EN BANC

ABAKADA GURO PARTY LIST (Formerly AASJAS) OFFICERS SAMSON S. ALCANTARA and ED VINCENT S. ALBANO, Petitioners, - versus - **THE HONORABLE EXECUTIVE SECRETARY EDUARDO ERMITA; HONORABLE SECRETARY OF THE DEPARTMENT OF FINANCE CESAR PURISIMA; and HONORABLE COMMISSIONER OF INTERNAL REVENUE GUILLERMO PARAYNO, JR.,** Respondents.	**G.R. No. 168056** Present: DAVIDE, JR., ***C.J.***, PUNO, PANGANIBAN, QUISUMBING, YNARES-SANTIAGO, SANDOVAL-GUTIERREZ, CARPIO, AUSTRIA-MARTINEZ, CORONA, CARPIO-MORALES, CALLEJO, SR., AZCUNA, TINGA, CHICO-NAZARIO, *and* GARCIA, ***JJ***.

x - x

AQUILINO Q. PIMENTEL, JR., LUISA P. EJERCITO-ESTRADA, JINGGOY E. ESTRADA, PANFILO M. LACSON, ALFREDO S. LIM, JAMBY A.S. MADRIGAL, AND SERGIO R. OSMEÑA III,

Petitioners,

- versus -

EXECUTIVE SECRETARY EDUARDO R. ERMITA, CESAR V. PURISIMA, SECRETARY OF FINANCE, GUILLERMO L. PARAYNO, JR., COMMISSIONER OF THE BUREAU OF INTERNAL REVENUE,

Respondents.

x - x

G.R. No. 168207

ASSOCIATION OF PILIPINAS SHELL DEALERS, INC. represented by its President, ROSARIO ANTONIO; PETRON DEALERS' ASSOCIATION represented by its President, RUTH E. BARBIBI; ASSOCIATION OF CALTEX DEALERS' OF THE PHILIPPINES represented by its President, MERCEDITAS A. GARCIA; ROSARIO ANTONIO doing business under the name and style of "ANB NORTH SHELL SERVICE STATION"; LOURDES MARTINEZ doing business under the name and style of "SHELL GATE – N. DOMINGO"; BETHZAIDA TAN doing business under the name and style of "ADVANCE SHELL STATION"; REYNALDO P.

G.R. No. 168461

MONTOYA doing business under the name and style of "NEW LAMUAN SHELL SERVICE STATION"; EFREN SOTTO doing business under the name and style of "RED FIELD SHELL SERVICE STATION"; DONICA CORPORATION represented by its President, DESI TOMACRUZ; RUTH E. MARBIBI doing business under the name and style of "R&R PETRON STATION"; PETER M. UNGSON doing business under the name and style of "CLASSIC STAR GASOLINE SERVICE STATION"; MARIAN SHEILA A. LEE doing business under the name and style of "NTE GASOLINE & SERVICE STATION"; JULIAN CESAR P. POSADAS doing business under the name and style of "STARCARGA ENTERPRISES"; ADORACION MANEBO doing business under the name and style of "CMA MOTORISTS CENTER"; SUSAN M. ENTRATA doing business under the name and style of "LEONA'S GASOLINE STATION and SERVICE CENTER"; CARMELITA BALDONADO doing business under the name and style of "FIRST CHOICE SERVICE CENTER"; MERCEDITAS A. GARCIA doing business under the name and style of "LORPED SERVICE CENTER"; RHEAMAR A. RAMOS doing business under the name and style of "RJRAM PTT GAS STATION"; MA. ISABEL VIOLAGO doing business under the name and style of "VIOLAGO-PTT SERVICE CENTER"; MOTORISTS' HEART CORPORATION represented by its

Vice-President for Operations, JOSELITO F. FLORDELIZA; MOTORISTS' HARVARD CORPORATION represented by its Vice-President for Operations, JOSELITO F. FLORDELIZA; MOTORISTS' HERITAGE CORPORATION represented by its Vice-President for Operations, JOSELITO F. FLORDELIZA; PHILIPPINE STANDARD OIL CORPORATION represented by its Vice-President for Operations, JOSELITO F. FLORDELIZA; ROMEO MANUEL doing business under the name and style of "ROMMAN GASOLINE STATION"; ANTHONY ALBERT CRUZ III doing business under the name and style of "TRUE SERVICE STATION",

Petitioners,

- versus -

CESAR V. PURISIMA, in his capacity as Secretary of the Department of Finance and GUILLERMO L. PARAYNO, JR., in his capacity as Commissioner of Internal Revenue,

Respondents.

x - x

FRANCIS JOSEPH G. ESCUDERO, VINCENT CRISOLOGO, EMMANUEL JOEL J. VILLANUEVA, RODOLFO G. PLAZA, DARLENE ANTONINO-CUSTODIO, OSCAR G. MALAPITAN, BENJAMIN C. AGARAO, JR. JUAN EDGARDO M. ANGARA, JUSTIN MARC SB.

G.R. No. 168463

ANGARA, JUSTIN MARC SB. CHIPECO, FLORENCIO G. NOEL, MUJIV S. HATAMAN, RENATO B. MAGTUBO, JOSEPH A. SANTIAGO, TEOFISTO DL. GUINGONA III, RUY ELIAS C. LOPEZ, RODOLFO Q. AGBAYANI and TEODORO A. CASIÑO,

Petitioners,

- versus -

CESAR V. PURISIMA, in his capacity as Secretary of Finance, GUILLERMO L. PARAYNO, JR., in his capacity as Commissioner of Internal Revenue, and EDUARDO R. ERMITA, in his capacity as Executive Secretary,

Respondents.

x - x

BATAAN GOVERNOR ENRIQUE T. GARCIA, JR.

Petitioner,

- versus -

HON. EDUARDO R. ERMITA, in his capacity as the Executive Secretary; HON. MARGARITO TEVES, in his capacity as Secretary of Finance; HON. JOSE MARIO BUNAG, in his capacity as the OIC Commissioner of the Bureau of Internal Revenue; and HON. ALEXANDER AREVALO, in his capacity as the OIC Commissioner of the Bureau of Customs,

Respondents.

G.R. No. 168730

Promulgated:

September 1, 2005

x - x

D E C I S I O N

AUSTRIA-MARTINEZ, *J.*:

> The expenses of government, having for their object the interest of all, should be borne by everyone, and the more man enjoys the advantages of society, the more he ought to hold himself honored in contributing to those expenses.
>
> -Anne Robert Jacques Turgot (1727-1781)
> French statesman and economist

Mounting budget deficit, revenue generation, inadequate fiscal allocation for education, increased emoluments for health workers, and wider coverage for full value-added tax benefits … these are the reasons why Republic Act No. 9337 (R.A. No. 9337)[1] was enacted. Reasons, the wisdom of which, the Court even with its extensive constitutional power of review, cannot probe. The petitioners in these cases, however, question not only the wisdom of the law, but also perceived constitutional infirmities in its passage.

Every law enjoys in its favor the presumption of constitutionality. Their arguments notwithstanding, petitioners failed to justify their call for the invalidity of the law. Hence, R.A. No. 9337 is not unconstitutional.

LEGISLATIVE HISTORY

R.A. No. 9337 is a consolidation of three legislative bills namely, House Bill Nos. 3555 and 3705, and Senate Bill No. 1950.

House Bill No. 3555[2] was introduced on first reading on January 7, 2005. The House

Committee on Ways and Means approved the bill, in substitution of House Bill No. 1468, which Representative (Rep.) Eric D. Singson introduced on August 8, 2004. The President certified the bill on January 7, 2005 for immediate enactment. On January 27, 2005, the House of Representatives approved the bill on second and third reading.

House Bill No. 3705[3] on the other hand, substituted House Bill No. 3105 introduced by Rep. Salacnib F. Baterina, and House Bill No. 3381 introduced by Rep. Jacinto V. Paras. Its "mother bill" is House Bill No. 3555. The House Committee on Ways and Means approved the bill on February 2, 2005. The President also certified it as urgent on February 8, 2005. The House of Representatives approved the bill on second and third reading on February 28, 2005.

Meanwhile, the Senate Committee on Ways and Means approved ***Senate Bill No. 1950***[4] on March 7, 2005, "in substitution of Senate Bill Nos. 1337, 1838 and 1873, taking into consideration House Bill Nos. 3555 and 3705." Senator Ralph G. Recto sponsored Senate Bill No. 1337, while Senate Bill Nos. 1838 and 1873 were both sponsored by Sens. Franklin M. Drilon, Juan M. Flavier and Francis N. Pangilinan. The President certified the bill on March 11, 2005, and was approved by the Senate on second and third reading on April 13, 2005.

On the same date, April 13, 2005, the Senate agreed to the request of the House of Representatives for a committee conference on the disagreeing provisions of the proposed bills.

Before long, the Conference Committee on the Disagreeing Provisions of House Bill

No. 3555, House Bill No. 3705, and Senate Bill No. 1950, "after having met and discussed in full free and conference," recommended the approval of its report, which the Senate did on May 10, 2005, and with the House of Representatives agreeing thereto the next day, May 11, 2005.

On May 23, 2005, the enrolled copy of the consolidated House and Senate version was transmitted to the President, who signed the same into law on May 24, 2005. Thus, came R.A. No. 9337.

July 1, 2005 is the effectivity date of R.A. No. 9337.[5] When said date came, the Court issued a temporary restraining order, effective immediately and continuing until further orders, enjoining respondents from enforcing and implementing the law.

Oral arguments were held on July 14, 2005. Significantly, during the hearing, the Court speaking through Mr. Justice Artemio V. Panganiban, voiced the rationale for its issuance of the temporary restraining order on July 1, 2005, to wit:

> J. PANGANIBAN : . . . But before I go into the details of your presentation, let me just tell you a little background. You know when the law took effect on July 1, 2005, the Court issued a TRO at about 5 o'clock in the afternoon. But before that, there was a lot of complaints aired on television and on radio. Some people in a gas station were complaining that the gas prices went up by 10%. Some people were complaining that their electric bill will go up by 10%. Other times people riding in domestic air carrier were complaining that the prices that they'll have to pay would have to go up by 10%. While all that was being aired, per your presentation and per our own understanding of the law, that's not true. It's not true that the e-vat law necessarily increased prices by 10% uniformly isn't it?
>
> ATTY. BANIQUED : No, Your Honor.
>
> J. PANGANIBAN : It is not?
>
> ATTY. BANIQUED : It's not, because, Your Honor, there is an Executive Order that granted the Petroleum companies some subsidy . . . interrupted

J. PANGANIBAN : That's correct . . .

ATTY. BANIQUED : . . . and therefore that was meant to temper the impact . . . interrupted

J. PANGANIBAN : . . . mitigating measures . . .

ATTY. BANIQUED : Yes, Your Honor.

J. PANGANIBAN : As a matter of fact a part of the mitigating measures would be the elimination of the Excise Tax and the import duties. That is why, it is not correct to say that the VAT as to petroleum dealers increased prices by 10%.

ATTY. BANIQUED : Yes, Your Honor.

J. PANGANIBAN : And therefore, there is no justification for increasing the retail price by 10% to cover the E-Vat tax. If you consider the excise tax and the import duties, the Net Tax would probably be in the neighborhood of 7%? We are not going into exact figures I am just trying to deliver a point that different industries, different products, different services are hit differently. So it's not correct to say that all prices must go up by 10%.

ATTY. BANIQUED : You're right, Your Honor.

