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SENATE

S. No. 718

RECEIVED BY: *ji*

Introduced by Senator Ralph G. Recto

Explanatory Note

It is a legal truism that taxes are the lifeblood of the Government. Thus, to generate income, the Bureau of Internal Revenue (BIR) and the Bureau of Customs (BOC), are mandated to collect national taxes, tariffs and duties, under the National Internal Revenue Code (NIRC) and the Tariff and Customs Code of the Philippines (TCCP), respectively, to finance Government projects, programs and its personnel.

In the arena of tax collection, there are two sides always, the Government and the taxpayer. Reading the provisions of NIRC and TCCP on remedies, the Government is amply protected.

Under the NIRC, as amended, and TCCP, as amended, there are legal rights and remedies available to the taxpayers. However, inspite of the available remedies and rights, there are reports that certain individuals have been subjected to harassment by some officials and employees of the BIR and BOC as well as to undue and baseless complaints resulting to embarrassment and humiliation on the part of the taxpayers.

Protecting taxpayers is a balancing task that challenges the Government vis-à-vis its mandate to collect the necessary revenues for the Government.

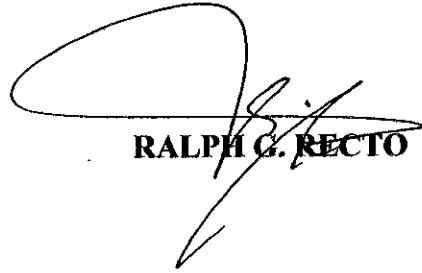
Thus, this bill seeks to ordain a bill of rights for the taxpayers which provide: a) taxpayers' basic rights, b) taxpayers' right in civil cases, and c) taxpayers' rights in criminal cases. The enumerated rights are in addition to the legal rights and remedies provided for under NIRC and TCCP.

In order to protect the taxpayers' bill of rights, this measure seeks to establish the Office of the Taxpayers Advocate with, among others, the following functions:

- a. assist taxpayers in resolving problems with the BIR and BOC;
- b. identify areas in which taxpayers have problems in dealings with the BIR and BOC;
- c. to the extent possible, propose changes in the administrative practices of the BIR and BOC to mitigate problems identified under the preceding paragraph; and
- d. identify potential legislative changes which may be appropriate to mitigate such problems; and
- e. issue taxpayer assistance orders.

Clearly, there is a need to enact this bill into a law in order to protect the rights of the taxpayers. Hence, promoting honesty and observance of proper procedures on the part of BIR and BOC, which in the process will minimize, if not totally eliminate graft and corruption.

In view of the foregoing, urgent approval of this measure is earnestly sought.



RALPH C. RECTO

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AN ACT
ORDAINING A BILL OF RIGHTS FOR TAXPAYERS

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

1 **SECTION 1. Title.** – This Act shall be known as “The Taxpayer Bill of Rights
2 Act of 2013.”

3 **SEC. 2. Declaration of Principles.** – It is hereby declared the policy of the State
4 to provide increased protection of taxpayers’ rights in complying with the National
5 Internal Revenue Code of 1997, as amended, the Tariff and Customs Code of the
6 Philippines, as amended, and all other rules and regulations, to the end that abuses
7 committed against taxpayers are mitigated or avoided, and taxes are collected
8 responsibly, with due regard for taxpayers’ rights.

9 **SEC. 3. Taxpayer’s Bill of Rights.** – In addition to the rights and remedies of
10 the taxpayers as provided for in the National Internal Revenue Code (NIRC) of 1997, as
11 amended; Tariff and Customs Code of the Philippines (TCCP), as amended; Republic
12 Act No. 1125, as amended, creating the Court of Tax Appeals (CTA); and all other laws,
13 rules and regulations, issuances and circulars in support thereof, the taxpayers are hereto
14 granted the following: a) taxpayers’ basic rights; b) taxpayers’ rights in civil cases; and c)
15 taxpayers’ rights in criminal cases, whether at the administrative level or at the judicial
16 level, concerning tax assessments, collection and refund, and prosecution for criminal
17 cases.

