

[REPUBLIC ACT NO. 7918, February 24, 1995]

AN ACT AMENDING ARTICLE 39, TITLE III OF EXECUTIVE ORDER NO. 226, OTHERWISE KNOWN AS THE OMNIBUS INVESTMENTS CODE OF 1987, AS AMENDED, AND FOR OTHER PURPOSES.

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

SECTION 1. Article 39, Title III of Executive Order No. 226, otherwise known as the Omnibus Investments Code of 1987, as amended, is hereby further amended to read as follows:

"ART. 39. *Incentives to Registered Enterprises.* — All registered enterprises shall be granted the following incentives to the extent engaged in a preferred area of investment:

"(a) Income Tax Holiday. —

"(1) For six (6) years from commercial operation for pioneer firms and four (4) years for non-pioneer firms, new registered firms shall be fully exempt from income taxes levied by the national government. Subject to such guidelines as may be prescribed by the Board, the income tax exemption will be extended for another year in each of the following cases:

"(i) The project meets the prescribed ratio of capital equipment to number of workers set by the Board;

"(ii) Utilization of indigenous raw materials at rates set by the Board;

"(iii) The net foreign exchange savings or earnings amount to at least US\$500,000 annually during the first three (3) years of operation.

"The preceding paragraph notwithstanding, no registered pioneer firm may avail of this incentive for a period exceeding eight (8) years.

"(2) For a period of three (3) years from commercial operation, registered expanding firms shall be entitled to an exemption from income taxes levied by the national government proportionate to their expansion under such terms and conditions as the Board may determine: Provided, however, That during the period within which this incentive is availed of by the expanding firm it shall not be entitled to additional deduction for incremental labor expense.

"(3) The provision of Article 7(14) notwithstanding, registered firms shall not be entitled to any extension of this incentive.

"(b) Additional Deduction for Labor Expense. — For the first five (5) years from registration a registered enterprise shall be allowed an additional deduction from the taxable income of fifty percent (50%) of the wages corresponding to the increment in the number of direct labor for skilled and unskilled workers if the project meets the prescribed ratio of capital equipment to number of workers set by the Board: *Provided*, That this additional deduction shall be doubled if the activity is located in less developed areas as defined in Article 40.

"(c) Tax and Duty Exemption on Imported Capital Equipment and its Accompanying Spare Parts. — New, expanding/modernizing enterprises which have been registered with the Board of Investments on or before December 31, 1994 shall be exempt to the extent of one hundred percent (100%) of national internal revenue taxes and customs duties on importations of machinery, equipment and accompanying spare parts within the prescribed period under its law of registration or until December 31, 1997 whichever comes first: *Provided, however*, That those enterprises located outside the National Capital Region (NCR) and registered on or before December 31, 1994 may avail of the incentives herein provided until December 31, 1999: *Provided, further*, That the enterprise which shall register after December 31, 1994 shall be subject to the provisions of Republic Act No. 7716, and three percent (3%) customs duties up to December 31, 1997: *Provided, finally*, That the importation of machinery, equipment and accompanying spare parts shall comply with the following conditions:

"(1) They are not manufactured domestically in sufficient quantity, or comparable quality, and at reasonable prices;

"(2) They are reasonably needed and will be used exclusively by the registered enterprise in its registered activity, unless prior approval of the Board is secured for the part-time utilization of said equipment in a non-registered activity to maximize usage thereof or the proportionate taxes and duties are paid on specific equipment and machinery being permanently used for non-registered activities; and

"(3) The approval of the Board was obtained by the registered enterprise for the importation of such machinery, equipment and accompanying spare parts.

"In granting the approval of the importations under this paragraph, the Board may require international canvassing but if the total cost of the capital equipment or industrial plant exceeds US\$5,000,000, the Board shall apply or adopt the provisions of Presidential Decree No. 1764 on international competitive bidding.

"If the registered enterprise sells, transfers or disposes of these machinery, equipment and spare parts without prior approval of the Board within five (5) years from date of acquisition, the registered enterprise and the vendee, transferee, or assignee shall be solidarily

liable to pay twice the amount of the tax exemptions given it. The Board shall allow and approve the sale, transfer or disposition of the said items until December 31, 1997 or December 31, 1999 as the case may be if made:

"(aa) To another registered enterprise or registered domestic producer enjoying similar activities;

" (bb) For reasons of proven technical obsolescence; or

"(cc) For purpose of replacement to improve and/or expand the operations of the registered enterprise.

"(d) Tax Credit on Domestic Capital Equipment. — A tax credit equivalent to one hundred percent (100%) of the value of the national internal revenue taxes and customs duties that would have been waived on the machinery, equipment and spare parts, had these items been imported shall be given to the new and expanding enterprise registered with the Board of Investments as of December 31, 1994 which purchases machinery, equipment and spare parts from a domestic manufacturer: *Provided*, (1) That the said equipment, machinery and spare parts are reasonably needed and will be used exclusively by the registered enterprise in its registered activity, unless prior approval of the Board is secured for the part-time utilization of said equipment in a non-registered activity to maximize usage thereof; (2) That the equipment would have qualified for tax and duty exemption under paragraph (c) hereof; (3) That the approval of the Board was obtained by the registered enterprise; and (4) That the purchase is made on or before December 31, 1997 or December 31, 1999 as the case may be. If the registered enterprise sells, transfers, or disposes of these machinery, equipment and spare parts, the provision in the preceding paragraph for such disposition shall apply.

"(e) Simplification of Customs Procedures. — Customs procedures for the importation of equipment, spare parts, raw materials and supplies, and exports of processed products by registered enterprises shall be simplified by the Bureau of Customs.

"(f) Unrestricted Use of Consigned Equipment. — Provisions of existing laws notwithstanding, machinery, equipment and spare parts consigned to any registered enterprise shall not be subject to restrictions as to period of use of such machinery, equipment and spare parts: *Provided*, That the appropriate re-export bond is posted unless importation is otherwise covered under subsections (c) and (1) of this article: *Provided*, further, That such consigned equipment shall be for the exclusive use of the registered enterprise.

"If such equipment is sold, transferred or otherwise, Article 39(c)(3) shall apply. Outward remittance of foreign exchange covering the proceeds of such sale, transfer or disposition shall be allowed only upon prior Bangko Sentral ng Pilipinas approval.

"(g) Employment of Foreign Nationals. — Subject to the provisions of Section 29 of Commonwealth Act No. 613, as amended, a registered