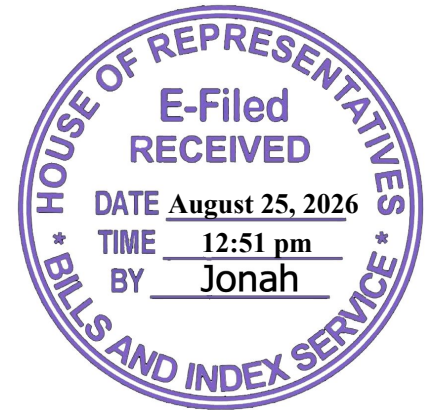




Republic of the Philippines
House of Representatives
Quezon City

TWENTIETH CONGRESS

Second Regular Session



House Bill No. 10941

Introduced by
APEC Party-List Representative Sergio C. Dagooc
PhilRECA Party-List Representative Presley C. De Jesus

EXPLANATORY NOTE

Electricity is a basic service and an essential input to household welfare, public services, and economic activity. However, electricity charges may rise sharply when international fuel prices increase, particularly where generation depends on coal, natural gas, diesel, fuel oil, or other fuel sources exposed to global markets, foreign-exchange movements, transport costs, and supply disruptions. When value-added tax is computed on the entire increased charge, the tax correspondingly magnifies the burden on households, micro, small and medium enterprises, and other electricity consumers.

In Small Power Utilities Group and other missionary, off-grid, and isolated-grid areas, electricity is frequently supplied by diesel and oil-fired generators. The cost and logistical difficulty of transporting fuel to remote areas may result in materially higher generation costs and may increase the need for subsidies and other support mechanisms. Fuel-related increases may therefore affect both the electricity bills of consumers and the fiscal burden associated with maintaining reliable electricity service.

Under Section 108 of the National Internal Revenue Code of 1997, as amended by Republic Act No. 9337, the sale of electricity by generation, transmission, and distribution companies is treated as a sale or exchange of services subject to value-added tax on gross receipts. The Bureau of Internal Revenue has likewise clarified that generation, transmission, distribution companies, and

electric cooperatives are subject to value-added tax on their sale of electricity. This bill retains the statutory value-added tax rate and instead limits the taxable base for specified electricity sales. It establishes a Fixed VAT Price Benchmark, expressed in Philippine pesos per kilowatt-hour, as the maximum VAT taxable base for covered electricity transactions. Value-added tax shall be computed on the lower of the actual gross receipts or selling price per kilowatt-hour and the applicable benchmark. The portion of the actual electricity charge exceeding the benchmark shall be excluded from the VAT taxable base, without being treated as a VAT-exempt or zero-rated transaction and without creating an additional entitlement to input-tax refund or credit.

This measure recognizes that generation technologies have different cost structures and exposure to fuel-price shocks. The Energy Regulatory Commission shall therefore determine, validate, review, and publish the benchmarks using objective and verifiable standards.

International energy-crisis measures demonstrate the policy validity of using targeted tax relief and price-stabilization tools to protect electricity consumers. The Fixed VAT Price Benchmark is a Philippine legislative adaptation of such recognized policy tools, designed to provide relief from extraordinary electricity-price increases while preserving a predictable and administratively workable VAT base for the National Government.

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


REP. SERGIO C. DAGOOC
APEC Party-List


REP. PRESLEY C. DE JESUS
PhilRECA Party-List



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AN ACT

ESTABLISHING A FIXED VALUE-ADDED TAX PRICE BENCHMARK FOR COVERED ELECTRICITY TRANSACTION AND EXPANDING THE VALUE-ADDED TAX EXEMPTION FOR FUELS USED IN POWER GENERATION, AMENDING FOR THE PURPOSE SECTIONS 108 AND 109 OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED

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

1 **SEC 1.** Section 108 of the National Internal Revenue Code of 1997, as
2 amended, is hereby further amended to read as follows:

3 **“SEC. 108. Value-added Tax on the Sale of Services, Including**
4 **Digital Services, and the Use or Lease of Properties. —**

