

HOUSE OF REPRESENTATIVES

HOUSE BILL No. _____

EXPLANATORY NOTE

This bill proposes to introduce further amendments to the National Internal Revenue Code of 1997, as amended, in order to safeguard the rights of taxpayers and to treat taxpayers, who dutifully pay their share to fund our government, with utmost fairness, justice and good faith. It has been observed that the Department of Finance and/or the Bureau of Internal Revenue have released numerous issuances which “re-interpreted” certain provisions of the Tax Code, resulting in unauthorized administrative legislation which, apart from undermining the rule of law are unjustly onerous and oppressive to taxpayers. These administrative legislations mark a significant departure from long established best practices which have guided both the taxpayers and the BIR in the interpretation and implementation of tax laws. According to affected sectors, the administrative legislation of the DOF or the BIR has deleterious effects on businesses, and is a disincentive for local and foreign investors who are unable to rely on a fair, reasonable, consistent, and stable tax system.

To address these pressing concerns of businesses, it is imperative to urgently enact the following amendments to the pertinent provisions of the National Internal Revenue Code of 1997, as amended.

Amendment	Comment
<p>SECTION 1. Section 4 is hereby amended to read as follows:</p> <p>"SECTION 4. Power of the Commissioner to Interpret Tax Laws and to Decide Tax Cases. —The power to interpret the provisions of this Code and other tax laws shall be under the exclusive and original jurisdiction of the Commissioner, subject to review by the Secretary of Finance; PROVIDED, THAT, THE POWER OF THE COMMISSIONER TO INTERPRET TAX LAWS SHALL IN NO CASE ENCROACH UPON THE EXCLUSIVE POWER OF THE SECRETARY OF FINANCE TO PROMULGATE RULES AND REGULATIONS UNDER SECTION 244.</p> <p>EXCEPT WHEN THIS CODE OTHERWISE EXPRESSLY PROVIDES, ANY CIRCULAR, ORDER, MEMORANDUM OR SIMILAR ISSUANCE OF GENERAL APPLICATION MADE BY THE COMMISSIONER PURSUANT TO HIS EXCLUSIVE AND ORIGINAL POWER TO INTERPRET TAX LAWS UNDER THIS SECTION SHALL NOT BE OPERATIVE UNTIL AFTER DUE PUBLIC NOTICE AND HEARING AND PUBLICATION IN ACCORDANCE WITH EXISTING LAWS ARE STRICTLY OBSERVED.</p> <p>"The power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges,</p>	<p>This amendment will ensure that proper consultation and due process are observed by the Commissioner in the exercise of his power to interpret tax laws.</p>

<p>penalties imposed in relation thereto, or other matters arising under this Code or other laws or portions thereof administered by the Bureau of Internal Revenue is vested in the Commissioner, subject to the exclusive appellate jurisdiction of the Court of Tax Appeals.”</p>	
<p>SECTION 2. Section 34(K) is hereby amended to read as follows:</p> <p>“(K) Additional Requirements for Deductibility of Certain Payments – Any amount paid or payable which is otherwise deductible from, or taken into account in computing gross income or for which depreciation or amortization may be allowed under this Section, shall be allowed as a deduction only if it is shown that the tax required to be deducted and withheld therefrom has been paid to the Bureau of Internal Revenue in accordance with this Section, Sections 58 and 81 of this Code; <u>PROVIDED, HOWEVER, THAT A PAYMENT SHALL NEVERTHELESS BE ALLOWED AS DEDUCTION IF THE WITHHOLDING TAX THEREON IS SUBSEQUENTLY PAID BY THE WITHHOLDING AGENT, EITHER AT THE TIME OF PAYMENT OF THE INCOME OR DURING THE TAX INVESTIGATION.</u></p> <p><u>IN NO CASE SHALL AN EXPENSE THAT IS OTHERWISE ALLOWABLE AS DEDUCTION BE DISALLOWED FOR THE FAILURE OF THE WITHHOLDING AGENT TO COMPLY WITH REPORTORIAL REQUIREMENTS PRESCRIBED BY THE COMMISSIONER.</u></p>	<p>This is taken from Sec. 2.58.5, RR No. 2-98. This effectively revokes RR. No. 12-2013, and codifies the rule that deductions should be allowed in cases of non-withholding or under-withholding of the tax, provided the withholding agent pays the tax.</p> <p>This is in response to RR No. 1-2014, which provides that failure of withholding agents to submit the alphalist of payees under the prescribed format will result in non-deductibility of an otherwise valid expense.</p>
<p>SECTION 3. Section 57(B) is hereby amended to read as follows:</p> <p>“(B) Withholding of Creditable Tax at Source. — The Secretary of Finance may, upon the recommendation of the Commissioner, require the withholding of a tax AT THE TIME OF ACTUAL OR CONSTRUCTIVE PAYMENT on the items of income SUBJECT TO TAX UNDER SECTIONS 24(A), 27(A)(1), 28(A)(1) payable to natural or juridical persons, residing in the Philippines, by payor-corporation/persons as provided for by law, at the rate of not less than one percent (1%) but not more than [thirty-two percent (32%)] fifteen per cent (15%) thereof, which shall be credited against the income tax liability of the taxpayer for the taxable year WHEN THE WITHHOLDING OF THE TAX WAS MADE AS EVIDENCED BY THE CERTIFICATE ISSUED BY THE WITHHOLDING AGENT. <u>PROVIDED, THAT EFFECTIVE</u></p>	<p>Only income subject to the normal tax should be subject to withholding tax to avoid excess withholding tax.</p> <p>The creditable withholding tax rate should be reduced to a reasonable level because it is based on gross income. Taxpayers end up perennially in excess tax credit position because the normal income tax is based on gross income less deductions.</p> <p>Withholding taxes remitted to the BIR by the withholding agents are often</p>

