

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

EIGHTEENTH CONGRESS
Second Regular Session

HOUSE BILL NO. 9573



Introduced by **REP. JOSE FRANCISCO “KIKO” B. BENITEZ, Ph.D.**

EXPLANATORY NOTE

The 1987 Constitution recognizes the complementary roles of public and private institutions in the educational system and shall exercise reasonable supervision and regulation of all educational institutions. (Para. 1, Sec. 4, Art. XIV)

Accordingly, Para. 3, Sec. 4, Article XIV of the Constitution states that:

“All revenues and assets of non-stock, non-profit educational institutions used actually, directly, and exclusively for educational purposes shall be exempt from taxes and 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.

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.” (Emphasis added.)

As such, private schools are granted preferential income tax rate of 10 percent, lower than the 35 percent imposed on corporations in general. With the enactment of Republic Act No. 11534 or the CREATE Law, proprietary educational institutions are granted tax relief for a period of three (3) years, with the income tax rate lowered from 10 percent to 1 percent. Sec. 27 (B) of the National Internal Revenue Code (NIRC) reads:

“Proprietary educational institutions and hospitals which are nonprofit shall pay a tax of ten percent (10%) on their taxable income except those covered by Subsection (D) hereof: *Provided*, That beginning July 1, 2020 until June 30, 2023, the tax rate herein imposed shall be one percent (1%): *Provided, further*, That if the gross income from ‘unrelated trade, business or other activity’ exceeds fifty percent (50%) of the total gross income derived by such educational institutions or hospitals from all sources, the tax prescribed in Subsection (A) hereof shall be imposed on the entire taxable income... (Emphasis added.)”

The same section of the NIRC defines “proprietary educational institution” as “any private school maintained and administered by private individuals or groups with an issued permit to operate from the Department of Education, Culture and Sports (DECS), or the Commission on Higher Education (CHED), or the Technical Education and Skills

Development Authority (TESDA), as the case may be, in accordance with existing laws and regulations.”

However, the Bureau of Internal Revenue now defines in Sec. 2 (c) of Revenue Regulation No. 5-2021 that proprietary educational institutions must be non-profit to qualify for the new tax rates under the CREATE Law. The new implementing regulations of the BIR effectively imposes 25 percent income tax rate on private schools – 15 percent higher from the 10 percent previously collected from private schools, regardless whether non-profit or for-profit.

To require schools to be both proprietary and non-profit to qualify for lower income tax rate is preposterous. The definition is self-contradictory and conceptually impossible. The word “proprietary” is understood as “privately owned and managed and run as a profit-making organization.” An educational institution cannot be both “proprietary” and non-profit. As a result, no private school may qualify for the lower income tax rate under the CREATE Law.

Under BIR’s rules, private schools will be unfairly taxed. Whereas the CREATE Law lowers income tax rates for corporations in general, RR 5-2021 effectively increases the income tax rate of private schools. This heavily burdens private schools which are struggling to adapt to disruptions in their operations because of the COVID-19 pandemic. The immediate impact will be seen in a sharp reduction of investments in school facilities and scholarships. The longer term impact of RR 5-2021 would be that faculty and personnel are at greater risk of losing their jobs, and even the communities and small businesses built around schools (e.g., dormitories, janitorial and security services, uniform sewers, carinderias, sari - sari stores and school bus services) will be significantly affected.

At a time when our private schools need government support to transition to flexible learning modes and adapt to the digital new normal, which will entail new investments in facilities and reskilling of faculty, the last thing they need is higher taxes.

Private schools play a crucial role in developing competencies of our workforce, providing quality education that enables our people to contribute to our economic development. It is therefore proper that we give them relief at a time of existential crisis to the sector and to our nation.

The conflation and confusion in the new BIR regulations must be rectified. If the NIRC provision on the tax of proprietary education institutions is ambiguous and causing erroneous interpretation of the BIR, the law must then be amended to make it clear that for-profit private schools, as partners for empowering our people with skills and information to lead a productive and fulfilling life, are also entitled to preferential tax rates.

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


JOSE FRANCISCO “KIKO” B. BENITEZ

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Introduced by **REP. JOSE FRANCISCO “KIKO” B. BENITEZ, Ph.D.**

AN ACT
AMENDING SECTION 27 (B) OF THE NATIONAL INTERNAL REVENUE CODE,
AS AMENDED, AND FOR OTHER PURPOSES

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

SECTION 1. Section 27 (B) of the National Internal Revenue Code of 1997, as amended, is hereby further amended to read as follows:

"Sec. 27. Rates of Income Tax on Domestic Corporations. –

“(B) [~~Proprietary Educational Institutions and Hospitals.~~—~~Proprietary educational institutions and hospitals which are non-profit~~] **HOSPITALS WHICH ARE NONPROFIT, AND ALL PROPRIETARY EDUCATIONAL INSTITUTIONS** shall pay a tax of ten percent (10%) on their taxable income except those covered by Subsection (D) hereof: *Provided*, That beginning July 1, 2020 until June 30, 2023, the tax rate herein imposed shall be one percent (1%): *Provided, further*, That if the gross income from ‘unrelated trade, business or other activity’ exceeds fifty percent (50%) of the total gross income derived by such educational institutions or hospitals from all sources, the tax prescribed in Subsection (A) hereof shall be imposed on the entire taxable income. For purposes of this Subsection, the term ‘unrelated trade, business or other activity’ means any trade, business or other activity, the conduct of which is not substantially related to the exercise or performance by such educational institution or hospital of its primary purpose or function. ‘Proprietary’ means a private hospital, or any private school maintained and administered by private individuals or groups with an issued permit to operate from the Department of Education (DEPED) or the Commission on Higher Education (CHED), or the Technical Education and Skills Development Authority (TESDA), as the case may be, in accordance with existing laws and regulations.

Sec. 2. *Implementing Rules and Regulations.* – The Department of Finance shall promulgate the necessary rules and regulations for the effective implementation of the provisions of this Act.

Sec. 3. *Separability Clause.* – If any portion or provision of this Act is subsequently declared invalid or unconstitutional, other provisions hereof which are not affected thereby shall remain in full force and effect.

Sec. 4. *Repealing Clause.* – All laws, decrees, orders, rules and regulations and other issuances or parts thereof, which are inconsistent with this Act, are hereby repealed or modified accordingly.

Sec. 5. *Effectivity.* – This Act shall take effect fifteen (15) days after its publication in the Official Gazette or in at least two (2) national newspapers of general circulation.

Approved,