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6 “The term ‘gross receipts’ means the total amount of money or its
7 equivalent representing the contract price, compensation, service fee, rental
8 or royalty, including the amount charged for materials supplied with the
9 services and deposits and advanced payments actually or constructively
10 received during the taxable quarter for the services performed or to be
11 performed for another person, excluding Value-Added Tax **AND AMOUNTS**
12 **EXPRESSLY EXCLUDED FROM THE VAT TAXABLE BASE UNDER**

1 **SECTION 108-C.**

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3 **SEC 2.** A new section designated as Section 108-C under Chapter I,
4 Title IV, of the National Internal Revenue Code of 1997, as amended, is hereby
5 inserted to read as follows:

6 **"SEC. 108-C. FIXED VAT PRICE BENCHMARK FOR COVERED**
7 **ELECTRICITY TRANSACTIONS. THE TERM 'FIXED VAT PRICE**
8 **BENCHMARK' REFERS TO THE MAXIMUM AMOUNT, EXPRESSED IN**
9 **PHILIPPINE PESOS PER KILOWATT-HOUR (P/KWH), WHICH SHALL**
10 **CONSTITUTE THE VAT TAXABLE BASE FOR A COVERED ELECTRICITY**
11 **SALE.**

12 **(1) COVERED ELECTRICITY SALES. — THIS SECTION SHALL**
13 **APPLY TO:**

14 **(A) THE SALE OR EXCHANGE OF ELECTRICITY BY A GENERATION**
15 **COMPANY TO A DISTRIBUTION UTILITY, ELECTRIC**
16 **COOPERATIVE, RETAIL ELECTRICITY SUPPLIER, CONTESTABLE**
17 **CUSTOMER, OR OTHER BUYER, WHEN THE CHARGE INCLUDES**
18 **OR IS AFFECTED BY THE COST OF FUEL OR ENERGY USED FOR**
19 **GENERATION; AND**

20 **(B) THE SALE OR EXCHANGE OF ELECTRICITY BY A**
21 **DISTRIBUTION UTILITY OR ELECTRIC COOPERATIVE TO CAPTIVE**
22 **CUSTOMERS, INCLUDING THE GENERATION, SUPPLY, AND**
23 **OTHER ELECTRICITY CHARGES PROPERLY ATTRIBUTABLE TO**
24 **THE ELECTRICITY SOLD TO SUCH CAPTIVE CUSTOMERS.**

25 **FOR PURPOSES OF THIS SECTION, THE TERM 'COVERED**
26 **ELECTRICITY SALE' REFERS ONLY TO THE SALE OR EXCHANGE OF**
27 **ELECTRICITY AND SHALL NOT INCLUDE UNRELATED GOODS,**
28 **PROPERTIES, SERVICES, PENALTIES, INTEREST, FINANCING**
29 **CHARGES, DONATIONS, SUBSIDIES, OR OTHER AMOUNTS NOT**
30 **PROPERLY ATTRIBUTABLE TO THE ELECTRICITY SOLD.**

31 **(2) VAT TAXABLE BASE. — NOTWITHSTANDING SECTION 108(A),**
32 **THE VALUE-ADDED TAX ON A COVERED ELECTRICITY SALE SHALL BE**
33 **COMPUTED ON THE LOWER OF:**

34 **(A) THE ACTUAL GROSS RECEIPTS OR SELLING PRICE**
35 **ATTRIBUTABLE TO THE ELECTRICITY SOLD, EXPRESSED IN**
36 **PESOS PER KILOWATT-HOUR; OR**

37 **(B) THE APPLICABLE FIXED VAT PRICE BENCHMARK.**

38 **"WHERE THE ACTUAL GROSS RECEIPTS OR SELLING PRICE PER**
39 **KILOWATT-HOUR EXCEEDS THE APPLICABLE FIXED VAT PRICE**

1 BENCHMARK, THE AMOUNT IN EXCESS THEREOF SHALL BE
2 EXCLUDED FROM THE VAT TAXABLE BASE FOR THE COVERED
3 ELECTRICITY SALE. SUCH EXCESS SHALL NOT BE TREATED AS A VAT-
4 EXEMPT TRANSACTION, A ZERO-RATED TRANSACTION, OR A
5 TRANSACTION SUBJECT TO A REDUCED VAT RATE.