18 **SEC. 4. Taxpayers’ Basic Rights.** – The following are the taxpayers’ basic
19 rights:

1 a. The right to be informed of any pending assessment, investigation for criminal
2 tax cases, collection or any other case(s) filed against the taxpayer or that the taxpayer is
3 a subject of any request for third-party information or any lifestyle check for purposes of
4 tax compliance. The right to available information and prompt, accurate responses to
5 questions and requests for tax assistance shall always be assured. In this regard, all
6 revenue officers and agents shall undergo regular evaluation on a variety of job standards
7 including customer relations. This standard requires agents to ensure that they fully
8 explain to taxpayers their rights under the law;

9 b. The right to obtain simple, nontechnical statements, which explain the reason
10 for audit selection and the procedures, remedies, and rights available during audit,
11 appeals and collection proceedings. These rights include, but are not limited to, the rights
12 pursuant to this Taxpayers' Bill of Rights and the right to be provided with a narrative
13 description which explains the basis of audit changes, proposed assessments, assessments
14 and denials of refunds; identifies any amount of tax, interest, or penalty due; and states
15 the consequences of the taxpayer's failure to comply with the notice;

16 c. The right to have a speedy and impartial disposition of cases, the right to due
17 process and the observance of rules regarding assessments, refunds or any other
18 proceedings including requests for advisory rulings, clearances, termination letters and
19 lifting of seizure, garnishment and forfeiture orders, whether it be against him/her or
20 against the officials and staff of the Bureau of Internal Revenue (BIR), the Bureau of
21 Customs (BOC) and other government agency or municipality, including government
22 owned and controlled corporations (GOCCs) or government financial institutions (GFIs),
23 tasked with the enforcement of revenue or banking and financial laws, whether of local or
24 national application;

25 d. The right to privacy as guaranteed by the Constitution, and the right to have
26 any case or proceeding, including those involving third-party information requests
27 against or involving the taxpayer, to be devoid of publicity, whether through radio,
28 television, newspaper or any alternative media, while said case or proceeding is pending;

1 e. The right to seek assistance from the National Taxpayer Advocate who shall
2 be responsible for facilitating the resolution of taxpayer complaints and problems not
3 resolved through the normal administrative channels within the BIR or BOC, including
4 any taxpayer complaints regarding unsatisfactory treatment by BIR or BOC employees.
5 The taxpayers' rights advocate may issue a stay order if a taxpayer has suffered or is
6 about to suffer irreparable loss as a result of an action by the said Bureaus;

7 f. The right to have the taxpayer's tax information kept confidential unless
8 otherwise specified by law;

9 g. The right to participate in free education activities that help the taxpayer
10 successfully comply with the revenue laws of the State;

11 h. The right to fair and consistent application of the tax laws of the State by the
12 BIR and BOC;

13 i. The right to have the BIR begin and complete its audits in a timely and
14 *expeditious manner after notification of intent to audit (letter of authority)*. Such audit
15 shall be conducted only once per year unless otherwise provided by law;

16 j. The right to request for installment payment of tax liabilities under any
17 compromise settlement or any assessed tax liabilities pursuant to Taxpayer Assistance
18 Order;

19 k. The right to recover attorney's fees and litigation costs for tax assessments
20 made without substantial justification, and for claims for tax refunds which are not acted
21 upon for an unreasonable length of time at the administrative level, or denied at the
22 administrative level but subsequently allowed by the Court of Tax Appeals (CTA) if it
23 appears that such denial was unjustified. The award of attorney's fees and costs of
24 litigation shall be included in the order upholding the taxpayer's claim;

25 l. The right to have interests and penalties abated in case of any unjustifiable
26 error or delay caused by the tax authorities or their agents, including ministerial acts such
27 as loss of records, personnel transfers, extended illness or leaves of absence, and
28 personnel training; and,

1 m. The right to have the assistance of counsel in criminal proceedings, should the
2 taxpayer request for it.

