

SIXTEENTH CONGRESS OF THE }
REPUBLIC OF THE PHILIPPINES }
Second Regular Session }



HOUSE OF REPRESENTATIVES
H.B. NO. **5713**

Introduced by: CONGRESSMAN JEFFREY P. FERRER

EXPLANATORY NOTE

This bill seeks to amend the National Internal Revenue Code of 1997 (NIRC), as amended, by clarifying the definition and providing for the technical meaning of "Raw Cane Sugar" in order to reflect the true intent of the legislature in exempting from value-added tax (VAT) the sale of "Raw Cane Sugar".

As provided for in section 109 (A) of the NIRC, the sale of "Raw Cane Sugar" along with molasses is included as one of the agricultural products whose transaction enjoys VAT exemption. Section 109 (A) states:

"(A) Sale or importation of agricultural and marine food products in their original state, livestock and poultry of a kind generally used as, or yielding or producing foods for human consumption; and breeding stock and genetic materials therefor.

"Products classified under this paragraph shall be considered in their original state even if they have undergone the simple processes of preparation or preservation for the market, such as freezing, drying, salting, broiling, roasting, smoking or stripping. Polished and/or husked rice, corn grits, **raw cane sugar** and molasses, ordinary salt, and copra shall be considered in their original state;"

Let it be noted that to be exempt the enumerated agricultural products must be in their original state. The legislature then, through the second paragraph, qualified this requirement by providing that even if an agricultural product has undergone the simple processes of preparation or preservation it shall still be considered in its original state. This is then further qualified by a specific enumeration of several agricultural products which the law recognizes as in its original state, with "Raw Cane Sugar" included therein.

Thus, by specific provision of law transactions involving the sale of "Raw Cane sugar" are exempt from VAT.

However, with the issuance of Revenue Regulation Nos. 13-2013, 4-2015 and the succeeding Revenue Regulations relative thereto, the BIR redefined "Raw Cane Sugar" thereby effectively revoking and removing its VAT exemption.

In Revenue Regulation 13-2013, the BIR provided that:

"(b) Raw Sugar - refers to sugar produced by simple process of conversion of sugar cane without need of any mechanical or similar device such as muscovado. For this purpose, raw sugar refers only to muscovado.

Centrifugal process of producing sugar is not in itself a simple process. Therefore, any type of sugar produced therefrom is not exempt from VAT."

BIR then issued another Revenue Regulation 4-2015 this time drawing a distinction between "Raw Sugar", which was the term it originally used in Revenue Regulation 13-2013, and "Raw Cane Sugar".

In what is a clear case of "flip-flopping", BIR initially said that "Raw Sugar" can only be muscovado. Subsequent to that erroneous definition, BIR revises its own definition and has now come up with an equally erroneous definition saying that "Raw Cane Sugar" is now the one which should be referred to as muscovado.

It is quite apparent from these issuances that BIR focuses on the process involved in the production of "Raw Cane Sugar or Raw Sugar". BIR's misinterpretation stems from its incorrect understanding of the processes involved in such production. It believes that in order for "Raw Cane Sugar" to be exempt it must follow that the production thereof is done through the simple process of conversion of sugar without need of any mechanical or similar device. It further contends that centrifugation in itself is not a simple process.

Because of this, BIR is now saying that "raw sugar" should be subject to VAT, while "raw cane sugar" is not.

This distinction is unwarranted. "Raw Sugar" and "Raw Cane Sugar" are in fact one and the same. The legislature did not intend to differentiate between "raw cane sugar" and "raw sugar" and neither should the BIR.

For this purpose we refer to the internationally accepted definition of "Raw Cane Sugar" or "Raw Sugar", which has incidentally been harmonized and adopted domestically.

BIR's definition of "raw cane sugar" as sugar produced without the need of any mechanical or similar device runs counter to the internationally-accepted definition under the Codex Alimentarius. The Codex Standard for Sugars (CODEX STAN 212-1999) defines "raw cane sugar" as "partially purified sucrose, which is crystallized from partially purified cane juice, without further purification, but which does not preclude centrifugation or drying, and which is characterized by sucrose crystals covered with a film of cane molasses".