<p>JANUARY 1, 2016, AN INCOME EARNER OR RECIPIENT SHALL HAVE THE OPTION TO WITHHOLD AND REMIT THE CREDITABLE TAX ON HIS OWN INCOME. FOR THIS PURPOSE, THE INCOME EARNER OR RECIPIENT WHO OPTED FOR SELF -WITHHOLDING SHALL BE ISSUED A CERTIFICATE OF SELF WITHHOLDING IN ACCORDANCE WITH THE RULES AND REGULATIONS TO BE ISSUED BY THE SECRETARY OF FINANCE UPON RECOMMENDATION OF THE COMMISSIONER.</p>	<p>disallowed as a tax credit through no fault of the income recipient/ earner. For example, the BIR disallows the tax credit if there is a timing difference between the withholding of the tax and reporting of the income or the collection of the physical certificates of creditable withholding tax. To avoid unjust enrichment on the part of the government, i.e., disallowance of a valid tax credit by mere technicality, the income earner/recipient should be given the option to self-withhold to ensure that any tax paid in advance to the government through the withholding tax system can be credited against income tax liability.</p>
<p>SECTION 4. Section 58(B) is amended to read as follows:</p> <p>“(B) Statement of Income Payments Made and Taxes Withheld. — Every withholding agent required to deduct and withhold taxes under Section 57 shall furnish each recipient, in respect to his or its receipts during the calendar quarter or year, a written statement showing the income or other payments made by the withholding agent during such quarter or year, and the amount of the tax deducted and withheld therefrom, simultaneously upon payment at the request of the payee, but not later than the twentieth (20th) day following the close of the quarter in the case of corporate payee, or not later than March 1 of the following year in the case of individual payee for creditable withholding taxes. For final withholding taxes, the statement should be given to the payee on or before January 31 of the succeeding year.</p> <p>IN THE CASE OF AN INCOME EARNER OR RECIPIENT WHO OPTED TO SELF-WITHHOLD THE TAX UNDER SECTION 57 (B), THE WITHHOLDING TAX RETURN SHOWING THE INCOME AND THE TAX REMITTED AND WITHHELD THEREFROM SHALL BE SUFFICIENT SUBSTANTIATION OF THE TAX CREDIT.”</p>	<p>The amendment is to define the documentary support for claim for tax credit in case the taxpayer opts to self-withhold under Section 57(B).</p>
<p>SECTION 5. Section 100 is hereby amended to read as follows:</p> <p>"SECTION 100. Transfer for Less Than Adequate and Full Consideration. — Where property, other than real property referred to in Section 24(D) AND</p>	<p>The purpose of this amendment is to exclude bona fide or ordinary commercial transactions</p>

