

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

FIFTEENTH CONGRESS
First Regular Session

HOUSE BILL No. **4695**

Introduced by **HON. RENE LOPEZ RELAMPAGOS**
1st District, Bohol

EXPLANATORY NOTE

One of the remedies of the Philippine Government for collection of delinquent taxes is the institution of civil and/or criminal actions with the approval of the Commissioner of Internal Revenue (Sec. 220, Republic Act No. 8424 amending the National Internal Revenue Code [NIRC]). The remedy of criminal action is resorted to not only for collection of taxes but also for enforcement of statutory penalties of all sorts. (Sec. 221, NIRC)

The author of this bill is aware of the following bills filed by his distinguished colleagues in the House of Representatives:

1) **House Bill No. 294**, sponsored by Hon. Danilo E. Suarez, seeks to make it mandatory for the Bureau of Internal Revenue (BIR) to take exclusive jurisdiction in handling tax-related cases and by discouraging referral of the cases to the Department of Justice. In this manner, the people from the BIR, armed with expertise on the field, would solely handle tax cases to the exclusion of others. Aside from hastening prosecution of cases, it will encourage the BIR itself to broaden and expand its legal department and provide the necessary assistance in relation thereto. In his Explanatory Note, Rep. Suarez is of the belief that despite the passage of Republic Act No. 9232, which expanded the jurisdiction of the Court of Tax Appeals and mandated that civil and criminal actions in tax-related cases shall be heard by the Court of Tax Appeals (CTA), there have been impediments in the resolution of tax cases. These impediments have proved to be stumbling blocks in the BIR's effort to collect taxes by effectively prosecuting various tax-related cases. One such impediment pertains to the time-honored practice of the BIR to refer to the Department of Justice (DOJ), through its various collection assessment cases before the courts. This is quite understandable considering the limited staff in the legal department of the BIR who will handle tax-related cases. This set-up, however, has become a breeding ground for corruption as concerned taxpayers would turn out conniving with the prosecutors of the DOJ to delay resolution of cases or in some instances, decide in their favor.

2) **House Bill No. 2692**, also sponsored by Rep. Suarez, seeks to address the impediments in the resolution of tax cases filed by taxpayers of the BIR. It is not disputed that the current procedure in filing tax cases suffers from several problems which contribute in the delay of resolving such cases. While it is admitted that the problem cannot be solved overnight, this proposed measure addresses one specific problem which is the removal of an additional layer in filing tax cases with the Court of Tax Appeals. In its Explanatory Note, Rep. Suarez claims that one of the major stumbling blocks in our judicial system is the delay in the resolution of tax cases. This issue not only delays bringing to justice known tax evaders, but also adversely

affects the collection efforts of the government's main revenue generating agency – the BIR. For every day a tax case remains unresolved, it costs the government millions of pesos, all of which rightfully belong to our nation's coffers. Data from the BIR show that as of 2009, a total of six hundred seventy eight (678) refund and assessment cases are pending with the Court of Tax Appeals and the DOJ. The total amount due involved in refund cases amount to Php 26.43 billion, while the pending assessment cases involve Php 77.15 billion. All in all, these cases involve amounts reaching more than Php 100 billion, a very substantial amount that should properly belong to the government. x x x The prosecution of tax cases can be best handled by the tax lawyers themselves – those who have gathered, and have access to, sufficient evidence to recover tax collection deficiencies. The possibility of graft and corruption may also be reduced, since the BIR lawyers, being attributable under the Attrition Act, would be motivated to recover taxes which rightfully should be included in the total revenue collection of the BIR. With this bill, the BIR would be able to focus its resources in the litigation of tax cases involving known tax deficients and evaders to improve its collection. This bill, if approved, will shorten the tedious process of filing tax cases. This would hasten the resolution of tax cases and therefore improve the collection efforts of the BIR.

3) **House Bill No. 1755**, sponsored by Hon. Salvador H. Escudero III, seeks to mandate the BIR to acquire and have exclusive jurisdiction over all tax-related cases, thereby doing away with the participation of the DOJ in the prosecution of said cases. In his Explanatory Note, he maintains that the proposed measure is but apt considering the allegations of fraud in the National Prosecution Service of the DOJ. Moreover, it hastens delineation of responsibilities in the tax collection efforts of the government, making accountability solely in the hands of the BIR. Lastly, it complements Republic Act No. 9282 which expands the jurisdiction of the Court of Appeals, by mandating all civil and criminal actions in tax related cases cognizable by said court.

