HOUSE OF REPRESENTATIVES
JUL 21 2004
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RECORDS & INDEX DIVISION

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

THIRTEENTH CONGRESS

First Regular Session

HOUSE BILL NO. 1560

Introduced by HON. DANILO E. SUAREZ

EXPLANATORY NOTE

The advancement in technology has brought robustness in the telecommunications and broadcast industries. Both industries exhibited positive growth in the last five years and with the consumer's growing interest and rising demand for their products and services, their expansion is expected to go on in the coming years.

But just like any other business, the demand for telecom and broadcasting products and services will certainly reach its saturation point. Competition in these sectors will become very stiff that as early as now, measures that will create a level playing field must be executed. Aside from reviewing the terms of their franchises and studying regulatory issuances, other areas that significantly affect business operations must likewise be explored.

One of these areas is taxation. Presently, both industries are generally subject to income and business taxes i.e. value-added and percentage taxes. There are not much problems in the administration of the income tax as all other businesses are taxed using the parameters set under the law. Problems lie, therefore, in the implementation of the business taxes.

Under the present system, services rendered locally by telecom companies are subjected to the value-added tax (VAT) and classified as either exempt, zero-rated or taxable at 10% of gross receipts. Overseas dispatches, messages and communications transmitted by telecom companies are, however, charged with an overseas communication tax (OCT) at the rate of 10% on the amount paid for such services. This set-up creates an opportunity for tax evasion as receipts from higher taxed products/services can be shifted to the lower taxed group, thereby reducing the tax liability of the company. Another factor that cuts down the tax liability of telecom companies is the amount of input tax credits claim on capital expenditures. These practices may grant undue benefit to some companies to the disadvantage of other companies where such options may not be available.

The broadcast industry, on the other hand, has a different set-up. Large broadcast companies are subject to the VAT while small broadcast networks who have not opted to be subject to the VAT, pay the franchise tax. Thus, big TV and radio networks are taxed, albeit on a higher tax rate, on gross receipts less any deductions from input VAT credits while the small ones are taxed on gross.

This very diverse taxation scheme for both the telecom and the broadcast industry not only creates unequal tax treatment for similarly situated companies but likewise spawn complexities in tax administration. Not a few BIR officials have admitted to the difficulty of monitoring tax compliance from these sectors because of this predicament. To correct these inequities and at the same time address the administrative difficulties of the BIR, this bill seeks to remove franchise grantees of telecommunications and broadcast services from the coverage of the value-added tax and subject them instead to the franchise tax. Under the proposed measure, telecom and broadcast companies shall be subject to a tax equivalent to three- and-a-half percent (3.5%) of their gross receipts on the first year of its effectivity. Thereafter, the tax will be increased to seven percent (7%).

With the re-imposition of the franchise tax on these sectors, it is hoped that all players in the telecommunications and broadcast sector will be afforded equal treatment in terms of taxation. With this in place, the industry can look forward to better business opportunities where competition is evenhanded and no company is unjustly penalized by any inequitable levy.

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

HON. DANILO E. SUAREZ
3rd District, Quezon

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AN ACT
PROVIDING FOR THE REIMPOSITION OF THE FRANCHISE TAX ON TELEPHONE AND TELEGRAPH COMPANIES, AND RADIO AND TELEVISION BROADCASTING COMPANIES, AMENDING FOR THE PURPOSE SECTIONS 108 AND 119 OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED AND FOR OTHER PURPOSES

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

SECTION 1. Section 108 of the National Internal Revenue Code of 1997, as amended, is hereby further amended to read as follows:

"SEC. 108. *Value-added Tax on Sale of Services and Use or Lease of Properties.* –

"(A) *Rate and Base of Tax.* - There shall be levied, assessed and collected, a value-added tax equivalent to ten percent (10%) of gross receipts derived from the sale or exchange of services, including the use or lease of properties.

"The phrase **'sale or exchange of services'** means the performance of all kinds of services in the Philippines for others for a fee, remuneration or consideration, including those performed or rendered by construction and service contractors; stock, real estate, commercial, customs and immigration brokers; lessors of property, whether personal or real; warehousing services; lessors or distributors of cinematographic films; persons engaged in milling, processing, manufacturing or repacking goods for others; proprietors, operators or keepers of hotels, motels, resthouses, pension houses, inns, resorts; proprietors or operators of restaurants, refreshment parlors, cafes and other eating places, including clubs and caterers; dealers in securities; lending investors; transportation

contractors on their transport of goods or cargoes, including persons who transport goods or cargoes for hire and other domestic common carriers by land, air and water relative to their transport of goods or cargoes; services of [franchise grantees of telephone and telegraph, radio and television broadcasting and other] franchise grantees except those under Section 119 of this Code; SERVICES OF [and] non-life insurance companies (except their crop insurances), including surety, fidelity, indemnity and bonding companies; and similar services regardless of whether or not the performance thereof calls for the exercise or use of the physical or mental faculties. The phrase '**sale or exchange of services**' shall likewise include:

x x x"

SEC. 2. Section 119 of the National Internal Revenue Code of 1997, as amended, is hereby further amended to read as follows:

"SEC. 119. *Tax on Franchises.* – Any provision of general or special law to the contrary notwithstanding, there shall be levied, assessed and collected in respect to all franchises, [on radio and/or television broadcasting companies whose annual gross receipts of the preceding year does not exceed Ten million pesos (P10,000,000), subject to Section 236 of this Code, a tax of three percent (3%) and on electric, gas and water utilities, a tax of two percent (2%) on] UPON the gross receipts derived from the business covered by the law granting the franchise, A TAX IN ACCORDANCE WITH THE SCHEDULE PRESCRIBED HEREUNDER:

(A) ON ELECTRIC, GAS AND WATER UTILITIIES .....TWO PERCENT (2%)

(B) ON TELEPHONE AND/OR TELEGRAPH SYSTEMS, AND RADIO AND/OR TELEVISION BROADCASTING COMPANIES..... THREE AND A HALF PERCENT (3.5%)

[*Provided, however*, That radio and television broadcasting companies referred to in this Section shall have an option to be registered as a value-added taxpayer and pay the tax due thereon: *Provided, further,* That once the option is exercised, it shall not be revoked.]

PROVIDED, THAT ON THE SECOND YEAR FOLLOWING THE EFFECTIVITY OF THIS ACT AND THEREAFTER, THE RATE OF FRANCHISE TAX IMPOSED UNDER PARAGRAPH (B) HEREOF SHALL BE INCREASED TO SEVEN PERCENT (7%).

x x x"

SEC. 3. ***Implementing Rules and Regulations.*** - The Secretary of Finance shall, upon the recommendation of the Commissioner of Internal Revenue, promulgate the necessary rules and regulations for the effective implementation of this Act.

SEC. 4. ***Repealing Clause.*** - All laws, decrees, executive orders, rules and regulations or parts thereof which are contrary to or inconsistent with this Act are hereby repealed, amended or modified accordingly.

SEC. 5. ***Effectivity.*** - This Act shall take effect fifteen (15) days after its publication in the Official Gazette or in any two newspapers of general circulation, whichever comes earlier.

Approved,