

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

NINETEENTH CONGRESS
Third Regular Session

House Bill No. **10874**



Introduced by Representatives **AURELIO "DONG" D. GONZALES, JR.**
and **JOEY SARTE SALCEDA**

AN ACT
INTRODUCING TAX PROVISIONS TO REPUBLIC ACT NO. 9707, OTHERWISE
KNOWN AS "AN ACT GRANTING THE CONVERGE INFORMATION AND
COMMUNICATIONS TECHNOLOGY SOLUTIONS, INC. A FRANCHISE TO
CONSTRUCT, INSTALL, ESTABLISH, OPERATE AND MAINTAIN
TELECOMMUNICATIONS SYSTEMS THROUGHOUT THE PHILIPPINES"
PURSUANT TO THE EQUALITY CLAUSE, AND FOR OTHER PURPOSES

EXPLANATORY NOTE

Section 17 of the Equality Clause of Republic Act No. 9707, or the franchise granted to Converge Technology Solutions, Inc., provides that:

Any advantage, favor, privilege, exemption or immunity granted under existing franchise, or may hereafter be granted, shall ipso facto become part of previously granted telecommunications franchises and shall be accorded immediately and unconditionally to the grantees of such franchises: Provided, however, That the foregoing shall neither apply to nor affect the provisions of telecommunications franchises concerning territory covered by the franchise, the life span of the franchise or the type of service authorized by the franchise.

Republic Act No. 10926, granting a franchise to Smart Communications, is the latest telecommunications franchise enacted by the Congress on April 21, 2017. However, there is dispute as to the applicability of the tax provisions of Republic Act No. 10926 on Republic Act No. 9707, despite the equality clause.

The Supreme Court, in a similar question of applicability of tax exemption with respect to the equality clause of franchises, stated in PLDT vs. City of Davao (2003) that "Tax

exemptions should be granted only by clear and unequivocal provision of law on the basis of language too plain to be mistaken¹.”

The Supreme Court expressly cited *Rochester R. Co. v. Rochester*, where:
“[T]he U.S. Supreme Court, after reviewing cases involving the effect of the transfer to one company of the powers and privileges of another in conferring a tax exemption possessed by the latter, held that a statute authorizing or directing the grant or transfer of the "privileges" of a corporation which enjoys immunity from taxation or regulation should not be interpreted as including that immunity.”

It is clear however, in Article VI, Section 28(1) of the 1987 Constitution that the rule of taxation shall be uniform and equitable. As such, Congress must be guided by the jurisprudentially established principle that “all subjects or objects of taxation, similarly situated, are to be treated alike.” Constrained by the general interpretation against mere presumption in tax privileges, Congress must enforce the equality clause through amendatory legislation expressly granting the tax provisions of its most recently enacted franchises to other franchises of similar character and situation.

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



AURELIO "DONG" D. GONZALES, JR,



JOEY SARTE SALCEDA

¹ Citing *Afisco Ins. Corp. v. Court of Appeals*, 302 SCRA 1 (1999).

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

SECTION 1. A new Section 15-A is hereby introduced after Section 15 and before Section 16 of Republic Act No. 9707, to read as follows:

"Sec. 15-A. *Tax Provisions.* - The grantee, its successors or assignees, shall be liable to pay the same taxes on their real estate, buildings and personal property, exclusive of this franchise, as other persons or corporations which are now or hereafter may be required by law to pay, except radio telecommunications and electronic communications equipment, machinery and spare parts needed in connection with the business of the grantee which shall be exempt from customs duties, tariffs and other taxes, as well as those declared exempt in this section. In addition thereto, the grantee, its successors or assignees, shall pay a value-added tax on all gross receipts of the business transacted under this franchise by the grantee, its successors or assignees, in the Philippines, in lieu of any and all taxes of any kind, nature or description levied, established or collected by an authority

whatsoever including, but not limited to, city, municipal, provincial or national, from which the grantee is hereby expressly exempted effective from the date of the effectivity of this Act: *Provided*, That the grantee, its successors or assignees, shall continue to be liable for income taxes payable under Title II of the National Internal Revenue Code pursuant to Section 2 of Executive Order No. 72 unless the latter enactment is amended or repealed, in which case the amendment or repeal shall be applicable thereto.

"The grantee shall file the return with and pay the tax due there onto the Commissioner of Internal Revenue or his duly authorized representative in accordance with the National Internal Revenue Code and the return shall be subject to audit by the Bureau of Internal Revenue."

Section 2. *Separability Clause.* - If any provision or part hereof is held invalid or unconstitutional, the remainder of the law or the provision not otherwise affected shall remain valid and subsisting.

Section 3. *Repealing Clause.* - Except as otherwise expressly provided in this Act, all other laws, decrees, executive orders, proclamations and administrative regulations or parts thereof inconsistent herewith are hereby repealed or modified accordingly.

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

Approved,