J. PANGANIBAN : Now. For instance, Domestic Airline companies, Mr. Counsel, are at present imposed a Sales Tax of 3%. When this E-Vat law took effect the Sales Tax was also removed as a mitigating measure. So, therefore, there is no justification to increase the fares by 10% at best 7%, correct?

ATTY. BANIQUED : I guess so, Your Honor, yes.

J. PANGANIBAN : There are other products that the people were complaining on that first day, were being increased arbitrarily by 10%. And that's one reason among many others this Court had to issue TRO because of the confusion in the implementation. That's why we added as an issue in this case, even if it's tangentially taken up by the pleadings of the parties, the confusion in the implementation of the E-vat. Our people were subjected to the mercy of that confusion of an across the board increase of 10%, which you yourself now admit and I think even the Government will admit is incorrect. In some cases, it should be 3% only, in some cases it should be 6% depending on these mitigating measures and the location and situation of each product, of each service, of each company, isn't it?

ATTY. BANIQUED : Yes, Your Honor.

J. PANGANIBAN : Alright. So that's one reason why we had to issue a TRO pending the clarification of all these and we wish the government will take time to clarify all these by means of a more detailed implementing rules, in case the law is upheld by this Court. . . .[6]

The Court also directed the parties to file their respective Memoranda.

G.R. No. 168056

Before R.A. No. 9337 took effect, petitioners *ABAKADA GURO* Party List*, et al.*, filed a petition for prohibition on May 27, 2005. They question the constitutionality of Sections 4, 5 and 6 of R.A. No. 9337, amending Sections 106, 107 and 108, respectively, of the National Internal Revenue Code (NIRC). Section 4 imposes a 10% VAT on sale of goods and properties, Section 5 imposes a 10% VAT on importation of goods, and Section 6 imposes a 10% VAT on sale of services and use or lease of properties. These questioned provisions contain a uniform *proviso* authorizing the President, upon recommendation of the Secretary of Finance, to raise the VAT rate to 12%, effective January 1, 2006, after any of the following conditions have been satisfied, to wit:

> . . . That the President, upon the recommendation of the Secretary of Finance, shall, effective January 1, 2006, raise the rate of value-added tax to twelve percent (12%), after any of the following conditions has been satisfied:
>
> (i) Value-added tax collection as a percentage of Gross Domestic Product (GDP) of the previous year exceeds two and four-fifth percent (2 4/5%); or
>
> (ii) National government deficit as a percentage of GDP of the previous year exceeds one and one-half percent (1 ½%).

Petitioners argue that the law is unconstitutional, as it constitutes abandonment by Congress of its exclusive authority to fix the rate of taxes under Article VI, Section 28(2) of the 1987 Philippine Constitution.

G.R. No. 168207

On June 9, 2005, Sen. Aquilino Q. Pimentel, Jr., *et al.*, filed a petition for *certiorari* likewise assailing the constitutionality of Sections 4, 5 and 6 of R.A. No. 9337.

Aside from questioning the so-called *stand-by authority* of the President to increase the VAT rate to 12%, on the ground that it amounts to an undue delegation of legislative power, petitioners also contend that the increase in the VAT rate to 12% contingent on any of the two conditions being satisfied violates the due process clause embodied in Article III, Section 1 of the Constitution, as it imposes an unfair and additional tax burden on the people, in that: (1) the 12% increase is ambiguous because it does not state if the rate would be returned to the original 10% if the conditions are no longer satisfied; (2) the rate is unfair and unreasonable, as the people are unsure of the applicable VAT rate from year to year; and (3) the increase in the VAT rate, which is supposed to be an incentive to the President to raise the VAT collection to at least 2 $^{4}/_{5}$ of the GDP of the previous year, should only be based on fiscal adequacy.

Petitioners further claim that the inclusion of a *stand-by authority* granted to the President by the Bicameral Conference Committee is a violation of the "no-amendment rule" upon last reading of a bill laid down in Article VI, Section 26(2) of the Constitution.

G.R. No. 168461

Thereafter, a petition for prohibition was filed on June 29, 2005, by the Association of *Pilipinas* Shell Dealers, Inc., *et al.*, assailing the following provisions of R.A. No. 9337:

1) *Section 8*, amending Section 110 (A)(2) of the NIRC, requiring that the input tax on depreciable goods shall be amortized over a 60-month period, if the acquisition, excluding the VAT components, exceeds One Million Pesos (₱1, 000,000.00);

2) *Section 8*, amending Section 110 (B) of the NIRC, imposing a 70% limit on the amount of input tax to be credited against the output tax; and

3) *Section 12*, amending Section 114 (c) of the NIRC, authorizing the Government or any of its political subdivisions, instrumentalities or agencies, including GOCCs, to deduct a 5%

final withholding tax on gross payments of goods and services, which are subject to 10% VAT under Sections 106 (sale of goods and properties) and 108 (sale of services and use or lease of properties) of the NIRC.

Petitioners contend that these provisions are unconstitutional for being arbitrary, oppressive, excessive, and confiscatory.

Petitioners' argument is premised on the constitutional right of non-deprivation of life, liberty or property without due process of law under Article III, Section 1 of the Constitution. According to petitioners, the contested sections impose limitations on the amount of input tax that may be claimed. Petitioners also argue that the input tax partakes the nature of a property that may not be confiscated, appropriated, or limited without due process of law. Petitioners further contend that like any other property or property right, the input tax credit may be transferred or disposed of, and that by limiting the same, the government gets to tax a profit or value-added even if there is no profit or value-added.

Petitioners also believe that these provisions violate the constitutional guarantee of equal protection of the law under Article III, Section 1 of the Constitution, as the limitation on the creditable input tax if: (1) the entity has a high ratio of input tax; or (2) invests in capital equipment; or (3) has several transactions with the government, is not based on real and substantial differences to meet a valid classification.

Lastly, petitioners contend that the 70% limit is anything but progressive, violative of Article VI, Section 28(1) of the Constitution, and that it is the smaller businesses with higher input tax to output tax ratio that will suffer the consequences thereof for it wipes out whatever meager margins the petitioners make.

G.R. No. 168463

Several members of the House of Representatives led by Rep. Francis Joseph G. Escudero filed this petition for *certiorari* on June 30, 2005. They question the constitutionality of R.A. No. 9337 on the following grounds:

1) Sections 4, 5, and 6 of R.A. No. 9337 constitute an undue delegation of legislative power, in violation of Article VI, Section 28(2) of the Constitution;

2) The Bicameral Conference Committee acted without jurisdiction in deleting the *no pass on* provisions present in Senate Bill No. 1950 and House Bill No. 3705; and

3) Insertion by the Bicameral Conference Committee of Sections 27, 28, 34, 116, 117, 119, 121, 125,[7] 148, 151, 236, 237 and 288, which were present in Senate Bill No. 1950, violates Article VI, Section 24(1) of the Constitution, which provides that all appropriation, revenue or tariff bills shall originate exclusively in the House of Representatives

G.R. No. 168730

On the eleventh hour, Governor Enrique T. Garcia filed a petition for *certiorari* and prohibition on July 20, 2005, alleging unconstitutionality of the law on the ground that the limitation on the creditable input tax in effect allows VAT-registered establishments to retain a portion of the taxes they collect, thus violating the principle that tax collection and revenue should be solely allocated for public purposes and expenditures. Petitioner Garcia further claims that allowing these establishments to pass on the tax to the consumers is inequitable, in violation of Article VI, Section 28(1) of the Constitution.

RESPONDENTS' COMMENT

The Office of the Solicitor General (OSG) filed a Comment in behalf of respondents. Preliminarily, respondents contend that R.A. No. 9337 enjoys the presumption of

constitutionality and petitioners failed to cast doubt on its validity.

Relying on the case of *Tolentino vs. Secretary of Finance*, 235 SCRA 630 (1994), respondents argue that the procedural issues raised by petitioners, *i.e.*, legality of the bicameral proceedings, exclusive origination of revenue measures and the power of the Senate concomitant thereto, have already been settled. With regard to the issue of undue delegation of legislative power to the President, respondents contend that the law is complete and leaves no discretion to the President but to increase the rate to 12% once any of the two conditions provided therein arise.

Respondents also refute petitioners' argument that the increase to 12%, as well as the 70% limitation on the creditable input tax, the 60-month amortization on the purchase or importation of capital goods exceeding ₱1,000,000.00, and the 5% final withholding tax by government agencies, is arbitrary, oppressive, and confiscatory, and that it violates the constitutional principle on progressive taxation, among others.

Finally, respondents manifest that R.A. No. 9337 is the anchor of the government's fiscal reform agenda. A reform in the value-added system of taxation is the core revenue measure that will tilt the balance towards a sustainable macroeconomic environment necessary for economic growth.

ISSUES

The Court defined the issues, as follows:

PROCEDURAL ISSUE

Whether R.A. No. 9337 violates the following provisions of the Constitution:

a. Article VI, Section 24, and
b. Article VI, Section 26(2)

SUBSTANTIVE ISSUES

1. Whether Sections 4, 5 and 6 of R.A. No. 9337, amending Sections 106, 107 and 108 of the NIRC, violate the following provisions of the Constitution:

a. Article VI, Section 28(1), and
b. Article VI, Section 28(2)

2. Whether Section 8 of R.A. No. 9337, amending Sections 110(A)(2) and 110(B) of the NIRC; and Section 12 of R.A. No. 9337, amending Section 114(C) of the NIRC, violate the following provisions of the Constitution:

a. Article VI, Section 28(1), and
b. Article III, Section 1

RULING OF THE COURT

As a prelude, the Court deems it apt to restate the general principles and concepts of value-added tax (VAT), as the confusion and inevitably, litigation, breeds from a fallacious notion of its nature.

The VAT is a tax on spending or consumption. It is levied on the sale, barter, exchange or lease of goods or properties and services.[8] Being an indirect tax on expenditure, the seller of goods or services may pass on the amount of tax paid to the buyer,[9] with the seller acting merely as a tax collector.[10] The burden of VAT is intended to fall on the immediate buyers and ultimately, the end-consumers.

In contrast, a direct tax is a tax for which a taxpayer is directly liable on the transaction or business it engages in, without transferring the burden to someone else.[11] Examples are

individual and corporate income taxes, transfer taxes, and residence taxes.[12]

In the Philippines, the value-added system of sales taxation has long been in existence, albeit in a different mode. Prior to 1978, the system was a single-stage tax computed under the "cost deduction method" and was payable only by the original sellers. The single-stage system was subsequently modified, and a mixture of the "cost deduction method" and "tax credit method" was used to determine the value-added tax payable.[13] Under the "tax credit method," an entity can credit against or subtract from the VAT charged on its sales or outputs the VAT paid on its purchases, inputs and imports.[14]

It was only in 1987, when President Corazon C. Aquino issued Executive Order No. 273, that the VAT system was rationalized by imposing a multi-stage tax rate of 0% or 10% on all sales using the "tax credit method."[15]

E.O. No. 273 was followed by R.A. No. 7716 or the Expanded VAT Law,[16] R.A. No. 8241 or the Improved VAT Law,[17] R.A. No. 8424 or the Tax Reform Act of 1997,[18] and finally, the presently beleaguered R.A. No. 9337, also referred to by respondents as the VAT Reform Act.

The Court will now discuss the issues in logical sequence.

PROCEDURAL ISSUE

I.

