

NINETEENTH CONGRESS OF THE)
REPUBLIC OF THE PHILIPPINES)
First Regular Session)



'22 AUG 30 P 3 :19

SENATE

RECEIVED BY

S.B. No. 1233

Introduced by Senator WIN GATCHALIAN

**AN ACT PRESCRIBING AND INSTITUTIONALIZING THE PAYMENT BY THE
GOVERNMENT OF THE INCOME TAX OF PETROLEUM SERVICE
CONTRACTORS, AS INCENTIVE IN PETROLEUM OPERATIONS AND FOR
OTHER PURPOSES**

EXPLANATORY NOTE

Petroleum exploration and development is a capital-intensive economic activity which plays a significant role in achieving the Philippines' energy security and self-sufficiency. Under Presidential Decree No. 87 (PD 87), private entities which are legally, financially, and technically qualified are granted the privilege to explore and develop oil and gas resources owned by the State¹ through a Petroleum Service Contract entered with the government.

Given that oil and gas exploration entail significant capital expenditure, there is thus a need for stability in government policies to encourage developers to invest in the sector. A particular policy that needs to be clarified is the payment of income tax liability incurred by a petroleum service contractor. While the law provides that the government share in the annual net revenue derived from a Petroleum Service Contract shall already include the income tax liability of the petroleum service contractor,² the Commission on Audit (COA) has nonetheless issued a ruling charging


¹ Section 2, Article XII, 1987 Constitution.

² Section 18 (2), Presidential Decree No. 87 otherwise known as the Oil Exploration and Development Act of 1972:

the Malampaya Consortium for income tax liability amounting to Php 146.8 Billion.³ The COA Decision has cast uncertainty in the Philippine upstream oil and gas sector has been cited as potentially damaging to the government's efforts in enticing new explorations.⁴

This proposed legislation thus seeks to remove the cloud caused by the COA Decision by explicitly mandating the government to assume the payment of income tax in line with the provisions of PD 87 and consistent with the long-held practice by the Department of Energy and Department of Finance. This proposed measure would thus provide stability and certainty in tax policy further stimulating private sector participation in the domestic upstream oil and gas industry, a critical sector of the economy.

For these reasons, the immediate passage of this measure is sought.



WIN GATCHALIAN

Provided, finally, That in no case shall the annual net revenue or share of the GOVERNMENT, including all taxes paid by or on behalf of the contractor, be less than sixty percent of the difference between the gross income and the sum of operating expenses and Filipino participation incentive;

³ COA Orders Malampaya consortium to pay P146-B in taxes. CNN Philippines. 17 May 2018. Available at: <https://www.cnnphilippines.com/news/2018/5/17/COA-malampaya-P146-billion-taxes.html>. Accessed on 9 August 2022.

⁴ Malampaya tax dispute goes to Supreme Court. Upstream Online. 24 May 2018. Available at: <https://www.upstreamonline.com/weekly/malampaya-tax-dispute-goes-to-supreme-court/2-1-340156>. Accessed on 9 August 2022.

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

1 **SECTION 1. Short Title.** – This Act shall be known as the “Income Tax Incentive
2 for Petroleum Service Contractors Act”.

3
4 **SECTION 2. Declaration of Policy.** – It is hereby declared the policy of the State
5 to encourage the production of indigenous petroleum through a stable incentive regime
6 towards ensuring energy security in the country.

7
8 **SECTION 3. Income Tax Incentive.** – The Government shall pay the income tax
9 of petroleum service contractors on income derived from petroleum operations in the
10 Philippines under the service contract using the government share in the annual net
11 revenue or net proceeds.

12
13 **SECTION 4. Implementing Rules and Regulations.** – The Department of Energy,
14 in consultation with the relevant government agencies energy industry stakeholders, shall
15 issue the implementing rules and regulations of this Act within sixty (60) days upon its
16 effectivity.

17
18 **SECTION 5. Amendatory Clause.** – Sections 8.11, 12.1, 12.2, and 19 of
19 Presidential Decree No. 87, otherwise known as the “Oil Exploration and Development
20 Act of 1972” are hereby amended.

1 **SECTION 6. *Separability Clause.*** – Any portion or provision of this Act, which
2 may be declared unconstitutional or invalid shall not have the effect of nullifying other
3 portions or provisions hereof.

4
5 **SECTION 7. *Repealing Clauses.*** – All laws, ordinances, rules, regulations and
6 other issuance or parts thereof, which are inconsistent with this Act, are hereby amended,
7 modified, or repealed accordingly.

8
9 **SECTION 8. *Effectivity Clause.*** – This Act shall take effect fifteen (15) days after
10 its publication in at least two (2) newspaper of general circulation.

Approved,