

[PRESIDENTIAL DECREE NO. 1358, April 21, 1978]

FURTHER AMENDING CERTAIN SECTIONS OF TITLE V OF THE NATIONAL INTERNAL REVENUE CODE, AS AMENDED.

WHEREAS, there is a need to restructure the sales tax system to make it more progressive and responsive to the requirements of a developing economy;

WHEREAS, certain luxury and semi-luxury articles should be reclassified based on their inherent essentialities consistently with present economic levels and conditions;

WHEREAS, to minimize the adverse effects of worldwide inflation, the sales tax rate of basic commodities should be reduced from 7% to 5%;

WHEREAS, local governments are in need of additional revenue to augment the funds needed in their development projects;

WHEREAS, in the interest of equity and in order to eliminate the double taxation feature of the present sales tax system as regards raw materials used in the manufacture of articles, there is need to adopt the tax credit method in computing the sales tax;

WHEREAS, in order to make the administration of the customs duty and advance sales tax or compensating tax simple, it is desirable to adopt a common base of valuation of imported articles for such levies;

NOW, THEREFORE, I, FERDINAND E. MARCOS, President of the Republic of the Philippines, by virtue of the powers vested in me by the Constitution, do hereby decree:

SECTION 1. Certain sections of Title V of the National Internal Revenue Code as amended, are hereby further amended to read as follows:

"SEC. 193. *Payment of percentage taxes.* —

- a. *In general.*—Unless otherwise specifically provided, it shall be the duty of every person conducting a business on which a percentage tax is imposed under this Title, to make a true and complete return of the amount of his, her or its gross value of output actually removed from the factory or mill warehouse and within twenty days after the end of each quarter pay and the tax due thereon: *Provided*, That any person retiring from a business subject to the percentage tax shall notify the nearest internal revenue officer thereof, file his return or declaration, and pay the tax due thereon within twenty days after closing his business.

"For purposes of this section, sales on consignment shall be considered actually sold on the day of sale or sixty days after the date consigned, whichever is earlier.

"If the percentage tax on any business is not paid within the time specified above, the amount of the tax shall be increased by

twenty-five *per centum* the increment to be a part of the tax and the entire unpaid amount shall be subject to interest at the rate of fourteen *per centum per annum*.

"In case of willful neglect to file the return within the period prescribed herein, or in case of false or fraudulent return is willfully made there shall be added to the tax or to the deficiency tax in case any payment has been made on the basis of such return before the discovery of the falsity or fraud, a surcharge of fifty *per centum* of its amount and the entire unpaid amount shall be subject to interest at the rate of fourteen *per centum per annum*. The amount so added to any tax shall be collected at the same time and in the same manner and as part of the tax unless the tax has been paid before the discovery of the falsity or fraud, in which case, the amount so added shall be collected in the same manner as the tax.

- b. *Sales tax on imported articles.*—When the articles are imported, the percentage taxes established in Sections 194, 195, 196, 197, 198, 199 and 201 of this Code shall be paid in advance by the importer, in accordance with the regulations promulgated by the Secretary of Finance and prior to the release of such articles from customs' custody, based on the home consumption value or price (excluding internal excise taxes) thereof, plus ten (10) percent of such home consumption value or price, including postage, commission, customs duty and all similar charges, except freight and insurance, plus one hundred *per centum* of such total value in the case of articles enumerated in Sections 194 and 195; fifty *per centum* in the case of articles under Section 196 and 197; and twenty-five *per centum* in the case of articles under Sections 198, 199 and 201. The tax imposed in this section shall not apply to articles to be used by the importer himself in the manufacture or preparation of articles subject to specified tax: *Provided, However,* That where the National Economic and Development Authority certifies to the availability of local raw materials of sufficient quantity, comparable quality and price to meet the needs of manufacturers subject to specific tax the importation of such raw materials shall be subject to the tax herein imposed.

The home consumption value or price under this section shall be the value or price declared in the consular, commercial, trade or sales invoice, certified to as correct under penalties of perjury by the Philippine Consul at the port of origin if there is any. Where there exists a reasonable doubt as to the value or price of the imported article declared in the entry, the correct value of the article shall be ascertained from the reports of the revenue attache or commercial attache (foreign trade promotion attache), pursuant to Republic Act Numbered Fifty-Four Hundred and Sixty six or other Philippine diplomatic officers and from such other information that may be available to the Bureau of Customs.

From the data thus gathered, the Commissioner of Customs shall ascertain and establish the home consumption values of articles

exported to the Philippines and shall publish such lists of values from time to time.

When the dutiable value provided for in the preceding paragraphs cannot be ascertained for failure of the importer to produce the documents mentioned above or where there exists a reasonable doubt as to dutiable value of the imported articles declared in the entry, it shall be the domestic wholesale selling price of such or similar article in Manila or other principal markets in the Philippines on the date the tax becomes payable on the articles in the usual wholesale quantities and in the ordinary course of trade, minus —

- a. Twenty percent thereof for expenses and profits; and
- b. Duties and taxes paid thereon.

"The tax herein imposed shall be collected in all cases where the original importer sold, transferred or negotiated the imported articles to third persons before release thereof from customs' custody, regardless of the tax status of the original importer and the indorsee or transferee, the same to be paid by the transferee and/or indorsee.

"The provisions of this Code shall not be construed as nullifying whatever interpretation the government has given to the word 'importer' heretofore.

