

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City, Metro Manila

FIFTHTEENTH CONGRESS
Second Regular Session

HOUSE BILL NO. 5925



Introduced by Representative Neptali M. Gonzales II

EXPLANATORY NOTE

The fundamental constitutional policy of education is that it is the duty of the State to make quality education available while the same time affordable to as large a segment of the population as possible.¹ Further, it is the fundamental democratic policy that student should be able to go to schools of their choice, whether public or private.² This policy summed up in Article XIV, Section 1: "The State shall protect and promote the right of all citizens to quality education at all levels of education and shall take appropriate steps to make education accessible to all."

It is a known fact, however that quality education is a rare commodity in the Philippines and that the State itself is not able to maintain mass quality education.³ Much less is the State able to give subsidy to private schools which much therefore rely on their income to support their operation.⁴ The Constitutional Commission therefore found it necessary to at least provide for a significant tax relief to private educational institutions, whether non-stock, non-profit or proprietary schools, colleges and universities.

As a result of the above thrust, Art. XIV, Sec 4(3) of the 1987 Constitution provides that "(a)ll revenues and assets of non-stock, non-profit educational institutions used actually, directly, and exclusively for educational purposes shall exempt from taxes duties. Upon the dissolution or cessation of the corporate existence of such institutions, their assets shall be disposed of in the manner provided by law. Likewise, proprietary educational institutions, including those cooperatively owned, may likewise be entitled to such exemptions, subject to the limitations provided by law, including restrictions on dividends and provisions for reinvestment."

The constitutional provision thus has a threefold rationale. It is intended (1) to preserve the democratic choice of students; (2) to enable educational institutions to improve their quality; and (3) to make quality education affordable to students.

These points were emphasized during the deliberations of the 1986 Constitutional Commission, where Commissioners Gascon, Nollado, Bacani and Ople highlighted the need to grant tax exemptions to educational institutions, not only to keep them financially viable but also to make education truly affordable and available to a greater number of Filipinos.

¹ Bernas, Joaquin G., S.J., "The 1987 Constitution of the Republic of the Philippines: A Commentary" p. 1285; 2009 Edition

² Ibid.

Clearly, even during the drafting of the 1987 Constitution, the problem of private educational institutions, whether non-stock, non-profit or proprietary schools, colleges and universities have already been highlighted and as a result of said realization, several Constitutional provisions have been formulated providing financial support through tax exemptions.

However, the Department of Finance issued Department Order No. 137-87 dated December 16, 1987 outlining the rules and regulations for educational institutions to avail of the subject constitutional tax exemption. In the said DO No. 137-87, it provided that in order to avail of the exemption, all revenues and assets aside from being actually, directly and exclusively used for educational purposes must also be derived in pursuance of their primary purpose.

As a result of the above department order, the constitutional tax exemption granted to educational institutions, whether non-stock, non-profit or proprietary schools, colleges and universities pursuant to the Constitution has been weakened, diluted and denied. This should not be the case because Article XIV, Sec. 4(3) does not take into account how these assets and revenues are sourced. They could be derived from donations, school operations and other modes of income generation. There is nothing in the deliberations of the Constitutional Convention was the manner of acquiring these assets and revenues given any relevance.

Moreover, the mandate of the Constitution to likewise entitle proprietary educational institutions, including those cooperatively owned, to such exemption has not been made operative even after 22 years from the effectivity of the 1987 Constitution which necessitates the passing of an enabling legislation that should have been done a long time ago.

There is therefore the need for a law to be enacted to strengthen and recognize the constitutional tax exemption granted to non-stock, non-profit educational institutions pursuant to Art. XIV, Sec. 4(3) of the 1987 Constitution and to extend the same to, subject to the limitations provided in this proposed legislation, to proprietary schools, colleges and universities, by amending Sec. 27(B) and Sec. 30(H) of the National Internal Revenue Code of the Philippines.