3 **SEC. 5. Taxpayers' Rights in Civil Cases.** – The following are the
4 taxpayers' rights in civil cases:

5 a. The right to have the opportunity to have the case against him/her amicably
6 settled, as the case may warrant: Provided, that in every stage of the proceeding, whether
7 in the administrative or judicial level, the parties shall always be given the chance to
8 exhaust all and every remedy available for the speedy settlement of the case: Provided,
9 however, That nothing in this law shall deprive the court of competent jurisdiction of its
10 judicial prerogatives;

11 b. The right to be informed of impending collection action which require sale or
12 seizure of property or freezing of assets, except jeopardy assessments, and the right to
13 have at least thirty (30) days notice in which to pay the liability or seek further review;

14 c. The right to have all other collection actions attempted before a jeopardy
15 assessment suspended, unless delay will endanger collection and, after a jeopardy
16 assessment, the right to have an immediate review of the jeopardy assessment. As used
17 herein, jeopardy assessment is a tax assessment made by an authorized revenue officer
18 (RO) without the benefit of a complete or partial audit, considering the RO's judgment
19 that the assessment and collection of a deficiency tax will be jeopardized by delay caused
20 by the taxpayer's failure to: (1) comply with audit and investigation requirements to
21 present his books of accounts and/or pertinent records; or (2) substantiate all or any of the
22 deductions, exemptions or credits claimed in his return;

23 d. The right to seek review, through formal or informal proceedings, of any
24 adverse decisions relating to determinations in the audit or collection processes and the
25 right to seek a reasonable administrative stay enforcement action while the taxpayer
26 pursues other administrative remedies available under the law;

27 e. The right to procedures for conditional termination of tax obligations through
28 installment payment agreements which recognize both the taxpayer's financial condition

1 and the best interests of the State, provided that the taxpayer gives accurate and current
2 information and meets all other tax obligations on schedule;

3 f. The right to procedures for requesting cancellation, release, or modification of
4 liens filed by the BIR and the BOC and for requesting that any lien which is filed in error
5 be so noted on the lien cancellation filed by the BIR and the BOC, with public notice to
6 any credit agency at the taxpayer's request;

7 g. The right of the taxpayer in a judicial or administrative action brought or
8 maintained without the support of justiciable issues of fact or law, to recover all costs of
9 the administrative or judicial action, including reasonable attorney's fees: and

10 h. The right to waiver of interest that accrues as the result of errors or delays
11 caused by a BIR/BOC employee: *Provided*, That the provisions of Rule 63 of the Rules
12 of Civil Procedures (Declaratory Relief and Similar Remedies) shall likewise be
13 applicable to the aggrieved taxpayer.

14 **SEC. 6. Taxpayers' Rights In Criminal Tax Cases.-** The following are the
15 taxpayers' rights in criminal tax cases:

16 a. The right to be knowledgeably and intelligently informed of the charges as
17 contained in any properly and timely prepared audit report, assessment notice,
18 correspondence, document, letter and the like, as implemented by rules and regulations,
19 as the case may be, coming from the BIR or BOC or any government agency tasked to
20 enforce the revenue laws and banking and financial laws, in appropriate cases;

21 b. The right to be given ample and adequate opportunity, as the situation may
22 warrant, to present evidence at his/her or anybody else's possession that would assist the
23 taxpayer in the pursuit of the case;

24 c. The taxpayer shall have the right to seek the assistance of competent and
25 willing counsel of his/her own choice, to help and assist him/her in the preparation or
26 defense of the case;

27 d. The right to be served with all the necessary documents and papers
28 appurtenant thereto, relative to the charges against him/her, in a manner that would assist
29 him/her to expeditiously present his/her side pursuant to the charges against him/her;

1 e. The taxpayer shall have the right to present his/her own witnesses: and

2 f. The right to be represented or advised by counsel or other qualified
3 representatives at any time in administrative interactions with the BIR and the BOC, the
4 right to procedural safeguards with respect to recording of interviews during tax
5 determination or collection processes conducted by the BIR and the BOC, the right to be
6 treated in a professional manner by the BIR and the BOC personnel and the right to have
7 audits, inspections of records, and interviews conducted at a reasonable time and place
8 except in criminal and internal investigations.