Whether R.A. No. 9337 violates the following provisions of the Constitution:

a. Article VI, Section 24, and
b. Article VI, Section 26(2)

A. The Bicameral Conference Committee

Petitioners Escudero, *et al.*, and Pimentel, *et al.*, allege that the Bicameral Conference Committee exceeded its authority by:

1) Inserting the *stand-by authority* in favor of the President in Sections 4, 5, and 6 of R.A. No. 9337;

2) Deleting entirely the *no pass-on* provisions found in both the House and Senate bills;

3) Inserting the provision imposing a 70% limit on the amount of input tax to be credited against the output tax; and

4) Including the amendments introduced only by Senate Bill No. 1950 regarding other kinds of taxes in addition to the value-added tax.

Petitioners now beseech the Court to define the powers of the Bicameral Conference Committee.

It should be borne in mind that the power of internal regulation and discipline are intrinsic in any legislative body for, as unerringly elucidated by Justice Story, **"[i]f the power did not exist, it would be utterly impracticable to transact the business of the nation, either at all, or at least with decency, deliberation, and order.**"[19] Thus, Article VI, Section 16 (3) of the Constitution provides that "each House may determine the rules of its proceedings." Pursuant to this inherent constitutional power to promulgate and implement its own rules of procedure, the respective rules of each house of Congress provided for the creation of a Bicameral Conference Committee.

Thus, Rule XIV, Sections 88 and 89 of the Rules of House of Representatives provides as follows:

> Sec. 88. *Conference Committee*. – In the event that the House does not agree with the Senate on the amendment to any bill or joint resolution, the differences may be settled by the conference committees of both chambers.
>
> In resolving the differences with the Senate, the House panel shall, as much as possible, adhere to and support the House Bill. If the differences with the Senate are so substantial that they materially impair the House Bill, the panel shall report such fact to the House for the latter's appropriate action.
>
> Sec. 89. *Conference Committee Reports*. – . . . Each report shall contain a detailed, sufficiently explicit statement of the changes in or amendments to the subject measure.
>
> . . .
>
> The Chairman of the House panel may be interpellated on the Conference Committee Report prior to the voting thereon. The House shall vote on the Conference Committee Report in the same manner and procedure as it votes on a bill on third and final reading.

Rule XII, Section 35 of the Rules of the Senate states:

> Sec. 35. In the event that the Senate does not agree with the House of Representatives on the provision of any bill or joint resolution, the differences shall be settled by a conference committee of both Houses which shall meet within ten (10) days after their composition. The President shall designate the members of the Senate Panel in the conference committee with the approval of the Senate.
>
> Each Conference Committee Report shall contain a detailed and sufficiently explicit statement of the changes in, or amendments to the subject measure, and shall be signed by a majority of the members of each House panel, voting separately.
>
> A comparative presentation of the conflicting House and Senate provisions and a reconciled version thereof with the explanatory statement of the conference committee shall be attached to the report.
>
> . . .

The creation of such conference committee was apparently in response to a problem, not addressed by any constitutional provision, where the two houses of Congress find themselves in disagreement over changes or amendments introduced by the other house in a

legislative bill. Given that one of the most basic powers of the legislative branch is to formulate and implement its own rules of proceedings and to discipline its members, may the Court then delve into the details of how Congress complies with its internal rules or how it conducts its business of passing legislation? Note that in the present petitions, the issue is not whether provisions of the rules of both houses creating the bicameral conference committee are unconstitutional, **but whether the bicameral conference committee has strictly complied with the rules of both houses, thereby remaining within the jurisdiction conferred upon it by Congress**.

In the recent case of *Fariñas vs. The Executive Secretary*,[20] the Court *En Banc*, **unanimously** reiterated and emphasized its adherence to the "enrolled bill doctrine," thus, declining therein petitioners' plea for the Court to go behind the enrolled copy of the bill. Assailed in said case was Congress's creation of two sets of bicameral conference committees, the lack of records of said committees' proceedings, the alleged violation of said committees of the rules of both houses, and the disappearance or deletion of one of the provisions in the compromise bill submitted by the bicameral conference committee. It was argued that such irregularities in the passage of the law nullified R.A. No. 9006, or the Fair Election Act.

Striking down such argument, the Court held thus:

> Under the "enrolled bill doctrine," the signing of a bill by the Speaker of the House and the Senate President and the certification of the Secretaries of both Houses of Congress that it was passed are conclusive of its due enactment. A review of cases reveals the Court's consistent adherence to the rule. **The Court finds no reason to deviate from the salutary rule in this case where the irregularities alleged by the petitioners mostly involved the internal rules of Congress, *e.g.*, creation of the 2nd or 3rd Bicameral Conference Committee by the House. This Court is not the proper forum for the enforcement of these internal rules of Congress, whether House or Senate. Parliamentary rules are merely procedural and with their observance the courts have no concern. Whatever doubts there may be as to the formal validity of Rep. Act No. 9006 must be resolved in its favor.** The Court reiterates its ruling in *Arroyo vs. De Venecia*, *viz.*:

> But the **cases, both here and abroad, in varying forms of expression, all deny to the courts the power to inquire into allegations that, in enacting a law, a House of Congress failed to comply with its own rules, in the absence of showing that there was a violation of a constitutional provision or the rights of private individuals.** In *Osmeña v. Pendatun*, it was held: "At any rate, courts have declared that 'the rules adopted by deliberative bodies are subject to revocation, modification or waiver at the pleasure of the body adopting them.' **And it has been said that "Parliamentary rules are merely procedural, and with their observance, the courts have no concern. They may be waived or disregarded by the legislative body." Consequently, "mere failure to conform to parliamentary usage will not invalidate the action (taken by a deliberative body) when the requisite number of members have agreed to a particular measure.**"[21] (Emphasis supplied)

The foregoing declaration is exactly in point with the present cases, where petitioners allege irregularities committed by the conference committee in introducing changes or deleting provisions in the House and Senate bills. Akin to the *Fariñas* case,[22] the present petitions also raise an issue regarding the actions taken by the conference committee on matters regarding Congress' compliance with its own internal rules. As stated earlier, one of the most basic and inherent power of the legislature is the power to formulate rules for its proceedings and the discipline of its members. Congress is the best judge of how it should conduct its own business expeditiously and in the most orderly manner. It is also the sole concern of Congress to instill discipline among the members of its conference committee if it believes that said members violated any of its rules of proceedings. Even the expanded jurisdiction of this Court cannot apply to questions regarding only the internal operation of Congress, thus, the Court is wont to deny a review of the internal proceedings of a co-equal branch of government.

Moreover, as far back as 1994 or more than ten years ago, in the case of *Tolentino vs. Secretary of Finance,*[23] the Court already made the pronouncement that "**[i]f a change is**

desired in the practice [of the Bicameral Conference Committee] it must be sought in Congress since this question is not covered by any constitutional provision but is only an internal rule of each house." [24] To date, Congress has not seen it fit to make such changes adverted to by the Court. It seems, therefore, that Congress finds the practices of the bicameral conference committee to be very useful for purposes of prompt and efficient legislative action.

Nevertheless, just to put minds at ease that no blatant irregularities tainted the proceedings of the bicameral conference committees, the Court deems it necessary to dwell on the issue. The Court observes that there was a necessity for a conference committee because a comparison of the provisions of House Bill Nos. 3555 and 3705 on one hand, and Senate Bill No. 1950 on the other, reveals that there were indeed disagreements. As pointed out in the petitions, said disagreements were as follows:

House Bill No. 3555	**House Bill No.3705**	**Senate Bill No. 1950**
With regard to "Stand-By Authority" in favor of President		
Provides for 12% VAT on every sale of goods or properties (amending Sec. 106 of NIRC); 12% VAT on importation of goods (amending Sec. 107 of NIRC); and 12% VAT on sale of services and use or lease of properties (amending Sec. 108 of NIRC)	Provides for 12% VAT in general on sales of goods or properties and reduced rates for sale of certain locally manufactured goods and petroleum products and raw materials to be used in the manufacture thereof (amending Sec. 106 of NIRC); 12% VAT on importation of goods and reduced rates for certain imported products including petroleum products (amending Sec. 107 of NIRC); and 12% VAT on sale of services and use or lease of properties and a reduced rate for certain services including power generation (amending Sec. 108 of NIRC)	Provides for a single rate of 10% VAT on sale of goods or properties (amending Sec. 106 of NIRC), 10% VAT on sale of services including sale of electricity by generation companies, transmission and distribution companies, and use or lease of properties (amending Sec. 108 of NIRC)

With regard to the "no pass-on" provision

No similar provision	Provides that the VAT imposed on power generation and on the sale of petroleum products shall be absorbed by generation companies or sellers, respectively, and shall not be passed on to consumers	Provides that the VAT imposed on sales of electricity by generation companies and services of transmission companies and distribution companies, as well as those of franchise grantees of electric utilities shall not apply to residential end-users. VAT shall be absorbed by generation, transmission, and distribution companies.

With regard to 70% limit on input tax credit

Provides that the input tax credit for capital goods on which a VAT has been paid shall be equally distributed over 5 years or the depreciable life of such capital goods; the input tax credit for goods and services other than capital goods shall not exceed 5% of the total amount of such goods and services; and for persons engaged in retail trading of goods, the allowable input tax credit shall not exceed 11% of the total amount of goods purchased.	No similar provision	Provides that the input tax credit for capital goods on which a VAT has been paid shall be equally distributed over 5 years or the depreciable life of such capital goods; the input tax credit for goods and services other than capital goods shall not exceed 90% of the output VAT.

With regard to amendments to be made to NIRC provisions regarding income and excise taxes

No similar provision	No similar provision	Provided for amendments to several NIRC provisions regarding corporate income, percentage, franchise and excise taxes

The disagreements between the provisions in the House bills and the Senate bill were with regard to (1) what rate of VAT is to be imposed; (2) whether only the VAT imposed on

electricity generation, transmission and distribution companies should not be passed on to consumers, as proposed in the Senate bill, or both the VAT imposed on electricity generation, transmission and distribution companies and the VAT imposed on sale of petroleum products should not be passed on to consumers, as proposed in the House bill; (3) in what manner input tax credits should be limited; (4) and whether the NIRC provisions on corporate income taxes, percentage, franchise and excise taxes should be amended.

There being differences and/or disagreements on the foregoing provisions of the House and Senate bills, the Bicameral Conference Committee was mandated by the rules of both houses of Congress to act on the same by settling said differences and/or disagreements. The Bicameral Conference Committee acted on the disagreeing provisions by making the following changes:

1. With regard to the disagreement on the rate of VAT to be imposed, it would appear from the Conference Committee Report that the Bicameral Conference Committee tried to bridge the gap in the difference between the 10% VAT rate proposed by the Senate, and the various rates with 12% as the highest VAT rate proposed by the House, by striking a compromise whereby the present 10% VAT rate would be retained until certain conditions arise, *i.e.*, the value-added tax collection as a percentage of gross domestic product (GDP) of the previous year exceeds 2 4/5%, or National Government deficit as a percentage of GDP of the previous year exceeds 1½%, when the President, upon recommendation of the Secretary of Finance shall raise the rate of VAT to 12% effective January 1, 2006.

2. With regard to the disagreement on whether only the VAT imposed on electricity generation, transmission and distribution companies should not be passed on to consumers or

whether both the VAT imposed on electricity generation, transmission and distribution companies and the VAT imposed on sale of petroleum products may be passed on to consumers, the Bicameral Conference Committee chose to settle such disagreement by altogether deleting from its Report any *no pass-on* provision.