4) **House Bill No. 2868**, sponsored by Hon. Luis R. Villafuerte, also seeks to amend Republic Act 8424 to enable, empower and authorize unequivocally the legal officers of the BIR, with the approval of the Commissioner of Internal Revenue, to exclusively investigate, prosecute, file and handle all cases and issues related to tax and taxation. It also seeks to simultaneously provide the Department of Finance (DOF) the power and right to review every criminal complaint before proper cases are filed in the courts. In the Explanatory Note of this bill, Rep. Villafuerte maintains the constitutional principle of expeditious and timely resolution of justifiable cases being always been one of the primary aspirations of any judicial system. The Government must endeavor to continuously seek avenues to further empower judicial entities and quasi-judicial agencies with the end in view of providing the same with the necessary legislative, budgetary and logistical support to ensure that the conduct of judicial actions are not delayed nor denied to anyone. Corollarily, the BIR has been mandated to be the lead agency in the collection of taxes. Legislative enactments have been approved by previous Congresses of the Philippines to provide for such powers and functions that have been deemed essential for the justifiable operations of the BIR. Republic Act No. 8424, otherwise known as the "Tax Reform Act of 1997" stipulates that civil and criminal actions and proceedings executed on behalf of the Government of the Philippines in matters relating to taxes and taxation shall be conducted by the legal officers of the BIR. In spite of the statutory directive of the said law, it has become customary procedure to refer cases to the DOJ for the determination of probable cause and the commencement of the appropriate legal actions. This is due to the lack of budgetary allocations that provide for additional manpower and logistical support and the absence of a clear-cut enabling provision of the law which vests exclusive jurisdiction of the BIR in the investigation, prosecution and management of tax-related cases, without need of referring such cases to the DOJ before they are filed at the appropriate courts. Efforts by the BIR to pursue its mandate in

the collection of taxes by actively pursuing tax evaders and other tax-related cases have been unceasingly hindered and troubled by the present processes currently operating in our prosecution system. The practice of referring cases to the DOJ has allegedly given rise to opportunities in the past to corrupt practices. Scheming taxpayers purportedly connive with prosecutors of the DOJ to circumvent the law by delaying the resolution of cases pending before them, or by favoring said taxpayers in their decisions. In order to avoid such accusations, this bill has been presented for enactment as a remedial legislation. x x x With the end in view of eliminating alleged avenues for collusion and corruption and eradicate bureaucratic red tape, and providing the appropriate agency of government the necessary assistance and support to further improve on the delivery of its services and the performance of its obligations, the immediate passage of this bill is earnestly requested.

5) **House Bill No. 3113**, sponsored by Hon. Giorgidi B. Aggabao, asserts that under the obtaining set-up, exclusive jurisdiction is vested with the DOJ to conduct preliminary investigation over all criminal cases arising from violations of the National Internal Revenue Code and other laws administered by the BIR. Tax laws are indubitably difficult and complex, requiring specialized knowledge, skills and experience. Without in any way diminishing the competence of DOJ prosecutors, devolving the conduct of preliminary investigation with the BIR and their prosecution of tax cases before the courts would ensure that cases for the government are handled by those eminently qualified. Moreover, the DOJ is laboring under obvious strain from all sort of cases referred to it for preliminary investigations. Shifting then the burden and responsibility of conducting preliminary investigations for tax cases away from the DOJ will definitely expedite the resolution of tax cases. This way, the skullduggery and underhand dealings attendant in the interminable wait for resolutions would be eliminated. This bill seeks to alter and modify this set-up, by granting exclusive authority to the BIR first, to investigate cases involving violations of the NIRC and related laws; second, to conduct preliminary investigations; third, to file the necessary complaint or information in court where the evidence warrants; and finally, to prosecute them.

This representation fully agrees to the following reasons/observations advanced by the distinguished sponsors, namely:

1) There may have been impediments in the resolution of tax cases which might be stumbling blocks to the BIR's effort to collect taxes effectively and prosecuting various tax-related cases. These issues not only delays bringing to justice known tax evaders, but also adversely affects the collection efforts of the BIR, the government's main revenue generating agency.

2) The Government must endeavor to continuously seek avenues to further empower judicial entities and quasi-judicial agencies with the end in view of providing the same with the necessary legislative, budgetary and logistical support to ensure that the conduct of judicial actions are not delayed nor denied to anyone.

3) Tax laws are indubitably difficult and complex, requiring specialized knowledge, skills and experience.

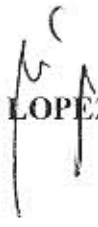
While there might be some allegations or perceptions that the present set-up of the BIR referring to the DOJ through its prosecutors various tax-related cases has become a breeding ground for corruption as concerned taxpayers would turn out conniving with the prosecutors of the DOJ to delay resolution of cases or in some cases or instances decide in their favor, such allegations or perceptions of fraud, graft and corruption on the part of the DOJ prosecutors -

which is also true on the part of the BIR people – cannot be avoided. However, if there will be synergy, i.e. combined action and/or operation between the BIR lawyers and the DOJ prosecutors specializing in handling tax-related cases and working together in handling these cases with the legal officers of the BIR as co-counsel, and these tax-related cases may not be dismissed singly or jointly by a DOJ prosecutor and legal officer of the BIR without prior written authority or approval of the BIR Commissioner in addition to the safeguard that the Department of Finance has the power to review every criminal complaint in tax-related cases before it is filed in court, then these allegations and perceptions will be minimized.

