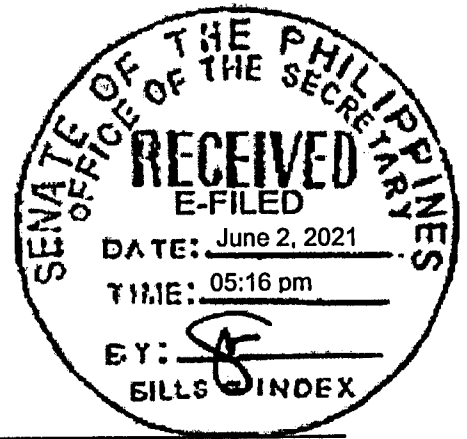


EIGHTEENTH CONGRESS OF THE)
REPUBLIC OF THE PHILIPPINES)
Second Regular Session)



SENATE
S. B. No. 2272

Introduced by Senator SONNY ANGARA

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

EXPLANATORY NOTE

An effective tax administration system is one that is clear and unambiguous and can easily be followed by both the tax office and the taxpayer. Any ambiguity in our tax laws then should be addressed so that correct taxes may be collected from proper taxpayers.

As currently worded, Section 27(B) of the National Internal Revenue Code (NIRC) creates an ambiguity as to whom the preferential tax rates apply to. Specifically, as to the qualifications, i.e. proprietary and nonprofit. The first sentence of Section 27(B), as amended, provides:

"(B) Proprietary Educational Institutions and Hospitals. – 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. x x x."

To add to the confusion, the tax office recently issued Revenue Regulation (RR) No. 5-2021 which interpreted the provision to mean that an educational institution should both be proprietary and nonprofit in order to qualify for the preferential tax rate. Being proprietary and nonprofit is a legal impossibility, as in its general sense, proprietary means privately owned and managed and run as a profit-making organization while nonprofit is one not conducted or maintained for the purpose of making a profit. Thus, instead of shoring up proprietary educational institutions during the pandemic with the much needed reduction in the income tax rate from 10% to 1% sought under the CREATE Act, this erroneous regulation would instead subject them to the regular rate of 25%.

Contrary to the clear mandates of both the Constitution and the NIRC as recently amended by the CREATE Law, RR No. 5-2021 limits the application of the preferential tax treatment to proprietary educational institutions that are "non-profit." Art. XIV, Sec. 4(3), of the Constitution provides:

"(3) 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."

Clearly, the reference to proprietary educational institutions above refers to for-profit educational institutions which are organized as stock corporations as the Constitution allows "restrictions on dividends and provisions for reinvestment" as part of the limitations for the grant to them of preferential tax treatment.

This confusing and erroneous tax regulation, which contradicts the language and the intention of both the Constitution and our tax laws, especially during this deep economic recession, will penalize, marginalize and discriminate against proprietary educational institutions with unfeasibly higher taxes that may force financially distressed schools to close down and trigger a radiating wave of economic disruption

that will hit not just teachers and school personnel, but also the extensive network of linked small and medium businesses and livelihood activities of the host communities.

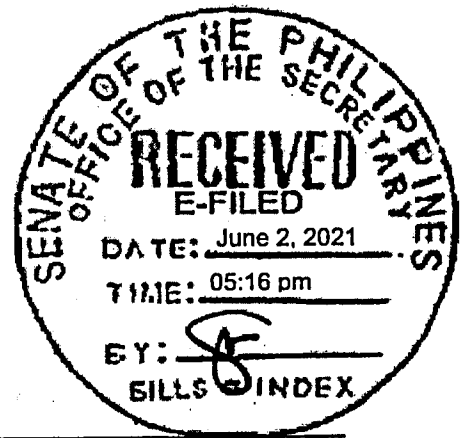
To remedy this apparent ambiguity and protect the Constitutional mandate of incentivizing proprietary educational institutions through a law passed by Congress, this measure seeks to amend Sec. 27(B) to clearly indicate that the preferential tax rate shall apply to: a. all proprietary educational institutions, including those that are stock and for profit; and b. nonprofit hospitals.

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



SONNY ANGARA

EIGHTEENTH CONGRESS OF THE)
REPUBLIC OF THE PHILIPPINES)
Second Regular Session)



SENATE
S. B. No. 2272

Introduced by Senator SONNY ANGARA

**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:

- 1 SECTION 1. Section 27 (B) of the National Internal Revenue Code of 1997, as
2 amended, is hereby further amended to read as follows:
3 "Sec. 27. Rates of Income Tax on Domestic Corporations. –
4 "B) [~~Proprietary Educational Institutions and Hospitals.~~ Proprietary
5 educational institutions and hospitals which are nonprofit] **HOSPITALS WHICH ARE**
6 **NONPROFIT, AND PROPRIETARY EDUCATIONAL INSTITUTIONS** shall pay a
7 tax of ten percent (10%) on their taxable income except those covered by Subsection
8 (D) hereof: Provided, That beginning July 1, 2020 until June 30, 2023, the tax rate
9 herein imposed shall be one percent (1%): Provided, further, That if the gross income
10 from 'unrelated trade, business or other activity' exceeds fifty percent (50%) of the
11 total gross income derived by such educational institutions or hospitals from all
12 sources, the tax prescribed in Subsection (A) hereof shall be imposed on the entire
13 taxable income. For purposes of this Subsection, the term 'unrelated trade, business
14 or other activity' means any trade, business or other activity, the conduct of which is
15 not substantially related to the exercise or performance by such educational institution
16 or hospital of its primary purpose or function. 'Proprietary' means a private hospital,
17 or any private school maintained and administered by private individuals or groups
18 with an issued permit to operate from the Department of Education (DepEd) or the
19 Commission on Higher Education (CHED), or the Technical Education and Skills

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

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

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

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

12 **Sec. 5. *Effectivity.*** – This Act shall take effect fifteen (15) days after its
13 publication in the Official Gazette or in a newspaper of general circulation.

Approved,