Incidentally, the Philippines, through the Department of Agriculture's Bureau of Agricultural and Fisheries Products Standards (BAFPS) through the Philippine National Standards on Raw Sugar (PNS/BAFPS 81:2010 ICS 67.180.10), has already adopted the above definition of "raw cane sugar". It can thus be asserted that this definition of "raw cane sugar" is what the NIRC contemplated when it exempted "raw cane sugar" from VAT.

Moreover, the Tariff and Customs Code of the Philippines – Asean Harmonized Tariff Nomenclature (TCCP AHTN - Chapter 17) has defined under its subheading notes that "“raw sugar” means sugar whose content of sucrose by weight, in the dry state, corresponds to a polarimeter reading of less than 99.5°.”

It is very clear from the foregoing that "Raw Cane Sugar" or "Raw Sugar" has a specific technical meaning with its corresponding standards. To change the same in order to justify additional collection of revenues would necessarily result to an illegal amendment of the law and would serve to violate our international agreements which use the accepted international definition.

Perforce, the issuance of these Revenue Regulations has evidently resulted to an amendment of the law and is an invalid exercise of the executive's rule making power.

Thus, in light of this seeming ambiguity and its effect on the sugar planters, its dependents and, particularly the consumers who will bear the brunt of the added imposition of VAT, Congress is duty bound to clarify its intent and immediately act to protect the interests of the Filipino people.

The immediate approval of this bill is therefore earnestly sought.


JEFFREY P. FERRER



Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

SIXTEENTH CONGRESS
Second Regular Session

HOUSE BILL NO. 5713

Introduced by Representative Jeffrey P. Ferrer

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

AN ACT FURTHER AMENDING SECTION 109 OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES

SECTION 1. Section 109 of the National Internal Revenue Code of 1997, as amended, is hereby further amended to read as follows:

"Sec. 109. Exempt Transactions. - (1) Subject to the provisions of subsection (2) hereof, the following transactions shall be exempt from the value-added tax:

"(A) Sale or importation of agricultural and marine food products in their original state, livestock and poultry of a kind generally used as, or yielding or producing foods for human consumption; and breeding stock and genetic materials therefor.

"Products classified under this paragraph shall be considered in their original state even if they have undergone the simple processes of preparation or preservation for the market, such as freezing, drying, salting, broiling, roasting, smoking or stripping. Polished and/or husked rice, corn grits, raw cane sugar and molasses, ordinary salt, and copra shall be considered in their original state. **FOR THIS PURPOSE, RAW CANE SUGAR SHALL MEAN RAW SUGAR WHOSE CONTENT OF SUCROSE BY WEIGHT, IN THE DRY STATE, CORRESPONDS TO A POLARIMETER READING OF LESS THAN 99.5°, SUCH THAT BUT NOT LIMITED TO BLANCO BIRECTO, PREMIUM RAW, SPECIAL RAW, WASHED SUGAR, SWEEPING AND MUSCOVADO;**"

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(F) Services by agricultural contract growers and milling for others of palay into rice, corn into grits and sugar cane into raw sugar **OR RAW CANE SUGAR;**"

Sec. 2. Implementing Rules and Regulations. - The Secretary of Finance, with the recommendation of the Commissioner of the Internal Revenue, shall issue the implementing rules and regulations of this Act within ninety (90) days starting from the effectivity of this Act.

Sec. 3. *Repealing Clause.* – All laws, acts, decrees, executive orders, issuances, and rules and regulations or parts thereof which are contrary to and inconsistent with any provisions of this Act are hereby repealed, amended, or modified accordingly.

Sec. 4. *Effectivity.* - This Act shall take effect immediately after its complete publication either in the Official Gazette or in a newspaper of general circulation in the Philippines.

Approved,