9 **SEC. 7. *Creation of the Office of the National Taxpayer Advocate.*** – In order
10 to protect the rights of taxpayers and recognizing the complexity of tax laws, both
11 substantive and procedural, there is hereby created the Office of the National Taxpayer
12 Advocate to promote tax compliance and assist taxpayers, individual or juridical, when
13 established tax procedures fail to resolve any dispute. The Office of the National
14 Taxpayer Advocate shall be under the administration and supervision of an official to be
15 known as the “National Taxpayer Advocate” and shall be attached to the Office of the
16 President for administrative purposes only. The National Taxpayer Advocate shall have
17 the rank of undersecretary and shall be appointed by the President of the Philippines.

18 The National Taxpayer Advocate shall be a Filipino citizen, at least forty (40)
19 years of age, a member of the Philippine Bar in good standing, with at least ten (10) years
20 of practice in the field of taxation, with proven integrity and competence, and must not
21 have been convicted of any crime involving moral turpitude.

22 An individual cannot be appointed as the National Taxpayer Advocate if such
23 individual has been an employee or officer of, or has rendered service as consultant or in
24 any other capacity to, the Bureau of Internal Revenue (BIR) or the Bureau of Customs
25 (BOC) or any of its agencies or has been a local treasurer for two (2) years prior to such
26 appointment. A National Taxpayer Advocate cannot serve as officer or employee or
27 consultant of, or be appointed to or act in whatever capacity in, the BIR or the BOC or as
28 local treasurer, within five (5) years following his/her tenure as a National Taxpayer

1 Advocate. For purposes of this Act, a local treasurer includes a municipal, city or
2 provincial treasurer.

3 **SEC. 8. *Functions of Office of the Taxpayers Advocate.*** – It shall be the
4 function of the Office of the Taxpayers Advocate to —

5 a. Assist taxpayers in resolving their problems with the BIR and BOC;

6 b. Identify areas in which taxpayers have problems in dealings with the BIR and
7 BOC;

8 c. Propose changes, to the extent possible, in the administrative practices of the
9 BIR and BOC with the end in view of mitigating problems identified under the preceding
10 paragraph;

11 d. Identify potential legislative changes which may be appropriate to mitigate
12 such problems: and

13 e. Issue taxpayer assistance orders upon application filed by a taxpayer with the
14 Office of the National Taxpayer Advocate, the latter may issue a Taxpayer Assistance
15 Order when: (i) it is determined that the taxpayer is suffering or about to suffer a
16 significant hardship as a result of the manner in which the internal revenue laws are being
17 administered by the BIR, BOC or the local treasurer; or (ii) the taxpayer meets such other
18 requirements as are set forth in the implementing rules and regulations of the Act. For
19 purposes of this paragraph, a significant hardship shall include (i) an immediate threat of
20 adverse action; (ii) any action that will violate the right to privacy of a taxpayer; (iii) a
21 delay of more than thirty (30) days in resolving taxpayer account problems; (iv) the
22 taxpayer will incur significant and unnecessary costs, including fees for professional
23 representation, if relief is not granted; or (v) irreparable injury to, or a long-term adverse
24 impact on, the taxpayer if relief is not granted. Nothing herein shall prevent the National
25 Taxpayer Advocate from taking any action in the absence of an application mentioned
26 herein.

27 f. In cases where any tax authority employee is not following the laws, rules and
28 regulations or any applicable published administrative guidance, the National Taxpayer

1 Advocate shall construe the factors taken into account in determining whether to issue a
2 Taxpayer Assistance Order in the manner most favorable to the taxpayer.

3 g. Any Taxpayer Assistance Order issued by the National Taxpayer Advocate
4 under this section may be modified or rescinded only by the National Taxpayer
5 Advocate, only if a valid written explanation was submitted by the Commissioner of
6 Revenue or the Commissioner of Customs, as the case may be, and that the reasons for
7 the modification or rescission are specifically stated by the National Taxpayer Advocate
8 in the rescission or modification order.

9 h. The duration of any period of limitation with respect to any action for which a
10 Taxpayer Assistance Order has been issued shall be suspended for the period beginning
11 on the date of the taxpayer's application under subsection (e) and ending on the date of
12 the National Taxpayer Advocate's decision with respect to such application and any
13 period specified by the National Taxpayer Advocate in a Taxpayer Assistance Order
14 issued pursuant to such application.

