

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

Eighteenth Congress
First Regular Session

HOUSE BILL NO. 1612



Introduced by Honorable Neptali M. Gonzales II

EXPLANATORY NOTE

The fundamental constitutional policy of education is that it is the duty of the State to make quality education available while the same time affordable to as large a segment of the population as possible. Further, it is the fundamental democratic policy that students should be able to go to schools of their choice, whether public or private.¹ This policy is summed up in Article XIV, Section 1: "The State shall protect and promote the right of all citizens to quality education at all levels of education and shall take appropriate steps to make education accessible to all."

It is a known fact, however that quality education is a rare commodity in the Philippines and that the State itself is not able to maintain mass quality education. Much less is the State able to give subsidy to private schools which much therefore rely on their income to support their operations. The Constitutional Commission therefore found it necessary to at least provide for a significant tax relief to private educational institutions, whether non-stock, non-profit or proprietary schools, colleges and universities.

As a result of the aforementioned thrust, Art. XIV, Sec. 4(3) of the 1987 Constitution provides that "(a)ll revenues and assets of non-stock, non-profit educational institutions used actually, directly, and exclusively for educational purposes shall exempt from taxes 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. Likewise, 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."

The constitutional provision thus has a threefold rationale. It is intended to (1) preserve the democratic choice of students; (2) enable educational institutions to improve their quality; and (3) make quality education affordable to students.

¹ Bernas, Joaquin G., S.J., "The 1987 Constitution of the Republic of the Philippines: A Commentary" p. 1285; 2009 Edition.

These points were emphasized during the deliberations of the 1986 Constitutional Commission where Commissioners Gascon, Nollado, Bacani and Ople highlighted the need to grant tax exemptions to educational institutions, not only to keep them financially viable but also to make education truly affordable and available to a greater number of Filipinos.

Clearly, even during the drafting of the 1987 Constitution, the problems of private educational institutions, whether non-stock, non-profit or proprietary schools, colleges and universities have already been highlighted and as a result of said realization, several Constitutional provisions have been formulated providing financial support through tax exemptions.

However, the Department of Finance issued Department Order No. 137-87 dated December 16, 1987 outlining the rules and regulations for educational institutions to avail of the subject constitutional tax exemption. This department order provided that in order to avail of the exemption, all revenues and assets aside from being actually, directly and exclusively used for educational purposes must also be derived in pursuance of their primary purpose.

As a result of the above department order, the constitutional tax exemption granted to educational institutions, whether non-stock, non-profit or proprietary schools, colleges and universities pursuant to the Constitution has weakened, diluted and denied. This should not be the case because Article XIV, Sec. 4(3) does not take into account how these assets and revenues are sourced. They could be derived from donations, school operations and other modes of income generation. There is nothing in the deliberations of the Constitutional Convention pertaining to the manner of acquiring these assets and revenues given any relevance.

Moreover, the mandate of the Constitution to likewise entitle proprietary educational institutions, including those cooperatively owned, to such exemption has not been made operative even after the 22 years from the effectivity of the 1987 Constitution which necessitates the passing of an enabling legislation that should have been done a long time ago.

There is therefore the need for a law to be enacted to strengthen and recognize constitutional tax exemption granted to non-stock, non-profit educational institutions pursuant to Art. XIV, Sec. 4(3) of the 1987 Constitution and to extend the same to, subject to the limitations provided in this proposed legislation, to proprietary schools, colleges and universities, by amending Sec. 27(B) and Sec. 30 (H) of the National Internal Revenue Code of the Philippines.

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


NEPTALI M. GONZALES II

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AN ACT
RECOGNIZING AND STRENGTHENING THE TAX EXEMPTIONS
GRANTED TO EDUCATIONAL INSTITUTIONS PURSUANT TO ART.
XIV, SECTION 4(3) OF THE 1987 CONSTITUTION BY AMENDING
SEVERAL PROVISIONS OF PRESIDENTIAL DECREE NO. 1158 AS
AMENDED BY REPUBLIC ACT NO. 8424 OTHERWISE KNOWN AS
THE NATIONAL INTERNAL REVENUE CODE OF THE PHILIPPINES

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

SECTION 1. Section 27(B) of the National Internal Revenue Code of the
Philippines is hereby amended to read as follows:

SEC. 27. Rates of Income Tax on Domestic Corporations. –

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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 if 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. For purposes of this Subsection, the

term 'unrelated trade, business or other activity' means any trade, business or other activity, the conduct of which is not substantially related to the exercise or performance by such educational institution or hospital of its primary purpose or function. A 'Proprietary educational institution' is any private school maintained and administered by private individuals or groups with an issued permit to operate from the Department of Education, Culture and Sports (DECS), or the Commission on Higher Education (CHED), or the Technical Education and Skills Development Authority (TESDA), as the case may be, in accordance with existing laws and regulations.

SEC. 2. Section 30 (H) of the National Internal Revenue Code of the Philippines is hereby amended to read as follows:

SEC. 30. Exemptions from Tax on Corporations. – The following corporations shall not be taxed under this Title in respect to income received by them as such:

(H) A nonstock and nonprofit educational institution pertaining to all revenues and assets used actually, directly and exclusively for educational purpose regardless of whether or not the same is derived in pursuance of the primary purpose.

Proprietary educational institutions. – Proprietary educational institutions shall exempt from taxes and duties pertaining to all revenues and assets used actually, directly and exclusively for educational purposes regardless of whether or not the same is derived in pursuance of primary purpose and subject to the

limitations provided by law, including restrictions on dividends and provisions for reinvestment. Provided, that the proprietary schools, colleges and universities shall still determine the amount equal to ten percent (10%) of their net income that could have been subject to income tax if they were not exempt from said income tax. Provided further, that the amount so determined shall be strictly utilized in the following manner: seventy percent (70%) for increases in salaries of employees; twenty percent (20%) for additional scholarship grants to students and ten percent (10%) for improvement of equipment, facilities and/or buildings. A “Proprietary educational institution” is any private school maintained and administered by private individuals or groups with issued permit to operate from the Department of Education (DepEd), or the Commission on Higher Education (CHED), or the Technical Education and Skills Development Authority (TESDA), as the case may be, in accordance with existing laws and regulations.

~~(J)(H)~~ Government educational institutions;

~~(K)(H)~~ xxx xxx xxx

SEC. 3. Implementing Rules and Regulations. – Within Ninety (90) days from the effectivity of this Act, the Department of Finance and other concerned agencies shall promulgate the necessary rules and regulations to effectively implement the provisions of this Act.

SEC. 4. Separability Clause. – If any provisions of this Act shall be declared unconstitutional or invalid, the other sections and provisions not affected thereby shall remain valid

SEC. 5. Repealing Clause. – All laws, presidential decrees, executive orders, proclamations and rules and regulations which are inconsistent with this Act is hereby repealed and mended accordingly.

SEC. 6. Effectivity Clause. – This Act shall take effect fifteen (15) days after its publication in any newspaper of national circulation.

Approved,