This representation strongly believes that there must be joint and focused efforts on the part of the BIR and DOJ in the handling and prosecuting of tax-related cases so that the perceived stumbling blocks in the BIR's effort to collect taxes will be effectively addressed. Also, this representation is of the view that while the people from the BIR may be armed with expertise in the field of taxation, making it mandatory for the BIR to take exclusive jurisdiction in handling tax-related cases will not hasten the prosecution of tax-related cases because the DOJ, before filing the necessary information in court with respect to the complaints filed by the BIR, will still investigate, conduct preliminary investigation, and determine whether there is a probable cause against concerned taxpayer. Moreover, this representation believes that the DOJ prosecutors, with their experience and training, have more investigative and litigation skills and expertise in handling criminal cases.

Hence, this representation proposes that ALL the tax-related cases shall be referred by the BIR to a specialized unit or office - with expertise in handling these cases - under the National Prosecution Service of the DOJ with the legal officers of the BIR as co-counsel, for investigation and prosecution, if warranted, under Section 220, Chapter II, Title VIII of Republic Act No. 8424. In other words, said tax-related cases must now be handled exclusively by prosecutors with expertise in handling these cases and lawyers of the BIR Legal Department, as co-counsel. This representation fully believes that the DOJ prosecutors and lawyers of the BIR, working together, and handling tax-related cases exclusively, will hasten the resolution and disposition of tax-related cases and thus improve the collection efforts of the BIR.

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


RENE LOPEZ RELAMPAGOS

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HOUSE BILL No. **4695**

Introduced by **HON. RENE LOPEZ RELAMPAGOS**
1st District, Bohol

AN ACT
AMENDING SECTION 220, CHAPTER II, TITLE VIII OF
REPUBLIC ACT NO. 8424, OTHERWISE KNOWN AS THE "TAX REFORM
ACT OF 1997", AND FOR OTHER PURPOSES

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

SECTION 1. - Section 220, Chapter II, Title VIII of Republic Act No. 8424, otherwise known as the "Tax Reform Act of 1997," is hereby amended to read as follows:

"Sec. 220. Form and Mode of Proceeding in Actions Arising under this Code. - Civil and criminal actions and proceedings instituted in behalf of the Government under the authority of this Code or other law enforced by the Bureau of Internal Revenue shall be brought in the name of the Government of the Philippines and shall be conducted, **INVESTIGATED, PROSECUTED AND HANDLED EXCLUSIVELY BY THE PROSECUTORS OF THE DEPARTMENT OF JUSTICE** AND by legal officers of the Bureau of Internal Revenue **AS CO-COUNSEL** but no civil or criminal action for the recovery of taxes or the enforcement of any fine, penalty or forfeiture under this Code shall be filed in Court without the approval of the Commissioner. **FOR THIS PURPOSE, REFERRAL BY THE BUREAU OF INTERNAL REVENUE SHALL BE ALLOWED IN CONNECTION WITH A CIVIL OR CRIMINAL ACTION TO AN OFFICE OR UNIT WITH EXPERTISE IN HANDLING TAX-RELATED CASES UNDER THE NATIONAL PROSECUTION SERVICES OF THE DEPARTMENT OF JUSTICE PROVIDED THAT THE LEGAL OFFICER OF THE BUREAU OF INTERNAL REVENUE SHALL BE CO-COUNSEL IN THIS CIVIL OR CRIMINAL ACTION. THE PROSECUTORS WITH EXPERTISE IN THE HANDLING OF TAX-RELATED CASES OF THE NATIONAL PROSECUTION SERVICES**

AND THE LEGAL OFFICERS OF THE BUREAU OF INTERNAL REVENUE SHALL HAVE EXCLUSIVE AUTHORITY TO FILE ANY CIVIL OR CRIMINAL CASE DIRECTLY WITH THE PROPER COURT OR THE DEPARTMENT OF JUSTICE, AS THE CASE MAY BE, FOR THE RECOVERY OF TAXES OR ENFORCEMENT OF ANY FINE, PENALTY OR FORFEITURE UNDER THIS CODE: PROVIDED THAT, NO COMPLAINT OR INFORMATION MAY BE FILED OR DISMISSED JOINTLY OR SINGLY BY THE PROSECUTOR OF THE DEPARTMENT OF JUSTICE AND LEGAL OFFICERS OF THE BUREAU OF INTERNAL REVENUE WITHOUT THE PRIOR WRITTEN AUTHORITY OR APPROVAL OF THE COMMISSIONER OF THE BUREAU OF INTERNAL REVENUE: PROVIDED, FINALLY, THAT THE DEPARTMENT OF FINANCE SHALL HAVE THE POWER TO REVIEW EVERY CRIMINAL COMPLAINT BEFORE IT IS FILED IN COURT.

SECTION 2. Repealing Clause. - All laws, decrees, orders, issuances, circulars, rules and regulations or parts thereof, which are inconsistent with the provisions of this Act are repealed or modified accordingly.

SECTION 3. Separability Clause. - If any provision of this Act is declared unconstitutional or invalid, other parts or provisions not affected thereby shall continue in full force and effect.

SECTION 4. Effectivity. - This Act shall take effect after fifteen (15) days following its publication in at least two (2) national newspapers of general circulation.

Approved,