<p>SHARES OF STOCK REFERRED TO IN SECTIONS 24(C), 25(A)(3), 27(D)(2), 28(A)(7)(C) AND 28(B)(5)(C), is transferred for less than an adequate and full consideration in money or money's worth, then the amount by which the fair market value of the property exceeded the value of the consideration shall, for the purpose of the tax imposed by this Chapter, be deemed a gift, and shall be included in computing the amount of gifts made during the calendar year. PROVIDED, HOWEVER, THAT A BONA FIDE SALE, EXCHANGE OR OTHER TRANSFER OF PROPERTY MADE IN THE COURSE OF BUSINESS CANNOT BE DEEMED A GIFT REGARDLESS OF THE AMOUNT OF CONSIDERATION."</p>	<p>where there is no donative intent from the coverage of the exorbitant 30% donor's tax.</p>
<p>SECTION 6. Section 112(C) is hereby amended to read as follows:</p> <p>(C) Period within which Refund or Tax Credit of Input Taxes shall be Made. – In proper cases, the Commissioner shall grant a refund or issue a tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsection (A) hereof. IF THE COMMISSIONER FAILS TO GRANT A REFUND OR ISSUE A TAX CREDIT CERTIFICATE WITHIN THE PERIOD PRESCRIBED HEREIN, THE CLAIM SHALL BE SUBJECT TO INTEREST AT THE RATE PRESCRIBED UNDER SECTION 249, WHICH INTEREST SHALL ACCRUE FROM THE EXPIRATION OF THE ONE HUNDRED TWENTY (120) DAY PERIOD UNTIL THE FULL PAYMENT OF THE REFUND OR ISSUANCE OF THE TAX CREDIT CERTIFICATE TO THE TAXPAYER.</p> <p>NOTWITHSTANDING THE LAPSE OF THE TWO (2) YEAR PERIOD PRESCRIBED UNDER SECTION 204(C), [I]n case of full or partial denial of the claim for tax refund or tax credit AT ANY TIME, or the failure on the part of the Commissioner to act on the application within the period ONE HUNDRED TWENTY (120)- PERIOD prescribed above, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day-period, appeal EITHER the decision or the unacted claim with the Court of Tax Appeals.</p>	<p>This amendment will penalize the BIR for not acting on the claims for refund and codifies the period for judicial appeal in refund cases.</p>
<p>SECTION 7. Section 204 (C) is hereby amended to read as follows:</p> <p>"SEC. 204. Authority of the Commissioner to</p>	

<p>Compromise, Abate and Refund or Credit Taxes. The Commissioner may -</p> <p>xxx xxx</p> <p>(C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty: Provided, however, That a return filed showing an overpayment shall be considered as a written claim for credit or refund.</p> <p>IF A REFUND OR TAX CREDIT CERTIFICATE FOR ERRONEOUSLY PAID TAXES IS NOT PAID OR ISSUED WITHIN THE ONE HUNDRED TWENTY (120) DAYS FROM FILING OF THE ADMINISTRATIVE CLAIM, THE CLAIM FOR REFUND SHALL BE SUBJECT TO THE INTEREST AT THE RATE PRESCRIBED UNDER SECTION 249, WHICH INTEREST SHALL ACCRUE FROM THE EXPIRATION OF THE ONE HUNDRED TWENTY (120) DAY PERIOD UNTIL THE FULL PAYMENT OF THE REFUND OR ISSUANCE OF THE TAX CREDIT CERTIFICATE TO THE TAXPAYER.</p> <p>xxx...”</p>	
<p>SECTION 8. Section 228 is hereby amended to read as follows:</p> <p>“SEC. 228. Protesting of Assessment. – When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings AND INVITE THE TAXPAYER TO AN INFORMAL CONFERENCE IN ORDER TO AFFORD THE TAXPAYER WITH AN OPPORTUNITY TO PRESENT HIS SIDE OF THE CASE.</p> <p>IF THERE EXISTS SUFFICIENT BASIS TO ASSESS THE TAXPAYER FOR ANY DEFICIENCY TAX, A PRELIMINARY ASSESSMENT NOTICE SHOWING IN DETAIL, THE FACTS AND THE LAW, RULES AND REGULATIONS, OR JURISPRUDENCE ON</p>	<p>This codifies the procedures on due process as provided under Revenue Regulations No. 12-99.</p>