"In the case of tax-free articles brought or imported into the Philippines by persons, entities or agencies exempt from the tax which subsequently sold, transferred, or exchanged in the Philippines to non-exempt private persons or entities, the purchasers shall be considered the importers thereof. The tax due on such articles shall constitute a lien on the article itself superior to all other charges or liens irrespective of the possessor thereof."

- c. *Flexibility Clause.*—In the interest of the national economy and general welfare, and subject to the limitations herein prescribed, the President, upon recommendation of the Secretary of Finance and the National Economic and Development Authority, is hereby empowered to:
 - a. Revise the rates of percentage taxes;
 - b. Change the classification of the articles enumerated in Sections 194, 195, 196, 197, 198, 199 and 201; and
 - c. Revise the taxable base levels in Sections 195 and 197.

The existing rates may be increased by not more than 50% or decreased by not more than 10%. The existing price levels may be increased or decreased by not more than 50%.

The above authority may be exercised by the President if any of the following conditions exists:

1. Economic conditions render it necessary to increase revenue, or to re-direct expenditure or consumption patterns by

increasing or decreasing the rate of percentage tax on certain commodities; or

2. Where, in the light of technological and social changes, it is necessary to classify new products or to reclassify articles subject to the sales tax on the basis of the changed concepts of essentiality or the degree of manufacturing done; or
3. Whenever by reason of fluctuation of currency and/or inflation, the existing taxable base levels are no longer realistic or consistent with current price levels, it is necessary to revise the same to conform to existing conditions; or
4. Where it is necessary to counter adverse action on the part of another country.

d. *Value-Added Tax.*—The provision of this title to the contrary notwithstanding, when public interest so requires, the President, upon recommendation of the Secretary of Finance, may subject the second sale of any article taxable under this title to a value-added tax at the same rates hereinafter provided, based on the gross selling price or gross value in any of the articles sold, bartered, exchanged or transferred. In case an article has been made subject to the value-added tax by the President, the tax credit method shall be applied in computing the tax due.

"SEC. 194. *Percentage tax on sales of non-essential articles.*—There shall be levied, assessed and collected once only on every original sale, barter, exchange, or similar transaction for nominal or valuable consideration intended to transfer ownership of, or title to, the articles hereinbelow enumerated a tax equivalent to fifty per centum of the gross value in money of the articles so sold, bartered, exchanged or transferred, such tax to be paid by the manufacturer or producer:

"(a) All articles commonly or commercially known as jewelry, whether real or imitation, pearls, precious and semi-precious stones and imitations thereof; articles made of, or ornamented, mounted or fitted with, precious metals or imitations thereof or ivory (not including surgical and dental instruments, silver plated wares, frames or mounting for spectacles or eyeglasses, and dental gold or gold alloys and other precious metals used in filling, mounting or fitting of the teeth); opera glasses, and lorgnettes. The term "precious metals" shall include platinum, gold, silver, and other metals of similar or greater value. The term "imitation thereof" shall include plating and alloys of such metals.

"(b) Perfumes, essences, extracts, toilet waters, cosmetics, hair dressings, hair dyes, hair restoratives, aromatic cachous, toilet powders, except tooth and mouth washes, dentrifices, tooth paste, talcum and medicated toilet powders, hair oils and pomades.

"(c) Dice, mahjong sets and playing cards.

"(d) Juke boxes.

"(e) Similar or analogous articles, substances or preparations to those enumerated above as determined by the Secretary of finance upon the recommendation of the Commissioner of Internal Revenue based on the inherent essentiality of the product.

Any percentage, specific or mining tax paid under this title, title IV or title VII, respectively, on domestically manufactured, processed or produced, or imported raw materials, part, accessory or other article forming part of the finished product shall be credited against the sales tax due on the finished product: *Provided, however,* That in case the total tax paid on the raw material, part, accessory or other article exceeds the amount of the sales tax due on the finished product, the excess shall be credited against the sales tax liabilities of the manufacturer for the succeeding taxable quarter: *And, provided, furthermore,* That the amount of the tax on the raw material, part, accessory, or other article shall be indicated as a separate item in the sales invoice.

Whenever the finished product subject to sales tax is manufactured or produced out of any raw material, part, accessory of other article which is exempt from tax, the tax otherwise due on the latter shall be deemed to have been paid for purposes of the next preceding paragraph.

Any materials part or accessory of the above-mentioned articles shall be taxed under this section.

"SEC. 196. *Percentage tax on sales of semi-essential articles.*—There shall be levied, assessed, and collected once only on every original sale, barter, exchange, or similar transaction intended to transfer ownership of, or title to, the articles hereinbelow enumerated, a tax equivalent to twenty-five per centum of the gross selling price or gross value, in money of the articles so sold, bartered, exchanged or transferred, such tax to be paid by the manufacturer or producer.

- a. Luggage, trunks, valises, travelling bags, suitcases, satchels, overnight bags, hat boxes for use of travelers, beach bags, bathing suit bags, brief cases made of leather or imitation leather, and salesman's sample and display cases; handbags, card, pass and key cases; toilet cases and other cases, bags and kits (without regard to size, shape, construction, or material from which made) for use in carrying toilet articles or articles of wearing apparel;
- b. Harpsicord and accordions;
- c. Firearms and cartridges or other forms of ammunitions;
- d. Electric, gas or oil water heaters; electric gas or oil appliances, other than stoves and ranges, of the typo used for cooking, warming, or keeping warn food or beverage for consumption on the premises; electric mixers, whippers, and juicers; and household type electric vacuum cleaners or polishers;
- e. Washing machines, cloth dryers and combination washing machines and cloth dryers of all types;
- f. Mechanical lighters;