6 THE EXCLUSION UNDER THIS SECTION SHALL APPLY ONLY TO
7 THE COMPUTATION OF OUTPUT VAT ON THE COVERED ELECTRICITY
8 SALE. IT SHALL NOT, BY ITSELF, ENTITLE THE SELLER OR PURCHASER
9 TO A REFUND, TAX CREDIT CERTIFICATE, OR ADDITIONAL INPUT-TAX
10 CREDIT ATTRIBUTABLE TO THE EXCLUDED AMOUNT, NOR SHALL IT
11 AFFECT THE ORDINARY RULES ON INPUT TAX UNDER SECTION 110
12 WITH RESPECT TO VAT ACTUALLY PAID ON PURCHASES AND
13 IMPORTATIONS.

14 (3) ROLE OF THE ENERGY REGULATORY COMMISSION (ERC). —
15 THE ENERGY REGULATORY COMMISSION (ERC) SHALL DETERMINE,
16 FIX, VALIDATE, REVIEW, AND PUBLISH THE FIXED VAT PRICE
17 BENCHMARKS.

18 THE ERC SHALL ESTABLISH THE FIXED VAT PRICE
19 BENCHMARKS BY GENERATION TECHNOLOGY, FUEL EXPOSURE, GRID
20 OR SERVICE AREA, AND CUSTOMER OR TRANSACTION CATEGORY
21 WHEN SUCH DIFFERENTIATION IS NECESSARY TO ACHIEVE
22 UNIFORMITY, EQUITY, AND PROTECTION OF CONSUMERS.

23 THE ERC SHALL NOT DETERMINE A BENCHMARK SOLELY ON
24 THE BASIS OF THE IDENTITY OF A TAXPAYER, CUSTOMER, OR
25 ELECTRIC-POWER INDUSTRY PARTICIPANT, OR THE AMOUNT OF
26 REVENUE SOUGHT TO BE COLLECTED. THE METHODOLOGY AND
27 BENCHMARKS SHALL BE UNIFORMLY APPLIED TO ALL SIMILARLY
28 SITUATED COVERED ELECTRICITY TRANSACTIONS.

29 **SEC 3. Determination and Publication of Fixed VAT Price**
30 **Benchmark.** — Within one hundred eighty (180) days from the effectivity of
31 this Act, the ERC shall, after due notice and public consultation, issue and
32 publish the initial fixed VAT price benchmarks.

33 The ERC shall review and publish the applicable fixed VAT price
34 benchmarks at least every six (6) months. The ERC may undertake a quarterly
35 review when there is a material movement in fuel prices, foreign-exchange
36 rates, electricity-market prices, or other relevant cost factors.

37 No revised benchmark shall apply retroactively to a billing period that
38 has already ended. A revised benchmark shall take effect only after
39 publication in the Official Gazette or on the official website of the ERC.

40 Any material modification in the benchmark methodology, coverage,

1 classification, or calculation shall be preceded by public consultation. The
2 ERC shall publish a written explanation of the data, assumptions, criteria,
3 and projected consumer and revenue effects supporting the modification.

4 **SEC 4. Submission of Records and Other Relevant Information.** —

5 Covered taxpayers shall maintain records sufficient to establish the actual
6 electricity charge, quantity sold, applicable benchmark, VAT taxable base,
7 VAT computed, amount excluded from the VAT taxable base, generation
8 technology, fuel source or energy source, and allocation of charges among
9 generation, transmission, distribution, supply, and other components.

10 Covered taxpayers shall submit periodic information, data,
11 certifications, and supporting documents to the ERC for purposes of
12 benchmark determination, validation, review, and regulatory monitoring, and
13 to the BIR for purposes of VAT administration, audit, and assessment, as
14 prescribed by the implementing rules and regulations.