WHICH THE PROPOSED ASSESSMENT IS BASED SHALL BE SERVED ON THE TAXPAYER; OTHERWISE THE PRELIMINARY ASSESSMENT SHALL BE VOID. Provided, however, That a [preassessment notice] PRELIMINARY ASSESSMENT NOTICE shall not be required in the following cases:

- (a) When the finding for any deficiency tax is the result of mathematical error in the computation of the tax as appearing on the fact of the return; or
- (b) When a discrepancy has been determined between the tax withheld and the amount actually remitted by the withholding agent; or
- (c) When a taxpayer who opted to claim a refund or tax credit of excess creditable withholding tax for a taxable period was determined to have carried over and automatically applied the same amount claimed against the estimated tax liabilities for the taxable quarter or quarters of the succeeding taxable year; or
- (d) When the excise tax due on exciseable articles has not been paid; or
- (e) When the article locally purchased or imported by an exempt person, such as, but not limited to, vehicles, capital equipment, machineries and spare parts, has been sold, traded or transferred to non-exempt persons.

WITHIN THIRTY (30) DAYS FROM RECEIPT OF THE PRELIMINARY ASSESSMENT NOTICE, THE TAXPAYER SHALL BE REQUIRED TO RESPOND TO THE PRELIMINARY ASSESSMENT NOTICE WHICH THE COMMISSIONER OR HIS DULY AUTHORIZED REPRESENTATIVE SHALL CONSIDER IN EARNEST PRIOR TO ISSUING THE FINAL ASSESSMENT. IF THE TAXPAYER FAILS TO RESPOND, THE COMMISSIONER OR HIS DULY AUTHORIZED REPRESENTATIVE SHALL ISSUE A FINAL ASSESSMENT BASED ON HIS FINDINGS.

The taxpayer shall be informed in writing of the

This will rectify RR 18-2013 which dispenses with the Preliminary Assessment Notice.

This adopts Rule 14 of the Rules of Court on service of summons to ensure that the due process rights of taxpayers are protected.

<p>law and the facts on which the FINAL assessment is made; otherwise, the FINAL assessment shall be void.</p> <p>THE PRELIMINARY OR FINAL ASSESSMENT SHALL BE SERVED ON THE TAXPAYER AT HIS REGISTERED ADDRESS AND, IN THE CASE OF JURIDICAL PERSONS, ON THE PRESIDENT, MANAGING PARTNER, GENERAL MANAGER, CORPORATE SECRETARY, TREASURER OR CHIEF FINANCIAL OFFICER; OTHERWISE, THE ISSUANCE OF THE ASSESSMENT SHALL BE INEFFECTIVE.</p> <p>Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.</p> <p>If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of one hundred eighty (180)-day period, AS THE CASE MAY BE; otherwise, the decision shall become final, executory and demandable.”</p>	<p>This codifies the doctrine in RCBC and Lascona.</p>
<p>SECTION 9. Section 235 is hereby amended to read as follows:</p> <p>"SECTION 235. Preservation of Books of Accounts and Other Accounting Records. — All the books of accounts, including the subsidiary books and other accounting records of corporations, partnerships, or persons, shall be preserved by them for a period beginning from the last entry in each book until the last day OF THE THREE (3) – YEAR PERIOD prescribed by Section 203 within which the Commissioner is authorized to make an assessment. The said books and records shall be subject to examination and inspection by internal revenue officers: Provided, That for income tax purposes, such examination and inspection shall be made only once in a taxable year, except in the following cases:</p> <p>"(a) Fraud, irregularity or mistakes, as determined by the Commissioner;</p> <p>"(b) The taxpayer requests reinvestigation;</p> <p>"(c) Verification of compliance with withholding tax laws</p>	<p>This amendment supersedes the requirement of RR 17-2013 extending the 3 year period to preserve books of accounts to 10 years. The prescriptive period for fraud assessment is the exception rather than the rule so honest taxpayers should not be burdened with the 10 year retention period.</p>

