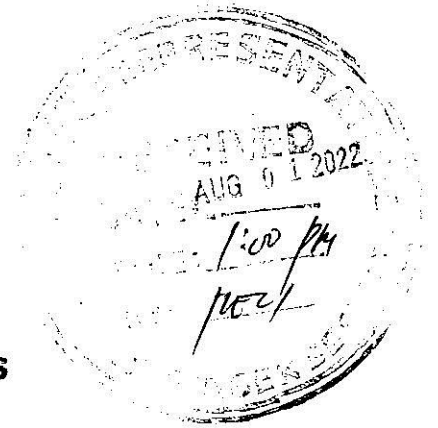


NINETEENTH CONGRESS OF THE)
REPUBLIC OF THE PHILIPPINES)
First Regular Session)



HOUSE OF REPRESENTATIVES

H. B. No. 2830

Introduced by Representative Ralph G. Recto

AN ACT

EXEMPTING THE SALE OF REAL PROPERTY IN THE EXERCISE OF THE STATE'S POWER OF EMINENT DOMAIN FROM THE PAYMENT OF CAPITAL GAINS AND DOCUMENTARY STAMP TAXES, AMENDING FOR THE PURPOSE SECTIONS 24 (D) AND 199 OF REPUBLIC ACT NO. 8424, AS AMENDED, OTHERWISE KNOWN AS THE "NATIONAL INTERNAL REVENUE CODE OF 1997"

EXPLANATORY NOTE

Section 9, Article III of the 1987 Constitution guarantees the right of every owner whose land is being taken for public use to be paid with just compensation. This exercise of the power of eminent domain by the State involves the transfer of real estate title in exchange for the payment of compensation. Section 24(D)(1) of Republic Act No. 8424, as amended, otherwise known as the National Internal Revenue Code (NIRC) of 1997 mandates that a final tax of six percent (6%) based on the gross selling price or current fair market value, whichever is higher, is imposed upon capital gains presumed to have been realized from the sale, exchange, or other disposition of real property located in the Philippines. This means that the Bureau of Internal Revenue considers the just compensation received by a property owner as a *gain* for which taxes should be paid. On the other hand, Section 199 of the NIRC, as amended, mandates the collection of documentary stamp tax on the same transaction.

One way of looking at the expropriation of a real property is as a forced sale of property. Owners have a degree of primal, oftentimes emotional attachment to the land and forcibly taking the land from them is like severing the attachment.

Accordingly, the State should exercise due sensibility and consideration by exempting the compulsory seller from paying these taxes, at least, to give justice for the material impairment of the seller's property.

In an effort to sustain economic growth through its infratructure program, the government may be constrained to acquire real properties. Private individuals and/or entities concerned should be spared the burden of paying the capital gains and documentary stamp taxes.

This bill acknowledges that time is of the essence in implementing a government infrastructure project, thus, allowing certain exceptions to taxation of property taken by eminent domain should hasten the acquisition process.

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



RALPH G. RECTO

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

1 Section 1. Section 24(D) of Republic Act No. 8424, as amended, otherwise
2 known as the National Internal Revenue Code of 1997, is hereby further amended to
3 read as follows:

4 "SEC. 24. x x x

5 "(A) x x x

6 "(B) x x x

7 "(C) x x x

8 "(D) Capital Gains from Sale of Real Property. –

9 (1) *In General.* – The provisions of Section 39(B) notwithstanding, a final
10 tax of six percent (6%) based on the gross selling price or current fair
11 market value as determined in accordance with Section 6(E) of this
12 Code, whichever is higher, is hereby imposed upon capital gains
13 presumed to have been realized from the sale, exchange, or other
14 disposition of real property located in the Philippines, classified as capital

1 assets, including pacto de retro sales and other forms of conditional
2 sales, by individuals, including estates and trusts: *Provided*, That the tax
3 liability, if any, on gains from sales or other dispositions of real property
4 to the government or any of its political subdivisions or agencies or to
5 government-owned or controlled corporations shall be determined either
6 under Section 24 (A) or under this Subsection, at the option of the
7 taxpayer: **PROVIDED, FURTHER, THAT IN CASE WHERE THE**
8 **GOVERNMENT EXERCISES ITS POWER OF EMINENT DOMAIN,**
9 **THE SAID TRANSACTION SHALL BE EXEMPT FROM THE**
10 **PAYMENT OF THE CAPITAL GAINS TAX IMPOSED UNDER THIS**
11 **SECTION.**

12 "(2) Exception. – x x x"

13 Sec. 2. Section 199 of Republic Act No. 8424, as amended, otherwise known
14 as the National Internal Revenue Code of 1997, is hereby further amended to read as
15 follows:

16 "SEC. 199. *Documents and Papers Not Subject to Stamp Tax.* - The provisions
17 of Section 173 to the contrary notwithstanding, the following instruments,
18 documents and papers shall be exempt from the documentary stamp tax:

19 "(a) x x x;

20 " x x x

21 "(n) x x x; **AND**

22 **"(O) TRANSACTIONS WHERE THE GOVERNMENT EXERCISES ITS**
23 **POWER OF EMINENT DOMAIN."**

24 Sec. 3. *Rules and Regulations.* – The Secretary of Finance shall, upon the
25 recommendation of the Commissioner of Internal Revenue, within sixty (60) days from
26 the effectivity of this Act, promulgate the necessary rules and regulations to faithfully
27 implement the intent and the provisions of this Act: *Provided*, That the failure of the
28 Secretary of Finance to promulgate the said rules and regulations shall not prevent
29 the implementation of this Act upon its effectivity.

30 Sec. 4. *Separability Clause.* – If any provision of this Act is subsequently
31 declared invalid or unconstitutional, other provisions hereof which are not affected
32 thereby shall remain in full force and effect.

1 Sec. 5. *Repealing Clause.* – All laws, decrees and orders or parts thereof
2 inconsistent with the provisions of this Act are hereby repealed, amended or modified
3 accordingly.

4 Sec. 6. *Effectivity Clause.* – This Act shall take effect fifteen (15) days after its
5 complete publication either in the *Official Gazette* or in at least one (1) newspaper of
6 general circulation.

Approved,