3. With regard to the disagreement on whether input tax credits should be limited or not, the Bicameral Conference Committee decided to adopt the position of the House by putting a limitation on the amount of input tax that may be credited against the output tax, although it crafted its own language as to the amount of the limitation on input tax credits and the manner of computing the same by providing thus:

> (A) Creditable Input Tax. – . . .
>
> . . .
>
> *Provided*, The input tax on goods purchased or imported in a calendar month for use in trade or business for which deduction for depreciation is allowed under this Code, shall be spread evenly over the month of acquisition and the fifty-nine (59) succeeding months if the aggregate acquisition cost for such goods, excluding the VAT component thereof, exceeds one million Pesos (₱1,000,000.00): PROVIDED, however, that if the estimated useful life of the capital good is less than five (5) years, as used for depreciation purposes, then the input VAT shall be spread over such shorter period: . . .
>
> (B) Excess Output or Input Tax. – If at the end of any taxable quarter the output tax exceeds the input tax, the excess shall be paid by the VAT-registered person. If the input tax exceeds the output tax, the excess shall be carried over to the succeeding quarter or quarters: PROVIDED that the input tax inclusive of input VAT carried over from the previous quarter that may be credited in every quarter shall not exceed seventy percent (70%) of the output VAT: PROVIDED, HOWEVER, THAT any input tax attributable to zero-rated sales by a VAT-registered person may at his option be refunded or credited against other internal revenue taxes, . . .

4. With regard to the amendments to other provisions of the NIRC on corporate income tax, franchise, percentage and excise taxes, the conference committee decided to

include such amendments and basically adopted the provisions found in Senate Bill No. 1950, with some changes as to the rate of the tax to be imposed.

Under the provisions of both the Rules of the House of Representatives and Senate Rules, the Bicameral Conference Committee is mandated to settle the differences between the disagreeing provisions in the House bill and the Senate bill. The term "settle" is synonymous to "reconcile" and "harmonize."[25] To reconcile or harmonize disagreeing provisions, the Bicameral Conference Committee may then (a) adopt the specific provisions of either the House bill or Senate bill, (b) decide that neither provisions in the House bill or the provisions in the Senate bill would

be carried into the final form of the bill, and/or (c) try to arrive at a compromise between the disagreeing provisions.

In the present case, the changes introduced by the Bicameral Conference Committee on disagreeing provisions were meant only to reconcile and harmonize the disagreeing provisions for it did not inject any idea or intent that is wholly foreign to the subject embraced by the original provisions.

The so-called *stand-by authority* in favor of the President, whereby the rate of 10% VAT wanted by the Senate is retained until such time that certain conditions arise when the 12% VAT wanted by the House shall be imposed, appears to be a compromise to try to bridge the difference in the rate of VAT proposed by the two houses of Congress. Nevertheless, such compromise is still totally within the subject of what rate of VAT should be imposed on taxpayers.

The *no pass-on provision* was deleted altogether. In the transcripts of the proceedings of the Bicameral Conference Committee held on May 10, 2005, Sen. Ralph Recto, Chairman of the Senate Panel, explained the reason for deleting the *no pass-on* provision in this wise:

> . . . the thinking was just to keep the VAT law or the VAT bill simple. And we were thinking that no sector should be a beneficiary of legislative grace, neither should any sector be discriminated on. The VAT is an indirect tax. **It is a pass on-tax**. And let's keep it plain and simple. Let's not confuse the bill and put a no pass-on provision. Two-thirds of the world have a VAT system and in this two-thirds of the globe, I have yet to see a VAT with a no pass-though provision. So, the thinking of the Senate is basically simple, let's keep the VAT simple.[26] (Emphasis supplied)

Rep. Teodoro Locsin further made the manifestation that the *no pass-on* provision "never really enjoyed the support of either House."[27]

With regard to the amount of input tax to be credited against output tax, the Bicameral Conference Committee came to a compromise on the percentage rate of the limitation or cap on such input tax credit, but again, the change introduced by the Bicameral Conference Committee was totally within the intent of both houses to put a cap on input tax that may be

credited against the output tax. From the inception of the subject revenue bill in the House of Representatives, one of the major objectives was to "plug a glaring loophole in the tax policy and administration by creating vital restrictions on the claiming of input VAT tax credits . . ." and "[b]y introducing limitations on the claiming of tax credit, we are capping a major leakage that has placed our collection efforts at an apparent disadvantage."[28]

As to the amendments to NIRC provisions on taxes other than the value-added tax proposed in Senate Bill No. 1950, since said provisions were among those referred to it, the

conference committee had to act on the same and it basically adopted the version of the Senate.

Thus, all the changes or modifications made by the Bicameral Conference Committee were germane to subjects of the provisions referred to it for reconciliation. Such being the case, the Court does not see any grave abuse of discretion amounting to lack or excess of jurisdiction committed by the Bicameral Conference Committee. In the earlier cases of *Philippine Judges Association vs. Prado*[29] and *Tolentino vs. Secretary of Finance,*[30] the Court recognized the long-standing legislative practice of giving said conference committee ample latitude for compromising differences between the Senate and the House. Thus, in the *Tolentino* case, it was held that:

> . . . it is within the power of a conference committee to include in its report an entirely new provision that is not found either in the House bill or in the Senate bill. If the committee can propose an amendment consisting of one or two provisions, there is no reason why it cannot propose several provisions, collectively considered as an "amendment in the nature of a substitute," so long as such amendment is germane to the subject of the bills before the committee. After all, its report was not final but needed the approval of both houses of Congress to become valid as an act of the legislative department. **The charge that in this case the Conference Committee acted as a third legislative chamber is thus without any basis.**[31] (Emphasis supplied)

B. R.A. No. 9337 Does Not Violate Article VI, Section 26(2) of the Constitution on the "No-Amendment Rule"

Article VI, Sec. 26 (2) of the Constitution, states:

> No bill passed by either House shall become a law unless it has passed three readings on separate days, and printed copies thereof in its final form have been distributed to its Members three days before its passage, except when the President certifies to the necessity of its immediate enactment to meet a public calamity or emergency. Upon the last reading of a bill, no amendment thereto shall be allowed, and the vote thereon shall be taken immediately thereafter, and the yeas and nays entered in the Journal.

Petitioners' argument that the practice where a bicameral conference committee is allowed to add or delete provisions in the House bill and the Senate bill after these had passed three readings is in effect a circumvention of the "no amendment rule" (Sec. 26 (2), Art. VI of the 1987 Constitution), fails to convince the Court to deviate from its ruling in the *Tolentino* case that:

> Nor is there any reason for requiring that the Committee's Report in these cases must have undergone three readings in each of the two houses. If that be the case, there would be no end to negotiation since each house may seek modification of the compromise bill. . . .
>
> **Art. VI. § 26 (2) must, therefore, be construed as referring only to bills introduced for the first time in either house of Congress, not to the conference committee report.**[32] (Emphasis supplied)

The Court reiterates here that **the "no-amendment rule" refers only to the procedure to be followed by each house of Congress with regard to bills initiated in each of said respective houses, before said bill is transmitted to the other house for its concurrence or amendment**. Verily, to construe said provision in a way as to proscribe any further changes to a bill after one house has voted on it would lead to absurdity as this would mean that the other house of Congress would be deprived of its constitutional power to amend or introduce changes to said bill. Thus, Art. VI, Sec. 26 (2) of the Constitution cannot be taken to mean that the introduction by the Bicameral Conference Committee of amendments and modifications to disagreeing provisions in bills that have been acted upon by both houses of Congress is prohibited.

C. R.A. No. 9337 Does Not Violate Article VI, Section 24 of the Constitution on Exclusive Origination of Revenue Bills

Coming to the issue of the validity of the amendments made regarding the NIRC provisions on corporate income taxes and percentage, excise taxes. Petitioners refer to the following provisions, to wit:

Section 27	
	Rates of Income Tax on Domestic Corporation
28(A)(1)	Tax on Resident Foreign Corporation
28(B)(1)	Inter-corporate Dividends
34(B)(1)	Inter-corporate Dividends
116	Tax on Persons Exempt from VAT
117	Percentage Tax on domestic carriers and keepers of Garage
119	Tax on franchises
121	Tax on banks and Non-Bank Financial Intermediaries
148	Excise Tax on manufactured oils and other fuels
151	Excise Tax on mineral products
236	Registration requirements
237	Issuance of receipts or sales or commercial invoices
288	Disposition of Incremental Revenue

Petitioners claim that the amendments to these provisions of the NIRC did not at all originate from the House. They aver that House Bill No. 3555 proposed amendments only regarding Sections 106, 107, 108, 110 and 114 of the NIRC, while House Bill No. 3705 proposed amendments only to Sections 106, 107,108, 109, 110 and 111 of the NIRC; thus, the other sections of the NIRC which the Senate amended but which amendments were not found in the House bills are not intended to be amended by the House of Representatives. Hence, they argue that since the proposed amendments did not originate from the House, such amendments are a violation of Article VI, Section 24 of the Constitution.

The argument does not hold water.

Article VI, Section 24 of the Constitution reads:

> Sec. 24. All appropriation, revenue or tariff bills, bills authorizing increase of the public debt, bills of local application, and private bills shall originate exclusively in the House of Representatives but the Senate may propose or concur with amendments.

In the present cases, petitioners admit that it was indeed House Bill Nos. 3555 and 3705 that initiated the move for amending provisions of the NIRC dealing mainly with the value-added tax. Upon transmittal of said House bills to the Senate, the Senate came out with Senate Bill No. 1950 proposing amendments not only to NIRC provisions on the value-added tax but also amendments to NIRC provisions on other kinds of taxes. Is the introduction by the Senate of provisions not dealing directly with the value- added tax, which is the only kind of tax being amended in the House bills, still within the purview of the constitutional provision authorizing the Senate to propose or concur with amendments to a revenue bill that originated from the House?

The foregoing question had been squarely answered in the *Tolentino* case, wherein the Court held, thus:

> . . . To begin with, it is not the law – but the revenue bill – which is required by the Constitution to "originate exclusively" in the House of Representatives. It is important to emphasize this, because a bill originating in the House may undergo such extensive changes in the Senate that the result may be a rewriting of the whole. . . . At this point, what is important to note is that, as a result of the Senate action, a distinct bill may be produced. **To insist that a revenue statute – and not only the bill which initiated the legislative process culminating in the enactment of the law – must substantially be the same as the House bill would be to deny the Senate's power not only to "*concur with amendments*" but also to "*propose amendments*."** It would be to violate the coequality of legislative power of the two houses of Congress and in fact make the House superior to the Senate.
>
> …
>
> …**Given, then, the power of the Senate to propose amendments, the Senate can propose its own version even with respect to bills which are required by the Constitution to originate in the House**.
>
> . . .

> Indeed, what the Constitution simply means is that the initiative for filing revenue, tariff or tax bills, bills authorizing an increase of the public debt, private bills and bills of local application must come from the House of Representatives on the theory that, elected as they are from the districts, **the members of the House can be expected to be more sensitive to the local needs and problems. On the other hand, the senators, who are elected at large, are expected to approach the same problems from the national perspective. Both views are thereby made to bear on the enactment of such laws**.[33] (Emphasis supplied)

Since there is no question that the revenue bill exclusively originated in the House of Representatives, the Senate was acting within its constitutional power to introduce amendments to the House bill when it included provisions in Senate Bill No. 1950 amending corporate income taxes, percentage, excise and franchise taxes. Verily, Article VI, Section 24 of the Constitution does not contain any prohibition or limitation on the extent of the amendments that may be introduced by the Senate to the House revenue bill.