15 The ERC may require generation companies, distribution utilities,
16 electric cooperatives, suppliers, transmission providers, market operators,
17 and other relevant electric-power industry participants to submit technical,
18 financial, operational, market, contractual, and billing information
19 reasonably necessary to determine and validate the benchmarks.

20 The BIR may obtain and use such benchmark-related information from
21 the ERC in the exercise of its authority under this Code.

22 A covered taxpayer that makes a false or misleading disclosure,
23 misdeclares the quantity or price of electricity sold, applies an incorrect
24 benchmark, improperly classifies a transaction as a covered electricity sale,
25 or submits false information to the ERC or BIR shall be liable for the correct
26 VAT, including applicable surcharges, interest, and penalties, without
27 prejudice to administrative, civil, criminal, or regulatory sanctions under this
28 Code, and other applicable laws.

29 **SEC 5. Tax Audit and Assessment.** — The ERC shall have primary

30 authority to determine, validate, and verify the technical, regulatory,
31 operational, and electricity-pricing data used in fixing and applying the fixed
32 VAT price benchmark.

33 For this purpose, the ERC may examine records and require the
34 submission of contracts, invoices, fuel-cost data, generation and dispatch
35 data, WESM settlement data, foreign-exchange data, billing records, and
36 other information necessary to determine whether the correct benchmark has
37 been applied to a covered electricity sale.

38 The BIR shall have exclusive authority to audit the taxpayer's VAT
39 returns, invoices, books of accounts, and other tax records; determine the

1 correct VAT taxable base using the applicable benchmark determined and
2 published by the ERC; and assess and collect any deficiency VAT, surcharge,
3 interest, and penalty under this Code.

4 In the conduct of a VAT audit or assessment involving this Section, the
5 BIR shall rely on the applicable fixed VAT price benchmark issued by the ERC.

6 Where a technical issue arises as to the proper technology
7 classification, fuel exposure, billing component, energy quantity, applicable
8 benchmark category, or other electricity-regulatory matter, the BIR shall refer
9 the matter to the ERC for technical determination. The ERC's determination
10 on such technical and regulatory matter shall be controlling for purposes of
11 the VAT assessment, without prejudice to the BIR's exclusive authority to
12 determine and assess the resulting tax liability under this Code.

13 **SEC 6. Inter-Agency Technical Committee.** — The Department of
14 Finance, Bureau of Internal Revenue, Department of Energy, and Energy
15 Regulatory Commission shall jointly establish an Inter-Agency Technical
16 Committee to monitor the implementation of section 108-C of the National
17 Internal Revenue Code, as introduced by this Act.

18 **SEC 7.** Section 109 of the National Internal Revenue Code of 1997, as
19 amended, is hereby further amended to read as follows:

20 "SEC. 109. *Exempt Transactions.* –

21 "(1) Subject to the provisions of Subsection (2) hereof, the following
22 transactions shall be exempt from the value-added tax:

23 "x x x

24 "(DD) **SALE OR IMPORTATION OF FOSSIL FUEL PRODUCTS,**
25 **INCLUDING COAL, PETROLEUM OILS, AND NATURAL GAS, IN**
26 **WHATEVER FORM OR STATE, WHICH ARE PROVEN TO BE USED**
27 **PRIMARILY FOR THE GENERATION OF ELECTRICITY IN THE**
28 **PHILIPPINES:**

29 **"(i) PROVIDED, THAT THE PURCHASER OR IMPORTER IS A**
30 **GENERATION COMPANY, ELECTRIC COOPERATIVE,**
31 **QUALIFIED THIRD-PARTY, OR OTHER ENTITY DULY**
32 **AUTHORIZED BY LAW OR BY THE ENERGY REGULATORY**
33 **COMMISSION (ERC) OR THE DEPARTMENT OF ENERGY**
34 **(DOE) TO ENGAGE IN THE GENERATION OF ELECTRICITY IN**
35 **THE PHILIPPINES;**