15 **SEC. 9. *Submission of Annual Reports by the Office of the National Taxpayer***
16 ***Advocate.*** - Not later than December 31 of each calendar year, the Office of the National
17 Taxpayer Advocate shall report to the Chairperson of the Committee on Ways and Means
18 of the Senate of the Philippines and House of Representatives on its activities during the
19 fiscal year ending during such calendar year. Any such report shall contain full and
20 substantive analysis, in addition to statistical information, and shall —

21 a. identify the initiatives that the Office of the National Taxpayer Advocate has
22 undertaken aimed at improving taxpayer services and the tax authorities' responsiveness;

23 b. contain recommendations received from individuals by the Office of National
24 Taxpayer Advocate;

25 c. contain a summary of at least twenty (20) of the most serious problems
26 encountered by taxpayers, including a description of the nature of such problems;

27 d. contain an inventory of the items described in subsections (a), (b), and (c) for
28 which action has been taken and the result of such action;

1 e. contain an inventory of the items described in subsections (a), (b), and (c) for
2 which action remains to be completed and the period during which each item has
3 remained on such inventory;

4 f. contain an inventory of the items described in subsections (a), (b), and (c) for
5 which no action has been taken, the period during which each item has remained on such
6 inventory, the reasons for the inaction, and identify any BIR and BOC official or
7 employee who is responsible for such inaction;

8 g. identify any Taxpayer Assistance Office orders/recommendations which was
9 not honored by the BIR, and the BOC in a timely manner;

10 h. contain recommendations for such administrative and legislative action as
11 may be appropriate to resolve problems encountered by taxpayers;

12 i. identify areas of the tax law that impose significant compliance burdens on
13 taxpayers, the BIR, the BOC, and local treasurers including specific recommendations for
14 remedying these problems;

15 j. identify the twenty (20) most litigated issues for each category of taxpayers,
16 including recommendations for mitigating such disputes: and

17 k. include such other information as the National Taxpayer Advocate may deem
18 advisable.

19 Each report required under this subparagraph shall be provided directly to the
20 Committee on Ways and Means of the Senate of the Philippines and the House of
21 Representatives without any prior review or comment from the respective Commissioner
22 of BIR or BOC or any other officer or employee of the said Bureaus. The National
23 Taxpayer Advocate shall furnish copies of said report to the Secretary of Finance, and to
24 the respective Commissioners of the BIR and BOC.

25 The Commissioners of the BIR and BOC shall establish procedures requiring a
26 formal response to all recommendations submitted to them by the National Taxpayer
27 Advocate within three (3) months from the date of submission.

28 **SEC. 10. Other Responsibilities of the National Taxpayer Advocate.** – The
29 National Taxpayer Advocate shall—

1 a. monitor the coverage and geographic allocation of local offices of taxpayer
2 advocates;

3 b. develop guidelines to be distributed to all BIR and BOC officers and
4 employees and the local treasurers outlining the criteria for referral of taxpayer inquiries
5 to local offices of taxpayer advocates;

6 c. ensure that the local telephone number for each local office of the taxpayer
7 advocate is published and available to taxpayers served by the office; and

8 d. develop career paths for local taxpayer advocates in the Office of the National
9 Taxpayer Advocate.

10 **SEC. 11. *Personnel Actions of the National Taxpayer Advocate.*** – The
11 National Taxpayer Advocate shall have the responsibility and authority to—

12 a. appoint local taxpayer advocates and make available at least one (1) such
13 advocate for each province; and

14 b. evaluate and take personnel actions including dismissal with respect to any
15 employee of any local office of the National Taxpayer Advocate described in subsection
16 (a).

17 The National Taxpayer Advocate may consult with the appropriate supervisory
18 personnel of the BIR and BOC in carrying out the National Taxpayer Advocate's
19 responsibilities and qualifications under this Section.