Furthermore, the amendments introduced by the Senate to the NIRC provisions that had not been touched in the House bills are still in furtherance of the intent of the House in initiating the subject revenue bills. The Explanatory Note of House Bill No. 1468, the very first House bill introduced on the floor, which was later substituted by House Bill No. 3555, stated:

> One of the challenges faced by the present administration is the urgent and daunting task of solving the country's serious financial problems. To do this, government expenditures must be strictly monitored and controlled and revenues must be significantly increased. This may be easier said than done, but our fiscal authorities are still optimistic the government will be operating on a balanced budget by the year 2009. In fact, several measures that will result to significant expenditure savings have been identified by the administration. **It is supported with a credible package of revenue measures that include measures to improve tax administration and control the leakages in revenues from income taxes and the value-added tax (VAT)**. (Emphasis supplied)

Rep. Eric D. Singson, in his sponsorship speech for House Bill No. 3555, declared that:

> In the budget message of our President in the year 2005, she reiterated that we all acknowledged that on top of our agenda must be the restoration of the health of our fiscal system.
>
> In order to considerably lower the consolidated public sector deficit and eventually achieve a balanced budget by the year 2009, **we need to seize windows of opportunities which might seem poignant in the beginning, but in the long run prove effective and beneficial to the overall status of our economy. One such opportunity is a review of existing tax rates, evaluating the relevance given our present conditions**.[34] (Emphasis supplied)

Notably therefore, the main purpose of the bills emanating from the House of Representatives is to bring in sizeable revenues for the government

to supplement our country's serious financial problems, and improve tax administration and control of the leakages in revenues from income taxes and value-added taxes. As these house bills were transmitted to the Senate, the latter, approaching the measures from the point of national perspective, can introduce amendments within the purposes of those bills. It can provide for ways that would soften the impact of the VAT measure on the consumer, *i.e.*, by distributing the burden across all sectors instead of putting it entirely on the shoulders of the consumers. The sponsorship speech of Sen. Ralph Recto on why the provisions on income tax on corporation were included is worth quoting:

> All in all, the proposal of the Senate Committee on Ways and Means will raise ₱64.3 billion in additional revenues annually even while by mitigating prices of power, services and petroleum products.
>
> However, not all of this will be wrung out of VAT. In fact, only ₱48.7 billion amount is from the VAT on twelve goods and services. The rest of the tab – ₱10.5 billion- will be picked by corporations.
>
> What we therefore prescribe is a burden sharing between corporate Philippines and the consumer. Why should the latter bear all the pain? Why should the fiscal salvation be only on the burden of the consumer?
>
> The corporate world's equity is in form of the increase in the corporate income tax from 32 to 35 percent, but up to 2008 only. This will raise ₱10.5 billion a year. After that, the rate will

slide back, not to its old rate of 32 percent, but two notches lower, to 30 percent.

Clearly, we are telling those with the capacity to pay, corporations, to bear with this emergency provision that will be in effect for 1,200 days, while we put our fiscal house in order. This fiscal medicine will have an expiry date.

For their assistance, a reward of tax reduction awaits them. We intend to keep the length of their sacrifice brief. We would like to assure them that not because there is a light at the end of the tunnel, this government will keep on making the tunnel long.

The responsibility will not rest solely on the weary shoulders of the small man. Big business will be there to share the burden.[35]

As the Court has said, the Senate can propose amendments and in fact, the amendments made on provisions in the tax on income of corporations are germane to the purpose of the house bills which is to raise revenues for the government.

Likewise, the Court finds the sections referring to other percentage and excise taxes germane to the reforms to the VAT system, as these sections would cushion the effects of VAT on consumers. Considering that certain goods and services which were subject to percentage tax and excise tax would no longer be VAT-exempt, the consumer would be burdened more as they would be paying the VAT in addition to these taxes. Thus, there is a need to amend these sections to soften the impact of VAT. Again, in his sponsorship speech, Sen. Recto said:

However, for power plants that run on oil, we will reduce to zero the present excise tax on bunker fuel, to lessen the effect of a VAT on this product.

For electric utilities like Meralco, we will wipe out the franchise tax in exchange for a VAT.

And in the case of petroleum, while we will levy the VAT on oil products, so as not to destroy the VAT chain, we will however bring down the excise tax on socially sensitive products such as diesel, bunker, fuel and kerosene.

. . .

What do all these exercises point to? These are not contortions of giving to the left hand

what was taken from the right. Rather, these sprang from our concern of softening the impact of VAT, so that the people can cushion the blow of higher prices they will have to pay as a result of VAT.[36]

The other sections amended by the Senate pertained to matters of tax administration which are necessary for the implementation of the changes in the VAT system.

To reiterate, the sections introduced by the Senate are germane to the subject matter and purposes of the house bills, which is to supplement our country's fiscal deficit, among others. Thus, the Senate acted within its power to propose those amendments.

SUBSTANTIVE ISSUES

I.

Whether Sections 4, 5 and 6 of R.A. No. 9337, amending Sections 106, 107 and 108 of the NIRC, violate the following provisions of the Constitution:

a. Article VI, Section 28(1), and
b. Article VI, Section 28(2)

A. No Undue Delegation of Legislative Power

Petitioners *ABAKADA GURO* Party List, *et al.*, Pimentel, Jr., *et al.*, and Escudero, *et al.* contend in common that Sections 4, 5 and 6 of R.A. No. 9337, amending Sections 106, 107 and 108, respectively, of the NIRC giving the President the *stand-by authority* to raise the VAT rate from 10% to 12% when a certain condition is met, constitutes undue delegation of the legislative power to tax.

The assailed provisions read as follows:

SEC. 4. Sec. 106 of the same Code, as amended, is hereby further amended to read as follows:

SEC. 106. Value-Added Tax on Sale of Goods or Properties. –

(A) Rate and Base of Tax. – There shall be levied, assessed and collected on every sale, barter or exchange of goods or properties, a value-added tax equivalent to ten percent (10%) of the gross selling price or gross value in money of the goods or properties sold, bartered or exchanged, such tax to be paid by the seller or transferor: **provided, that the President, upon the recommendation of the Secretary of Finance, shall, effective January 1, 2006, raise the rate of value-added tax to twelve percent (12%), after any of the following conditions has been satisfied.**

(i) value-added tax collection as a percentage of Gross Domestic Product (GDP) of the previous year exceeds two and four-fifth percent (2 4/5%) or

(ii) national government deficit as a percentage of GDP of the previous year exceeds one and one-half percent (1 ½%).

SEC. 5. Section 107 of the same Code, as amended, is hereby further amended to read as follows:

SEC. 107. Value-Added Tax on Importation of Goods. –

(A) In General. – There shall be levied, assessed and collected on every importation of goods a value-added tax equivalent to ten percent (10%) based on the total value used by the Bureau of Customs in determining tariff and customs duties, plus customs duties, excise taxes, if any, and other charges, such tax to be paid by the importer prior to the release of such goods from customs custody: Provided, That where the customs duties are determined on the basis of the quantity or volume of the goods, the value-added tax shall be based on the landed cost plus excise taxes, if any: **provided, further, that the President, upon the recommendation of the Secretary of Finance, shall, effective January 1, 2006, raise the rate of value-added tax to twelve percent (12%) after any of the following conditions has been satisfied.**

(i) value-added tax collection as a percentage of Gross Domestic Product (GDP) of the previous year exceeds two and four-fifth percent (2 4/5%) or

(ii) national government deficit as a percentage of GDP of the previous year exceeds one and one-half percent (1 ½%).

SEC. 6. Section 108 of the same Code, as amended, is hereby further amended to read as follows:

SEC. 108. Value-added Tax on Sale of Services and Use or Lease of Properties –

(A) Rate and Base of Tax. – There shall be levied, assessed and collected, a value-added tax equivalent to ten percent (10%) of gross receipts derived from the sale or exchange of services: **provided, that the President, upon the recommendation of the Secretary of Finance, shall, effective January 1, 2006, raise the rate of value-added tax to twelve percent (12%), after any of the**

following conditions has been satisfied.

(i) value-added tax collection as a percentage of Gross Domestic Product (GDP) of the previous year exceeds two and four-fifth percent (2 4/5%) or

(ii) national government deficit as a percentage of GDP of the previous year exceeds one and one-half percent (1 ½%). (Emphasis supplied)

Petitioners allege that the grant of the *stand-by authority* to the President to increase the VAT rate is a virtual abdication by Congress of its exclusive power to tax because such delegation is not within the purview of Section 28 (2), Article VI of the Constitution, which provides:

> The Congress may, by law, authorize the President to fix within specified limits, and may impose, tariff rates, import and export quotas, tonnage and wharfage dues, and other duties or imposts within the framework of the national development program of the government.

They argue that the VAT is a tax levied on the sale, barter or exchange of goods and properties as well as on the sale or exchange of services, which cannot be included within the purview of tariffs under the exempted delegation as the latter refers to customs duties, tolls or tribute payable upon merchandise to the government and usually imposed on goods or merchandise imported or exported.

Petitioners *ABAKADA GURO* Party List, *et al.*, further contend that delegating to the President the legislative power to tax is contrary to republicanism. They insist that accountability, responsibility and transparency should dictate the actions of Congress and they should not pass to the President the decision to impose taxes. They also argue that the law also effectively nullified the President's power of control, which includes the authority to set aside and nullify the acts of her subordinates like the Secretary of Finance, by mandating the fixing of the tax rate by the President upon the recommendation of the Secretary of Finance.

Petitioners Pimentel, *et al.* aver that the President has ample powers to cause, influence or create the conditions provided by the law to bring about either or both the conditions precedent.

On the other hand, petitioners Escudero, *et al.* find bizarre and revolting the situation that the imposition of the 12% rate would be subject to the whim of the Secretary of Finance, an unelected bureaucrat, contrary to the principle of no taxation without representation. They submit that the Secretary of Finance is not mandated to give a favorable recommendation and he may not even give his recommendation. Moreover, they allege that no guiding standards are provided in the law on what basis and as to how he will make his recommendation. They claim, nonetheless, that any recommendation of the Secretary of Finance can easily be brushed aside by the President since the former is a mere alter ego of the latter, such that, ultimately, it is the President who decides whether to impose the increased tax rate or not.

A brief discourse on the principle of non-delegation of powers is instructive.

The principle of separation of powers ordains that each of the three great branches of government has exclusive cognizance of and is supreme in matters falling within its own constitutionally allocated sphere.[37] A logical corollary to the doctrine of separation of powers is the principle of non-delegation of powers, as expressed in the Latin maxim: *potestas delegata non delegari potest* which means "what has been delegated, cannot be delegated."[38] This doctrine is based on the ethical principle that such as delegated power constitutes not only a right but a duty to be performed by the delegate through the instrumentality of his own judgment and not through the intervening

mind of another.[39]

With respect to the Legislature, Section 1 of Article VI of the Constitution provides that "*the Legislative power shall be vested in the Congress of the Philippines which shall consist of a Senate and a House of Representatives*." The powers which Congress is prohibited from delegating are those which are strictly, or inherently and exclusively, legislative. Purely legislative power, which can never be delegated, has been described as the **authority to make a complete law – complete as to the time when it shall take effect and as to whom it shall be applicable – and to determine the expediency of its enactment**.[40] Thus, the rule is that in order that a court may be justified in holding a statute unconstitutional as a delegation of legislative power, it must appear that the power involved is purely legislative in nature – that is, one appertaining exclusively to the legislative department. It is the nature of the power, and not the liability of its use or the manner of its exercise, which determines the validity of its delegation.