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



Neptali M. Gonzales II

1 FIFTHTEENTH CONGRESS OF THE)
2 REPUBLIC OF THE PHILIPPINES)
3 Second Regular Session)
4

5
6 HOUSE OF REPRESENTATIVES

7
8 HOUSE BILL NO. 5925
9

10
11 Introduced by Representative Neptali M. Gonzales II
12

13
14 AN ACT RECOGNIZING AND STRENGTHENING THE
15 TAX EXEMPTIONS GRANTED TO EDUCATIONAL INSTITUTIONS
16 PURSUANT TO ART. XIV, SECTION 4(3) OF THE 1987 CONSTITUTION BY
17 AMENDING SEVERAL PROVISIONS OF PRESIDENTIAL DECREE NO. 1158
18 AS AMENDED BY REPUBLIC ACT NO. 8424 OTHERWISE KNOWN AS THE
19 NATIONAL INTERNAL REVENUE CODE OF THE PHILIPPINES
20

21 Be it enacted by the House of Representatives and Senate of the
22 Philippines in Congress assembled:
23

24 **SECTION 1.** Section 27(B) should be amended to read as such:
25

26 **SEC. 27. *Rates of Income tax on Domestic Corporations.***
27
28

29 xxx

xxx

xxx

30
31 ~~B) Proprietary Educational Institutions and Hospitals. – Proprietary~~
32 ~~educational institutions and Hospitals which are nonprofit shall pay a tax of ten~~
33 ~~percent (10%) on their taxable income except those covered by Subsection (D)~~
34 ~~hereof: Provided, that if the gross income from unrelated trade, business or other~~
35 ~~activity exceeds fifty percent (50%) of the total gross income derived by such~~
36 ~~educational institutions or hospitals from all sources, the tax prescribed in~~
37 ~~Subsection (A) hereof shall be imposed on the entire taxable income. For~~
38 ~~purposes of this Subsection, the term ‘unrelated trade, business or other activity’~~
39 ~~means any trade, business or other activity, the conduct of which is not~~
40 ~~substantially related to the exercise or performance by such educational~~
41 ~~institution or hospital of its primary purpose or function. A ‘Proprietary educational~~
42 ~~institution’ is any private school maintained and administered by private~~
43 ~~individuals or groups with an issued permit to operate from the Department of~~
44 ~~Education, Culture and Sports (DECS), or the Commission on Higher Education~~
45 ~~(CHED), or the Technical Education and Skills Development Authority (TESDA),~~
46 ~~as the case may be, in accordance with existing laws and regulations.~~
47

48 **SECTION 2.** Section 30(H) of the National Internal Revenue Code of the
49 Philippines should also be amended to read as:
50

51 **SEC. 30. *Exemptions from Tax on Corporations.*** – The following
52 corporations shall not be taxed under this Title in respect to income received by
53 them as such:
54

cc vvv

vvv

vvv

1 (H) A nonstock and nonprofit educational institution pertaining to all
2 revenues and assets used actually, directly and exclusively for educational
3 purposes regardless of whether or not the same is derived in pursuance of
4 the primary purpose.

5
6 (I) Proprietary educational institutions. - Proprietary
7 educational institutions shall exempt from taxes and duties pertaining to all
8 revenues and assets used actually, directly and exclusively for educational
9 purposes regardless of whether or not the same is derived in pursuance of
10 primary purpose and subject to the limitations provided by law, including
11 restrictions on dividends and provisions for reinvestment. Provided, that
12 the proprietary schools, colleges and universities shall still determine the
13 amount equal to ten percent (10%) of their net income that could have been
14 subject to income tax if they were not exempt from said income tax.
15 Provided further, that the amount so determined shall be strictly utilized in
16 the following manner: seventy percent (70%) for increases in salaries of
17 employees; twenty percent (20%) for additional scholarship grants to
18 students and ten percent (10%) for improvement of equipment, facilities
19 and/or buildings. A "Proprietary educational institution" is any private
20 school maintained and administered by private individuals or groups with
21 issued permit to operate from the Department of Education, Culture and
22 Sports (DECS), or the Commission on Higher Education (CHED), or the
23 Technical Education and Skills Development Authority (TESDA), as the
24 case may be, in accordance with existing laws and regulations.

25
26 (J)(I)-Government educational institution;

27
28 (K)(J) xxx xxx xxx
29

30 **SECTION 3. Implementing Rules and Regulations.** Within Ninety (90)
31 days from the effectivity of this Act, the Department of Finance and other
32 concerned agencies, shall promulgate the necessary rules and regulations to
33 effectively implement the provisions of this Act.
34

35 **SECTION 4. Separability Clause.** If any of provisions of this Act shall be
36 declared unconstitutional or invalid, the other sections and provisions not
37 affected thereby shall remain valid.
38

39 **SECTION 5. Repealing Clause.** All laws, presidential decrees, executive
40 orders, proclamations and rules and regulations which are inconsistent with this
41 Act are hereby repealed and amended accordingly.
42

43 **SECTION 6. Effectivity Clause.** This Act shall take effect with 30 days
44 following its publication in a newspaper of general circulation.
45

46 Approved.
47
48
49
50
51