20 **SEC. 12. *Remedies.*** – Any violation of the provisions of this Act committed by
21 any official or employee of the BIR or the BOC, other than the Commissioner of Internal
22 Revenue and Commissioner of Customs, shall be filed with the office of the
23 Commissioner of Internal Revenue or the Commissioner of Customs, as the case may
24 warrant, with the assistance of the National Taxpayer Advocate. The Commissioner of
25 Internal Revenue or the Commissioner of Customs shall decide the controversy
26 expeditiously, which shall not in any case be less than thirty (30) days nor more than
27 sixty (60) days from the time the complaint or case is filed with their respective offices.
28 Decisions of the Commissioner of Internal Revenue or the Commissioner of Customs
29 concerning any complaint or case for violation of the provisions of this Act, may be

1 brought for review by the aggrieved party or anybody acting on his/her behalf, to the
2 Secretary of Finance. Should the Commissioner of Internal Revenue or Commissioner of
3 Customs fail to act on such complaint or case within the time herein prescribed, the
4 aggrieved party or anybody acting on his/her behalf may file the complaint or case
5 directly with the Secretary of Finance.

6 Complaints against the Commissioner of Internal Revenue or the Commissioner
7 of Customs for violation of this Act shall be filed directly with the Secretary of Finance
8 who shall decide the case within sixty (60) days from the date the complaint was filed.
9 Decisions of the Secretary of Finance may be appealed before the Office of the President.

10 Any complaint or case filed pursuant to this Section shall be without prejudice to
11 any other action that may be instituted against the employee or official of the BIR or the
12 BOC under existing laws, rules and regulations.

13 Evidence against the taxpayers obtained in relation to this Act shall be
14 inadmissible in any court or proceeding if found to have been obtained in violation of any
15 of the above-enumerated taxpayer's rights

16 **SEC. 13. Penalties for the Violation of the Bill of Rights of Taxpayers.** – Any
17 person or public officer who is found to have violated the Bill of Taxpayers Rights shall
18 be punished with imprisonment of not less than six (6) years nor more than twelve (12)
19 years and a fine of not less than one hundred thousand pesos (Php100,000.00) but not
20 more than five hundred thousand pesos (Php500,000.00).

21 **SEC. 14. Report of the Secretary of Department of Finance.** - On or before June
22 1 of each calendar year, the Secretary of the Department of Finance shall submit and
23 present to both the Chairpersons of the Senate and House of Representatives Ways and
24 Means Committee a report on (a) all categories of incidents involving the misconduct of
25 the officers and employees of the BIR and BOC during the preceding calendar year; and
26 (b) action on and disposition of any such instances.

27 **SEC. 15. Implementing Rules and Regulations.** – Within thirty (30) days after
28 the effectivity of this Act, the following shall convene for the purpose of formulating the
29 implementing rules and regulations for this Act:

- 1 a. A representative of the Department of Finance;
- 2 b. A representative from the Bureau of Internal Revenue;
- 3 c. A representative from the Bureau of Customs;
- 4 d. A representative from the Secretariat of the Congressional Oversight
5 Committee on Comprehensive Tax Reform Program; and
- 6 e. Representatives from the Committee on Ways and Means of both Houses of
7 Congress; and
- 8 f. A representative each from a business association and the Philippine Institute
9 of Certified Public Accountants (PICPA).

10 Said officials and representatives shall as necessary convene everyday for the
11 purpose of formulating the said rules until such time that the implementing rules and
12 regulations have been formulated; Provided, that the failure to produce implementing
13 rules and regulation within sixty (60) days from the effectivity of this Act shall not hinder
14 the implementation of this Act.

15 **SEC. 16. *Repealing Clause.*** – All laws, orders, decrees, rules and regulations,
16 and other parts thereof inconsistent with the provisions of this Act are hereby repealed,
17 amended or modified accordingly.

18 **SEC. 17. *Separability Clause.*** If any provision of this Act is declared invalid or
19 unconstitutional, other provisions hereof which are not affected thereby shall remain in
20 full force and effect.

21 **SEC. 18. *Effectivity Clause*** – This Act shall take effect fifteen (15) days after its
22 publication in The Official Gazette or in at least two (2) national newspapers of general
23 circulation.

Approved,