Nonetheless, the general rule barring delegation of legislative powers is subject to the following recognized limitations or exceptions:

(1) Delegation of tariff powers to the President under Section 28 (2) of Article VI of the Constitution;

(2) Delegation of emergency powers to the President under Section 23 (2) of Article VI of the Constitution;

(3) Delegation to the people at large;

(4) Delegation to local governments; and

(5) Delegation to administrative bodies.

In every case of permissible delegation, there must be a showing that the delegation

itself is valid. It is valid only if the law (a) is complete in itself, setting forth therein the policy to be executed, carried out, or implemented by the delegate;[41] and (b) fixes a standard — the limits of which are sufficiently determinate and determinable — to which the delegate must conform in the performance of his functions.[42] A sufficient standard is one which defines legislative policy, marks its limits, maps out its boundaries and specifies the public agency to apply it. It indicates the circumstances under which the legislative command is to be effected.[43] Both tests are intended to prevent a total transference of legislative authority to the delegate, who is not allowed to step into the shoes of the legislature and exercise a power essentially legislative.[44]

In *People vs. Vera*,[45] the Court, through eminent Justice Jose P. Laurel, expounded on the concept and extent of delegation of power in this wise:

> In testing whether a statute constitutes an undue delegation of legislative power or not, it is usual to inquire whether the statute was complete in all its terms and provisions when it left the hands of the legislature so that nothing was left to the judgment of any other appointee or delegate of the legislature.
>
> . . .
>
> '**The true distinction', says Judge Ranney, 'is between the delegation of power to make the law, which necessarily involves a discretion as to what it shall be, and conferring an authority or discretion as to its execution, to be exercised under and in pursuance of the law. The first cannot be done; to the latter no valid objection can be made.'**
>
> . . .
>
> It is contended, however, that a legislative act may be made to the effect as law after it leaves the hands of the legislature. It is true that laws may be made effective on certain contingencies, as by proclamation of the executive or the adoption by the people of a particular community. In Wayman vs. Southard, the Supreme Court of the United States ruled that the legislature may delegate a power not legislative which it may itself rightfully exercise. **The power to ascertain facts is such a power which may be delegated. There is nothing essentially legislative in ascertaining the existence of facts or conditions as the basis of the taking into effect of a law. That is a mental process common to all branches of the**

government. Notwithstanding the apparent tendency, however, to relax the rule prohibiting delegation of legislative authority on account of the complexity arising from social and economic forces at work in this modern industrial age, the orthodox pronouncement of Judge Cooley in his work on Constitutional Limitations finds restatement in Prof. Willoughby's treatise on the Constitution of the United States in the following language — speaking of declaration of legislative power to administrative agencies: **The principle which permits the legislature to provide that the administrative agent may determine when the circumstances are such as require the application of a law is defended upon the ground that at the time this authority is granted, the rule of public policy, which is the essence of the legislative act, is determined by the legislature. In other words, the legislature, as it is its duty to do, determines that, under given circumstances, certain executive or administrative action is to be taken, and that, under other circumstances, different or no action at all is to be taken. What is thus left to the administrative official is not the legislative determination of what public policy demands, but simply the ascertainment of what the facts of the case require to be done according to the terms of the law by which he is governed. The efficiency of an Act as a declaration of legislative will must, of course, come from Congress, but the ascertainment of the contingency upon which the Act shall take effect may be left to such agencies as it may designate. The legislature, then, may provide that a law shall take effect upon the happening of future specified contingencies leaving to some other person or body the power to determine when the specified contingency has arisen.** (Emphasis supplied).[46]

In *Edu vs. Ericta*,[47] the Court reiterated:

> What cannot be delegated is the authority under the Constitution to make laws and to alter and repeal them; the test is the completeness of the statute in all its terms and provisions when it leaves the hands of the legislature. To determine whether or not there is an undue delegation of legislative power, the inquiry must be directed to the scope and definiteness of the measure enacted. **The legislative does not abdicate its functions when it describes what job must be done, who is to do it, and what is the scope of his authority.** For a complex economy, that may be the only way in which the legislative process can go forward. **A distinction has rightfully been made between delegation of power to make the laws which necessarily involves a discretion as to what it shall be, which constitutionally may not be done, and delegation of authority or discretion as to its execution to be exercised under and in pursuance of the law, to which no valid objection can be made.** The Constitution is thus not to be regarded as denying the legislature the necessary resources of flexibility and practicability. (Emphasis supplied).[48]

Clearly, the legislature may delegate to executive officers or bodies the power to determine certain facts or conditions, or the happening of contingencies, on which the operation of a statute is, by its terms, made to depend, but the legislature must prescribe

sufficient standards, policies or limitations on their authority.[49] While the power to tax cannot be delegated to executive agencies, details as to the enforcement and administration of an exercise of such power may be left to them, including the power to determine the existence of facts on which its operation depends.[50]

The rationale for this is that the preliminary ascertainment of facts as basis for the enactment of legislation is not of itself a legislative function, but is simply ancillary to legislation. Thus, the duty of correlating information and making recommendations is the kind of subsidiary activity which the legislature may perform through its members, or which it may delegate to others to perform. Intelligent legislation on the complicated problems of modern society is impossible in the absence of accurate information on the part of the legislators, and any reasonable method of securing such information is proper.[51] The Constitution as a continuously operative charter of government does not require that Congress find for itself

every fact upon which it desires to base legislative action or that it make for itself detailed determinations which it has declared to be prerequisite to application of legislative policy to particular facts and circumstances impossible for Congress itself properly to investigate.[52]

In the present case, the challenged section of R.A. No. 9337 is the common *proviso* in Sections 4, 5 and 6 which reads as follows:

> That the President, upon the recommendation of the Secretary of Finance, shall, effective January 1, 2006, raise the rate of value-added tax to twelve percent (12%), after any of the following conditions has been satisfied:
>
> (i) Value-added tax collection as a percentage of Gross Domestic Product (GDP) of the previous year exceeds two and four-fifth percent (2 4/5%); or

(ii) National government deficit as a percentage of GDP of the previous year exceeds one and one-half percent (1 ½%).

The case before the Court is not a delegation of legislative power. It is simply a delegation of ascertainment of facts upon which enforcement and administration of the increase rate under the law is contingent. The legislature has made the operation of the 12% rate effective January 1, 2006, contingent upon a specified fact or condition. It leaves the entire operation or non-operation of the 12% rate upon factual matters outside of the control of the executive.

No discretion would be exercised by the President. Highlighting the absence of discretion is the fact that the word *shall* is used in the common *proviso*. The use of the word *shall* connotes a mandatory order. Its use in a statute denotes an imperative obligation and is inconsistent with the idea of discretion.[53] Where the law is clear and unambiguous, it must be taken to mean exactly what it says, and courts have no choice but to see to it that the mandate is obeyed.[54]

Thus, it is the ministerial duty of the President to immediately impose the 12% rate upon the existence of any of the conditions specified by Congress. This is a duty which cannot be evaded by the President. Inasmuch as the law specifically uses the word *shall*, the exercise of discretion by the President does not come into play. It is a clear directive to impose the 12% VAT rate when the specified conditions are present. The time of taking into effect of the 12% VAT rate is based on the happening of a certain specified contingency, or upon the ascertainment of certain facts or conditions by a person or body other than the legislature itself.

The Court finds no merit to the contention of petitioners *ABAKADA GURO* Party List, et al. that the law effectively nullified the President's power of control over the Secretary of Finance by mandating the fixing of the tax rate by the President upon the recommendation of the Secretary of Finance. The Court cannot also subscribe to the position of petitioners Pimentel, *et al.* that the word *shall* should be interpreted to mean *may* in view of the phrase "upon the recommendation of the Secretary of Finance." Neither does the Court find persuasive the submission of petitioners Escudero, *et al.* that any recommendation by the Secretary of Finance can easily be brushed aside by the President since the former is a mere alter ego of the latter.

When one speaks of the Secretary of Finance as the alter ego of the President, it simply means that as head of the Department of Finance he is the assistant and agent of the Chief Executive. The multifarious executive and administrative functions of the Chief Executive are performed by and through the executive departments, and the acts of the secretaries of such departments, such as the Department of Finance, performed and promulgated in the regular course of business, are, unless disapproved or reprobated by the Chief Executive, presumptively the acts of the Chief Executive. The Secretary of Finance, as such, occupies a political position and holds office in an advisory capacity, and, in the language of Thomas Jefferson, "should be of the President's bosom confidence" and, in the language of Attorney-General Cushing, is "subject to the direction of the President."[55]

In the present case, in making his recommendation to the President on the existence of either of the two conditions, the Secretary of Finance is not acting as the alter ego of the

President or even her subordinate. In such instance, he is not subject to the power of control and direction of the President. He is acting as the agent of the legislative department, to determine and declare the event upon which its expressed will is to take effect.[56] The Secretary of Finance becomes the means or tool by which legislative policy is determined and implemented, considering that he possesses all the facilities to gather data and information and has a much broader perspective to properly evaluate them. His function is to gather and collate statistical data and other pertinent information and verify if any of the two conditions laid out by Congress is present. His personality in such instance is in reality but a projection of that of Congress. Thus, being the agent of Congress and not of the President, the President cannot alter or modify or nullify, or set aside the findings of the Secretary of Finance and to substitute the judgment of the former for that of the latter.

Congress simply granted the Secretary of Finance the authority to ascertain the existence of a fact, namely, whether by December 31, 2005, the value-added tax collection as a percentage of Gross Domestic Product (GDP) of the previous year exceeds two and four-fifth percent ($2^4/_5\%$) or the national government deficit as a percentage of GDP of the previous year exceeds one and one-half percent (1½%). If either of these two instances has occurred, the Secretary of Finance, by legislative mandate, must submit such information to the President. Then the 12% VAT rate must be imposed by the President effective January 1, 2006. **There is no undue delegation of legislative power but only of the discretion as to the execution of a law. This is constitutionally permissible**.[57] Congress does not abdicate its functions or unduly delegate power when it describes what job must be done, who must do it, and what is the scope of his authority; in our complex economy that is frequently

the only way in which the legislative process can go forward.[58]

As to the argument of petitioners *ABAKADA GURO* Party List, *et al.* that delegating to the President the legislative power to tax is contrary to the principle of republicanism, the same deserves scant consideration. Congress did not delegate the power to tax but the mere implementation of the law. The intent and will to increase the VAT rate to 12% came from Congress and the task of the President is to simply execute the legislative policy. That Congress chose to do so in such a manner is not within the province of the Court to inquire into, its task being to interpret the law.[59]

The insinuation by petitioners Pimentel, *et al.* that the President has ample powers to cause, influence or create the conditions to bring about either or both the conditions precedent does not deserve any merit as this argument is highly speculative. The Court does not rule on allegations which are manifestly conjectural, as these may not exist at all. The Court deals with facts, not fancies; on realities, not appearances. When the Court acts on appearances instead of realities, justice and law will be short-lived.

B. The 12% Increase VAT Rate Does Not Impose an Unfair and Unnecessary Additional Tax Burden

Petitioners Pimentel, *et al.* argue that the 12% increase in the VAT rate imposes an unfair and additional tax burden on the people. Petitioners also argue that the 12% increase, dependent on any of the 2 conditions set forth in the contested provisions, is ambiguous because it does not state if the VAT rate would be returned to the original 10% if the rates are no longer satisfied. Petitioners also argue that such rate is unfair and unreasonable, as the

people are unsure of the applicable VAT rate from year to year.