36 **"PROVIDED FURTHER, THAT THE FOSSIL FUEL PRODUCTS**
37 **COVERED BY THE SALE OR IMPORTATION ARE PRIMARILY**
38 **INTENDED FOR, AND ARE ACTUALLY UTILIZED IN, THE**
39 **GENERATION OF ELECTRICITY IN THE PHILIPPINES;**

1 “(EE) SALE OR IMPORTATION OF DIESEL, HEAVY FUEL OIL, AND
2 OTHER OIL-BASED FUELS TO BE USED EXCLUSIVELY FOR POWER
3 GENERATION IN SMALL POWER UTILITIES GROUP (SPUG) AREAS,
4 MISSIONARY ELECTRIFICATION AREAS, AND OTHER OFF-GRID
5 OR ISOLATED GRID AREAS AS MAY BE DULY IDENTIFIED UNDER
6 THE MISSIONARY ELECTRIFICATION PROGRAM OF THE
7 GOVERNMENT:

8 “PROVIDED, THAT THE PURCHASER OR IMPORTER IS THE
9 NATIONAL POWER CORPORATION – SMALL POWER
10 UTILITIES GROUP (NPC-SPUG), GENERATION COMPANY,
11 ELECTRIC COOPERATIVE, QUALIFIED THIRD-PARTY, OR
12 OTHER ENTITY DULY AUTHORIZED BY LAW OR BY THE ERC
13 TO PERFORM THE MANDATE OF MISSIONARY
14 ELECTRIFICATION;

15 “PROVIDED FURTHER, THAT ANY PERSON WHO DIVERTS
16 OR CAUSES THE DIVERSION OF SUCH FUELS FOR USE
17 OTHER THAN POWER GENERATION IN SPUG, MISSIONARY
18 ELECTRIFICATION, OR OFF-GRID AREAS SHALL BE LIABLE
19 FOR THE VAT THAT SHOULD HAVE BEEN PAID, INCLUDING
20 SURCHARGES, INTEREST, AND PENALTIES, WITHOUT
21 PREJUDICE TO THE CANCELLATION OR SUSPENSION OF
22 LICENSES, AUTHORITIES, OR FRANCHISES AND OTHER
23 SANCTIONS UNDER THIS CODE, THE ELECTRIC POWER
24 INDUSTRY REFORM ACT (EPIRA), AND OTHER APPLICABLE
25 LAWS.

26 **SEC. 8. Prohibited Acts.** No VAT exemption shall apply where the fossil
27 fuel products are subsequently diverted, sold, or transferred for use other
28 than the generation of electricity, in which case the appropriate VAT, plus
29 surcharges, interest, and penalties, shall be imposed on the person
30 responsible for such diversion, without prejudice to other applicable
31 sanctions and penalties under this Code or other applicable laws.

32 **SEC. 9. Implementing Rules and Regulations.** The Department of
33 Finance (DOF), upon the recommendation of the Bureau of Internal Revenue,
34 and in consultation with the Department of Energy (DOE), the National Power
35 Corporation (NPC), the National Electrification Administration (NEA), the
36 Energy Regulatory Commission (ERC), and other concerned agencies and
37 stakeholders, shall issue the implementing rules and regulations within one
38 hundred twenty (120) days from the effectivity of this Act.

39 **SEC. 10. Oversight Committee.** – Upon the effectivity of this Act, the
40 Joint Congressional Energy Commission established under Republic Act No.
41 9136, as amended by Republic Act No. 11285, shall exercise oversight powers

1 over the implementation of this Act.

2 **SEC 11. Separability Clause.** If any part or provision of this Act shall
3 be declared unconstitutional, the other parts or provisions hereof which are
4 not affected thereby, shall continue in full force and effect.

5 **SEC 12. Repealing Clause.** All laws, acts, decrees, executive orders,
6 issuances and rules and regulations or parts thereof which are contrary to
7 and inconsistent with any provisions of this Act are hereby repealed, amended
8 or modified accordingly.

9 **SEC 13. Effectivity.** This Act shall take effect fifteen (15) days after its
10 complete publication in the Official Gazette or in two (2) newspapers of general
11 circulation.

12 *Approved,*