<p>and regulations;</p> <p>"(d) Verification of capital gains tax liabilities; and</p> <p>"(e) In the exercise of the Commissioner's power under Section 5(B) to obtain information from other persons in which case, another or separate examination and inspection may be made. Examination and inspection of books of accounts and other accounting records shall be done in the taxpayer's office or place of business or in the office of the Bureau of Internal Revenue. All corporations, partnerships or persons that retire from business shall, within ten (10) days from the date of retirement or within such period of time as may be allowed by the Commissioner in special cases, submit their books of accounts, including the subsidiary books and other accounting records to the Commissioner or any of his deputies for examination, after which they shall be returned. Corporations and partnerships contemplating dissolution must notify the Commissioner and shall not be dissolved until cleared of any tax liability.</p> <p>"Any provision of existing general or special law to the contrary notwithstanding, the books of accounts and other pertinent records of tax-exempt organizations or grantees of tax incentives shall be subject to examination by the Bureau of Internal Revenue for purposes of ascertaining compliance with the conditions under which they have been granted tax exemptions or tax incentives, and their tax liability, if any.</p>	
<p>SECTION 10. Section 244 is hereby amended to read as follows:</p> <p>"SECTION 244. Authority of Secretary of Finance to Promulgate Rules and Regulations. — The Secretary of Finance, upon recommendation of the Commissioner, shall promulgate all needful rules and regulations for the effective enforcement of the provisions of this Code; PROVIDED THAT ANY SUCH RULES AND REGULATIONS SHALL NOT BE OPERATIVE UNTIL THE REQUIREMENTS OF PUBLIC NOTICE AND HEARING AND PUBLICATION IN ACCORDANCE WITH EXISTING LAWS ARE STRICTLY OBSERVED.</p>	<p>This amendment will provide without doubt the need for public notice/hearing and publication for the issuance of new rules and regulations.</p>
<p>SECTION 11. Section 249 is hereby amended to read as follows:</p> <p>SECTION 249. Interest. —</p> <p>"(A) In General. — There shall be assessed and collected on any unpaid amount of tax, interest at the rate of twenty percent (20%) per annum, or such [higher] rate as may be prescribed by rules and</p>	<p>This amendment will clarify the established jurisprudence that interest is not penal but only compensatory in nature which has been impliedly abandoned in recent decisions.</p>

<p>regulations UNDER SUBSECTION (E) HEREOF, from the date prescribed for payment until the amount is fully paid; PROVIDED, THAT IN NO CASE SHALL THE DEFICIENCY AND THE DELINQUENCY INTEREST PRESCRIBED UNDER SUBSECTION (B) AND (C) HEREOF, BE IMPOSED SIMULTANEOUSLY.</p> <p>"(B) Deficiency Interest. — Any deficiency in the tax due, as the term is defined in this Code, shall be subject to the interest prescribed in Subsection (A) hereof, which interest shall be assessed and collected from the date prescribed for its payment until the full payment thereof.</p> <p>"(C) Delinquency Interest. — In case of failure to pay:</p> <p>"(1) The amount of the tax due on any return required to be filed, or</p> <p>"(2) The amount of the tax due for which no return is required, or</p> <p>"(3) A deficiency tax, or any surcharge or interest thereon on the due date appearing in the notice and demand of the Commissioner, there shall be assessed and collected on the unpaid amount, interest at the rate prescribed in Subsection (A) hereof until the amount is fully paid, which interest shall form part of the tax.</p> <p>"(D) Interest on Extended Payment. — If any person required to pay the tax is qualified and elects to pay the tax on installment under the provisions of this Code, but fails to pay the tax or any installment hereof, or any part of such amount or installment on or before the date prescribed for its payment, or where the Commissioner has authorized an extension of time within which to pay a tax or a deficiency tax or any part thereof, there shall be assessed and collected interest at the rate hereinabove prescribed on the tax or deficiency tax or any part thereof unpaid from the date of notice and demand until it is paid.</p> <p>(E) ADJUSTMENT OF RATE. - THE SECRETARY OF FINANCE, SHALL ADJUST THE RATE OF INTEREST PRESCRIBED UNDER SUBSECTION (A) HEREOF EFFECTIVE JANUARY 1, 2016 AND EVERY YEAR THEREAFTER IN ORDER TO FIX THE RATE OF INTEREST ANNUALLY AT NOT MORE THAN DOUBLE THE RATE OF INTEREST ON TREASURY BILLS OF ONE YEAR TENOR [OR SIMILAR MARKET BENCHMARK] AT THE TIME OF ADJUSTMENT."</p>	