Under the common *provisos* of Sections 4, 5 and 6 of R.A. No. 9337, if any of the two conditions set forth therein are satisfied, the President shall increase the VAT rate to 12%. The provisions of the law are clear. It does not provide for a return to the 10% rate nor does it empower the President to so revert if, after the rate is increased to 12%, the VAT collection goes below the $2^4/_5$ of the GDP of the previous year or that the national government deficit as a percentage of GDP of the previous year does not exceed 1½%.

Therefore, no statutory construction or interpretation is needed. Neither can conditions or limitations be introduced where none is provided for. Rewriting the law is a forbidden ground that only Congress may tread upon.[60]

Thus, in the absence of any provision providing for a return to the 10% rate, which in this case the Court finds none, petitioners' argument is, at best, purely speculative. There is no basis for petitioners' fear of a fluctuating VAT rate because the law itself does not provide that the rate should go back to 10% if the conditions provided in Sections 4, 5 and 6 are no longer present. The rule is that where the provision of the law is clear and unambiguous, so that there is no occasion for the court's seeking the legislative intent, the law must be taken as it is, devoid of judicial addition or subtraction.[61]

Petitioners also contend that the increase in the VAT rate, which was allegedly an incentive to the President to raise the VAT collection to at least $2\ ^4/_5$ of the GDP of the previous year, should be based on fiscal adequacy.

Petitioners obviously overlooked that increase in VAT collection is not the *only* condition. There is another condition, *i.e.*, the national government deficit as a percentage of GDP of the previous year exceeds one and one-half percent (1 ½%).

Respondents explained the philosophy behind these alternative conditions:

1. VAT/GDP Ratio > 2.8%

> The condition set for increasing VAT rate to 12% have economic or fiscal meaning. If VAT/GDP is less than 2.8%, it means that government has weak or no capability of implementing the VAT or that VAT is not effective in the function of the tax collection. Therefore, there is no value to increase it to 12% because such action will also be ineffectual.

2. Nat'l Gov't Deficit/GDP >1.5%

> The condition set for increasing VAT when deficit/GDP is 1.5% or less means the fiscal condition of government has reached a relatively sound position or is towards the direction of a balanced budget position. Therefore, there is no need to increase the VAT rate since the fiscal house is in a relatively healthy position. Otherwise stated, if the ratio is more than 1.5%, there is indeed a need to increase the VAT rate.[62]

That the first condition amounts to an incentive to the President to increase the VAT collection does not render it unconstitutional so long as there is a public purpose for which the law was passed, which in this case, is mainly to raise revenue. In fact, *fiscal adequacy* dictated the need for a raise in revenue.

The principle of fiscal adequacy as a characteristic of a sound tax system was originally stated by Adam Smith in his *Canons of Taxation* (1776), as:

> IV. Every tax ought to be so contrived as both to take out and to keep out of the pockets of the people as little as possible over and above what it brings into the public treasury of the state.[63]

It simply means that sources of revenues must be adequate to meet government

expenditures and their variations.[64]

The dire need for revenue cannot be ignored. Our country is in a quagmire of financial woe. During the Bicameral Conference Committee hearing, then Finance Secretary Purisima bluntly depicted the country's gloomy state of economic affairs, thus:

> First, let me explain the position that the Philippines finds itself in right now. We are in a position where 90 percent of our revenue is used for debt service. So, for every peso of revenue that we currently raise, 90 goes to debt service. That's interest plus amortization of our debt. So clearly, this is not a sustainable situation. That's the first fact.
>
> The second fact is that our debt to GDP level is way out of line compared to other peer countries that borrow money from that international financial markets. Our debt to GDP is approximately equal to our GDP. Again, that shows you that this is not a sustainable situation.
>
> The third thing that I'd like to point out is the environment that we are presently operating in is not as benign as what it used to be the past five years.
>
> What do I mean by that?
>
> In the past five years, we've been lucky because we were operating in a period of basically global growth and low interest rates. The past few months, we have seen an inching up, in fact, a rapid increase in the interest rates in the leading economies of the world. And, therefore, our ability to borrow at reasonable prices is going to be challenged. In fact, ultimately, the question is our ability to access the financial markets.
>
> When the President made her speech in July last year, the environment was not as bad as it is now, at least based on the forecast of most financial institutions. So, we were assuming that raising 80 billion would put us in a position where we can then convince them to improve our ability to borrow at lower rates. But conditions have changed on us because the interest rates have gone up. In fact, just within this room, we tried to access the market for a billion dollars because for this year alone, the Philippines will have to borrow 4 billion dollars. Of that amount, we have borrowed 1.5 billion. We issued last January a 25-year bond at 9.7 percent cost. We were trying to access last week and the market was not as favorable and up to now we have not accessed and we might pull back because the conditions are not very good.
>
> So given this situation, we at the Department of Finance believe that we really need to front-end our deficit reduction. Because it is deficit that is causing the increase of the debt and we are in what we call a debt spiral. The more debt you have, the more deficit you have because interest and debt service eats and eats more of your revenue. We need to get out of this debt spiral. And the only way, I think, we can get out of this debt spiral is really have a front-end adjustment in our revenue base.[65]

The image portrayed is chilling. Congress passed the law hoping for rescue from an inevitable catastrophe. Whether the law is indeed sufficient to answer the state's economic dilemma is not for the Court to judge. In the *Fariñas* case, the Court refused to consider the various arguments raised therein that dwelt on the wisdom of Section 14 of R.A. No. 9006 (The Fair Election Act), pronouncing that:

> . . . policy matters are not the concern of the Court. Government policy is within the exclusive dominion of the political branches of the government. It is not for this Court to look into the wisdom or propriety of legislative determination. Indeed, whether an enactment is wise or unwise, whether it is based on sound economic theory, whether it is the best means to achieve the desired results, whether, in short, the legislative discretion within its prescribed limits should be exercised in a particular manner are matters for the judgment of the legislature, and the serious conflict of opinions does not suffice to bring them within the range of judicial cognizance.[66]

In the same vein, the Court in this case will not dawdle on the purpose of Congress or the executive policy, given that it is not for the judiciary to "pass upon questions of wisdom, justice or expediency of legislation."[67]

II.

Whether Section 8 of R.A. No. 9337, amending Sections 110(A)(2) and 110(B) of the NIRC; and Section 12 of R.A. No. 9337, amending Section 114(C) of the NIRC, violate the following provisions of the Constitution:

a. Article VI, Section 28(1), and
b. Article III, Section 1

A. Due Process and Equal Protection Clauses

Petitioners Association of *Pilipinas* Shell Dealers, Inc., *et al.* argue that Section 8 of R.A. No. 9337, amending Sections 110 (A)(2), 110 (B), and Section 12 of R.A. No. 9337,

amending Section 114 (C) of the NIRC are arbitrary, oppressive, excessive and confiscatory. Their argument is premised on the constitutional right against deprivation of life, liberty of property without due process of law, as embodied in Article III, Section 1 of the Constitution.

Petitioners also contend that these provisions violate the constitutional guarantee of equal protection of the law.

The doctrine is that where the due process and equal protection clauses are invoked, considering that they are not fixed rules but rather broad standards, there is a need for proof of such persuasive character as would lead to such a conclusion. Absent such a showing, the presumption of validity must prevail.[68]

Section 8 of R.A. No. 9337, amending Section 110(B) of the NIRC imposes a limitation on the amount of input tax that may be credited against the output tax. It states, in part: "[*P*]*rovided*, that the input tax inclusive of the input VAT carried over from the previous quarter that may be credited in every quarter shall not exceed seventy percent (70%) of the output VAT: …"

Input Tax is defined under Section 110(A) of the NIRC, as amended, as the value-added tax due *from* or *paid* by a VAT-registered person on the importation of goods or local purchase of good and services, including lease or use of property, in the course of trade or business, from a VAT-registered person, and *Output Tax* is the value-added tax *due* on the sale or lease of taxable goods or properties or services by any person registered or required to register under the law.

Petitioners claim that the contested sections impose limitations on the amount of input tax that may be claimed. In effect, a portion of the input tax that has already been paid cannot now be credited against the output tax.

Petitioners' argument is not absolute. It assumes that the input tax exceeds 70% of the output tax, and therefore, the input tax in excess of 70% remains uncredited. However, to the extent that the input tax is less than 70% of the output tax, then 100% of such input tax is still creditable.

More importantly, the excess input tax, if any, is retained in a business's books of accounts and remains creditable in the succeeding quarter/s. This is explicitly allowed by Section 110(B), which provides that "if the input tax exceeds the output tax, the excess shall be carried over to the succeeding quarter or quarters." In addition, Section 112(B) allows a VAT-registered person to apply for the issuance of a tax credit certificate or refund for any unused input taxes, to the extent that such input taxes have not been applied against the output taxes. Such unused input tax may be used in payment of his other internal revenue taxes.

The non-application of the unutilized input tax in a given quarter is not *ad infinitum*, as petitioners exaggeratedly contend. Their analysis of the effect of the 70% limitation is incomplete and one-sided. It ends at the net effect that there will be unapplied/unutilized inputs VAT for a given quarter. It does not proceed further to the fact that such unapplied/unutilized input tax may be credited in the subsequent periods as allowed by the carry-over provision of Section 110(B) or that it may later on be refunded through a tax credit certificate under Section 112(B).

Therefore, petitioners' argument must be rejected.

On the other hand, it appears that petitioner Garcia failed to comprehend the operation of the 70% limitation on the input tax. According to petitioner, the limitation on the creditable input tax in effect allows VAT-registered establishments to retain a portion of the taxes they collect, which violates the principle that tax collection and revenue should be for public purposes and expenditures

As earlier stated, the input tax is the tax paid by a person, passed on to him by the seller, when he buys goods. Output tax meanwhile is the tax due to the person when he sells goods. In computing the VAT payable, three possible scenarios may arise:

First, if at the end of a taxable quarter the output taxes charged by the seller are equal to the input taxes that he paid and passed on by the suppliers, then no payment is required;

Second, when the output taxes exceed the input taxes, the person shall be liable for the excess, which has to be paid to the Bureau of Internal Revenue (BIR);[69] and

Third, if the input taxes exceed the output taxes, the excess shall be carried over to the succeeding quarter or quarters. Should the input taxes result from zero-rated or effectively zero-rated transactions, any excess over the output taxes shall instead be refunded to the taxpayer or credited against other internal revenue taxes, at the taxpayer's option.[70]

Section 8 of R.A. No. 9337 however, imposed a 70% limitation on the input tax. Thus, a person can credit his input tax only up to the extent of 70% of the output tax. In layman's term, the value-added taxes that a person/taxpayer paid and passed on to him by a seller can only be credited up to 70% of the value-added taxes that is due to him on a taxable

transaction. There is no retention of any tax collection because the person/taxpayer has already previously paid the input tax to a seller, and the seller will subsequently remit such input tax to the BIR. The party directly liable for the payment of the tax is the seller.[71] What only needs to be done is for the person/taxpayer to apply or credit these input taxes, as evidenced by receipts, against his output taxes.

Petitioners Association of *Pilipinas* Shell Dealers, Inc., *et al.* also argue that the input tax partakes the nature of a property that may not be confiscated, appropriated, or limited without due process of law.

The input tax is not a property or a property right within the constitutional purview of the due process clause. A VAT-registered person's entitlement to the creditable input tax is a mere statutory privilege.

