



AMCHAM PHILIPPINES

The American Chamber of Commerce of the Philippines, Inc.

STATEMENT ON SENATE BILL 3065 – RECOGNIZING TAX EXEMPTIONS UNDER TAX TREATIES AND INTERNATIONAL AGREEMENTS RELATED TO INTERNATIONAL CARRIERS

February 1, 2012

HON. RALPH G. RECTO

Chairman
Committee on Ways and Means
Philippine Senate
Pasay City, Philippines

Dear Chairman Recto:

Thank you for your letter dated January 26, 2012 inviting AmCham to the public hearing and requesting our views on Senate Bill 3065, a bill recognizing the tax exemptions under tax treaties and international agreements related to international carriers.

Taxes and fees of governments should be reviewed, reduced, simplified, or eliminated if they no longer serve an important national interest. The International Airport Transport Association (IATA) and the Board of Airline Representatives (BAR) have communicated strong opposition against the Common Carriers Tax (CCT) and the Gross Philippine Billings (GPB) imposed on foreign airlines operating in the Philippines. These taxes are not imposed by other countries and raise costs for foreign visitors vis-à-vis competitive destinations such as Malaysia, Thailand, and Vietnam. A tax regime comparable to international standards and practices will make the Philippines more attractive for foreign airlines as an investment destination, increase foreign tourism to the country, benefit the domestic airline business (plus auxiliary services such as catering, maintenance and repair, food manufacturing) of Philippine Airlines, Cebu Pacific, Zest Air, and SEAir, and expand the income streams of local tourism destinations.

Foreign airlines are operating in Philippines at very low profit margins, and these taxes raise the risk that their services to the Philippines will be reduced, suspended, or terminated. Airlines need to make high capital investments in aircraft and their operations and may shift them to destinations that are more profitable.

In 2011, foreign airline companies doing business in the Philippines experienced a major setback with the issuance of the Bureau of Internal Revenue's (BIR) tax ruling maintaining the effectivity and validity of the Philippines' revised common carriers tax policy. Under the National Internal Revenue Code, international air carriers are levied with a 5.5-percent tax on revenues - three-percent common carrier tax on their gross receipts and 2.5-percent tax on all cargo and passenger revenues originating from the Philippines in an uninterrupted flight, regardless of the place of sale or issue of a ticket.

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The new policy changed the tax base from the previous average billing to actual billing per passenger and added rental fees, advance payments, penalties and other service charges in computing the tax, alongside ticket price, excess baggage fees, cargo fees and mail fees. It has been the position of the foreign carriers that ruling reinforced the lack of playing field in the Philippine airline industry. It is feared that other foreign carriers may soon follow Air France-KLM's move to leave the Philippines if rationalization of the current tax regime is not achieved.

While we support the Aquino government in its policy of increasing revenue, the Philippines should balance generating revenues and attracting investors and tourists into the country, which will create more tax revenue.

In line with this, we would support the BAR in its statement recognizing the good intent of Senator Ralph G. Recto in filing SB 3065. With the urgent plea for the immediate consideration and passage of the bill, we share BAR's concerns as regards provisions contained in SB 3065.

As already discussed in the deliberations in the House of Representatives on a House Bill of the same measure, exemption provisions are not provided for in tax treaties and international agreements. The bilateral tax treaties only provide for a lower rate of 1.5 percent (instead of 2.5 percent) for the GPB, a form of income taxation.

Likewise, tax treaties cover income taxation and not common carriers tax, which is a form of business taxation according to the Department of Finance and the Bureau of Internal Revenue.

Accordingly, we share the sentiment and concern of BAR that SB 3065, as it is presently worded, will not effectively address the precarious situation of the airline industry in the Philippines. Major actions that would require a longer period of time would still have to be accomplished, i.e. amendment of tax treaties or international agreements to explicitly include business taxes and common carriers taxes as exemptions.

To ensure that the proposed measure would effectively address the concerns of the industry, we hereby support the proposed amendments of BAR:

Proposed Section 3:

In cases where reciprocal exemptions are not yet provided for in existing international agreements and tax treaties entered into by the Philippines, the Philippine government, pursuant to the principle of reciprocity, shall grant tax exemptions to international carriers whose governments already provide for such exemptions to Philippine carriers by virtue of their national tax laws or any other policy; Provided, further, that this grant of tax exemptions shall apply even in the absence of international operations by Philippine carriers.

Proposed Section 4:

Any contracting party may issue exchange of notes through diplomatic channels for the purpose of implementation of Section 3. The Philippine government shall reply within 60 days from the date of receipt of any such note.

Exchange of notes shall also constitute an agreement amending the tax treaties and international agreements in cases not covered under the proposed Section 3 and shall enter into force on the date of any contracting party's reply note confirming that respective governments agree to the terms and shall have effect with respect to the taxable years beginning on or a mutually agreed date. The Philippine government shall reply within 60 days from the date of receipt of any such note.

In the alternative, we humbly seek your consideration of HB 4444, filed by Representative Jerry P. Trenas (March 23, 2011) with the intent to aid the tourism and trade sector through enhanced airline connectivity. The Committee may consider incorporating HB 4444's approach on removing the CCT and GPB through the amendment of the Tax Code, doing away with the long and arduous process of amending tax treaties.

On December 13, 2010 the Joint Foreign Chambers (JFC) released *Arangkada Philippines 2010: A Business Perspective*. One year after the release of the *Arangkada*, the JFC tapped 50 experts from the private sector to assess the 471 recommendations. On the airline industry, we recommended to eliminate the discriminatory CCT and GPB. While this recommendation has started, as the legislation required (HB 4302) is pending Second Reading in the House and is now before us in this committee hearing, our assessment showed that HB 4302 and SB 3065 will not be effective unless the existing tax treaties are amended to allow the tax exemptions. This process may take time and may serve as the next barrier if the bill is enacted into law without the proposed amendments.

Three US airlines currently serve Manila. United, the longest US airline serving in the Philippines withdrew after the 1997 Asian Financial Crisis. But if tax situation is not fixed, we may have fewer in future. This is not good for tourism, business, or Philippine-Americans, and Filipinos who make up most of the passengers, and will find fewer flight choices in the future if this situation is not rectified.

We support the moves of the distinguished Chairman to have the bill certified for immediate enactment by the President. Enactment is urgent to prevent further reduction of services by foreign airlines bringing tourists, businessmen, and others to the Philippines.

Mr. Chairman, thank you for considering our views.

Regards,



Jeffrey C. Woodruff
Executive Director
American Chamber of Commerce of the Philippines