedent. This is the third reason.

Senate Precedents

Two Philippine precedents should suffice. In 1987, the Senate constituted itself as a Committee of the Whole on the issue of foreign debt. Last year, 1996, a similar committee tackled the issue of the Mindanao peace negotiations. In both these cases, the issue involved the concurrent jurisdiction of several committees. In the present case, there are no such

overlapping jurisdictions. The issue of a constituent assembly falls squarely under the jurisdiction of the Committee on Constitutional Amendments, Revision of Codes and Laws.

The Committee of the Whole as a modern parliamentary usage has only one major rationale—to produce an informal consensus. It is appropriate only for issues that necessitate full information not immediately available to the senators, such as the issue of foreign debt or the issue of rebellion, issues which call for technical or confidential information. But the issue of a constituent assembly is a legal and political issue, on which every senator already has all the information he needs, or he will ever want.

Restrictions

What can one do in a Committee of the Whole that one cannot do on the floor of the Senate? Nothing. Conversely, there are many things that one cannot do in a Committee of the Whole. These restrictions were enumerated in 1995 by the National Conference of State Legislators in the U.S., as follows:

1. the Senate President does not chair the Committee of the Whole.
2. Debate is unlimited, that is, motions for the previous question or to end debate are not in order. This means important legislation will have to be shelved.
3. Roll call votes are not taken. This means the public will be prevented from knowing what is the categorical position of each senator, and what is the reason for his position.
4. A call of the Senate is not allowed.
5. individuals who are not senators can be asked to testify on the floor. This will consume time that should otherwise be devoted to debate in plenary sessions.
6. the Senate may consider any question, whether it is formally introduced or not. This means that debate will be freewheeling and will tend to be irrelevant.
7. a Committee of the Whole does not take formal action. It only makes a report. Once the committee of the whole rises, its recommendation must be accepted by the Senate.

A Committee of the Whole does not have the power to take formal action. It has no power to pass a resolution for a constituent assembly. It can only recommend. After the Committee of the Whole "rises" and reports a resolution to the Senate, then the plenary session acts on the resolution.