The distinction between statutory privileges and vested rights must be borne in mind for persons have no vested rights in statutory privileges. The state may change or take away rights, which were created by the law of the state, although it may not take away property, which was vested by virtue of such rights.[72]

Under the previous system of single-stage taxation, taxes paid at every level of distribution are not recoverable from the taxes payable, although it becomes part of the cost, which is deductible from the gross revenue. When Pres. Aquino issued E.O. No. 273 imposing a 10% multi-stage tax on all sales, it was then that the crediting of the input tax paid on purchase or importation of goods and services by VAT-registered persons against the output tax was introduced.[73] This was adopted by the Expanded VAT Law (R.A. No. 7716),[74]

and The Tax Reform Act of 1997 (R.A. No. 8424).[75] The right to credit input tax as against the output tax is clearly a privilege created by law, a privilege that also the law can remove, or in this case, limit.

Petitioners also contest as arbitrary, oppressive, excessive and confiscatory, Section 8 of R.A. No. 9337, amending Section 110(A) of the NIRC, which provides:

> SEC. 110. *Tax Credits*. –
>
> (A) *Creditable Input Tax*. – …
>
> *Provided*, That the input tax on goods purchased or imported in a calendar month for use in trade or business for which deduction for depreciation is allowed under this Code, shall be spread evenly over the month of acquisition and the fifty-nine (59) succeeding months if the aggregate acquisition cost for such goods, excluding the VAT component thereof, exceeds One million pesos (₱1,000,000.00): *Provided*, however, That if the estimated useful life of the capital goods is less than five (5) years, as used for depreciation purposes, then the input VAT shall be spread over such a shorter period: *Provided*, *finally*, That in the case of purchase of services, lease or use of properties, the input tax shall be creditable to the purchaser, lessee or license upon payment of the compensation, rental, royalty or fee.

The foregoing section imposes a 60-month period within which to amortize the creditable input tax on purchase or importation of capital goods with acquisition cost of ₱1 Million pesos, exclusive of the VAT component. Such spread out only poses a delay in the crediting of the input tax. Petitioners' argument is without basis because the taxpayer is not permanently deprived of his privilege to credit the input tax.

It is worth mentioning that Congress admitted that the spread-out of the creditable input tax in this case amounts to a 4-year interest-free loan to the government.[76] In the same breath, Congress also justified its move by saying that the provision was designed to raise an annual revenue of 22.6 billion.[77] The legislature also dispelled the fear that the provision

will fend off foreign investments, saying that foreign investors have other tax incentives provided by law, and citing the case of China, where despite a 17.5% non-creditable VAT, foreign investments were not deterred.[78] Again, for whatever is the purpose of the 60-month amortization, this involves executive economic policy and legislative wisdom in which the Court cannot intervene.

With regard to the 5% creditable withholding tax imposed on payments made by the government for taxable transactions, Section 12 of R.A. No. 9337, which amended Section 114 of the NIRC, reads:

> SEC. 114. Return and Payment of Value-added Tax. –
>
> (C) Withholding of Value-added Tax. – The Government or any of its political subdivisions, instrumentalities or agencies, including government-owned or controlled corporations (GOCCs) shall, before making payment on account of each purchase of goods and services which are subject to the value-added tax imposed in Sections 106 and 108 of this Code, deduct and withhold a final value-added tax at the rate of five percent (5%) of the gross payment thereof: Provided, That the payment for lease or use of properties or property rights to nonresident owners shall be subject to ten percent (10%) withholding tax at the time of payment. For purposes of this Section, the payor or person in control of the payment shall be considered as the withholding agent.
>
> The value-added tax withheld under this Section shall be remitted within ten (10) days following the end of the month the withholding was made.

Section 114(C) merely provides a method of collection, or as stated by respondents, a more simplified VAT withholding system. The government in this case is constituted as a withholding agent with respect to their payments for goods and services.

Prior to its amendment, Section 114(C) provided for different rates of value-added taxes to be withheld -- 3% on gross payments for purchases of goods; 6% on gross payments for services supplied by contractors other than by public works contractors; 8.5% on gross

payments for services supplied by public work contractors; or 10% on payment for the lease or use of properties or property rights to nonresident owners. Under the present Section 114(C), these different rates, except for the 10% on lease or property rights payment to nonresidents, were deleted, and a uniform rate of 5% is applied.

The Court observes, however, that the law the used the word *final*. In tax usage, *final*, as opposed to creditable, means full. Thus, it is provided in Section 114(C): "final value-added tax at the rate of five percent (5%)."

In Revenue Regulations No. 02-98, implementing R.A. No. 8424 (The Tax Reform Act of 1997), the concept of final withholding tax on income was explained, to wit:

> SECTION 2.57. Withholding of Tax at Source
>
> (A) Final Withholding Tax. – Under the final withholding tax system the amount of income tax withheld by the withholding agent is constituted as **full and final payment** of the income tax due from the payee on the said income. The liability for payment of the tax rests primarily on the payor as a withholding agent. Thus, in case of his failure to withhold the tax or in case of underwithholding, the deficiency tax shall be collected from the payor/withholding agent. …
>
> (B) Creditable Withholding Tax. – Under the creditable withholding tax system, taxes withheld on certain income payments are intended to equal or at least approximate the tax due of the payee on said income. … Taxes withheld on income payments covered by the expanded withholding tax (referred to in Sec. 2.57.2 of these regulations) and compensation income (referred to in Sec. 2.78 also of these regulations) are creditable in nature.

As applied to value-added tax, this means that taxable transactions with the government are subject to a 5% rate, which constitutes as full payment of the tax payable on the transaction. This represents the net VAT payable of the seller. The other 5% effectively accounts for the standard input VAT (deemed input VAT), in lieu of the actual input VAT directly or attributable to the taxable transaction.[79]

The Court need not explore the rationale behind the provision. It is clear that Congress intended to treat differently taxable transactions with the government.[80] This is supported by the fact that under the old provision, the 5% tax withheld by the government remains creditable against the tax liability of the seller or contractor, to wit:

> SEC. 114. Return and Payment of Value-added Tax. –
>
> (C) **Withholding of <u>Creditable</u> Value-added Tax**. – The Government or any of its political subdivisions, instrumentalities or agencies, including government-owned or controlled corporations (GOCCs) shall, before making payment on account of each purchase of goods from sellers and services rendered by contractors which are subject to the value-added tax imposed in Sections 106 and 108 of this Code, deduct and withhold the value-added tax due at the rate of three percent (3%) of the gross payment for the purchase of goods and six percent (6%) on gross receipts for services rendered by contractors on every sale or installment payment which shall be **<u>creditable against the value-added tax liability of the seller or contractor</u>**: Provided, however, That in the case of government public works contractors, the withholding rate shall be eight and one-half percent (8.5%): Provided, further, That the payment for lease or use of properties or property rights to nonresident owners shall be subject to ten percent (10%) withholding tax at the time of payment. For this purpose, the payor or person in control of the payment shall be considered as the withholding agent.
>
> The valued-added tax withheld under this Section shall be remitted within ten (10) days following the end of the month the withholding was made. (Emphasis supplied)

As amended, the use of the word *final* and the deletion of the word *creditable* exhibits Congress's intention to treat transactions with the government differently. Since it has not been shown that the class subject to the 5% final withholding tax has been unreasonably narrowed, there is no reason to invalidate the provision. Petitioners, as petroleum dealers, are not the only ones subjected to the 5% final withholding tax. It applies to all those who deal with the government.

Moreover, the actual input tax is not totally lost or uncreditable, as petitioners believe. Revenue Regulations No. 14-2005 or the Consolidated Value-Added Tax Regulations 2005 issued by the BIR, provides that should the actual input tax exceed 5% of gross payments, the

excess may form part of the cost. Equally, should the actual input tax be less than 5%, the difference is treated as income.[81]

Petitioners also argue that by imposing a limitation on the creditable input tax, the government gets to tax a profit or value-added even if there is no profit or value-added.

Petitioners' stance is purely hypothetical, argumentative, and again, one-sided. The Court will not engage in a legal joust where premises are what ifs, arguments, theoretical and facts, uncertain. Any disquisition by the Court on this point will only be, as Shakespeare describes life in *Macbeth*,[82] "full of sound and fury, signifying nothing."

What's more, petitioners' contention assumes the proposition that there is no profit or value-added. It need not take an astute businessman to know that it is a matter of exception that a business will sell goods or services without profit or value-added. It cannot be overstressed that a business is created precisely for profit.

The equal protection clause under the Constitution means that "no person or class of persons shall be deprived of the same protection of laws which is enjoyed by other persons or other classes in the same place and in like circumstances."[83]

The power of the State to make reasonable and natural classifications for the purposes of taxation has long been established. Whether it relates to the subject of taxation, the kind of property, the rates to be levied, or the amounts to be raised, the methods of assessment, valuation and collection, the State's power is entitled to presumption of validity. As a rule, the judiciary will not interfere with such power absent a clear showing of unreasonableness,

discrimination, or arbitrariness.[84]

Petitioners point out that the limitation on the creditable input tax if the entity has a high ratio of input tax, or invests in capital equipment, or has several transactions with the government, is not based on real and substantial differences to meet a valid classification.

The argument is pedantic, if not outright baseless. The law does not make any classification in the subject of taxation, the kind of property, the rates to be levied or the amounts to be raised, the methods of assessment, valuation and collection. Petitioners' alleged distinctions are based on variables that bear different consequences. While the implementation of the law may yield varying end results depending on one's profit margin and value-added, the Court cannot go beyond what the legislature has laid down and interfere with the affairs of business.

The equal protection clause does not require the universal application of the laws on all persons or things without distinction. This might in fact sometimes result in unequal protection. What the clause requires is equality among equals as determined according to a valid classification. By classification is meant the grouping of persons or things similar to each other in certain particulars and different from all others in these same particulars.[85]

Petitioners brought to the Court's attention the introduction of Senate Bill No. 2038 by Sens. S.R. Osmeña III and Ma. Ana Consuelo A.S. – Madrigal on June 6, 2005, and House Bill No. 4493 by Rep. Eric D. Singson. The proposed legislation seeks to amend the 70% limitation by increasing the same to 90%. This, according to petitioners, supports their stance that the 70% limitation is arbitrary and confiscatory. On this score, suffice it to say that these

are still proposed legislations. Until Congress amends the law, and absent any unequivocal basis for its unconstitutionality, the 70% limitation stays.

B. Uniformity and Equitability of Taxation

Article VI, Section 28(1) of the Constitution reads:

> The rule of taxation shall be uniform and equitable. The Congress shall evolve a progressive system of taxation.

Uniformity in taxation means that all taxable articles or kinds of property of the same class shall be taxed at the same rate. Different articles may be taxed at different amounts provided that the rate is uniform on the same class everywhere with all people at all times.[86]

In this case, the tax law is uniform as it provides a standard rate of 0% or 10% (or 12%) on all goods and services. Sections 4, 5 and 6 of R.A. No. 9337, amending Sections 106, 107 and 108, respectively, of the NIRC, provide for a rate of 10% (or 12%) on sale of goods and properties, importation of goods, and sale of services and use or lease of properties. These same sections also provide for a 0% rate on certain sales and transaction.

Neither does the law make any distinction as to the type of industry or trade that will bear the 70% limitation on the creditable input tax, 5-year amortization of input tax paid on purchase of capital goods or the 5% final withholding tax by the government. It must be stressed that the rule of uniform taxation does not deprive Congress of the power to classify subjects of taxation, and only demands uniformity within the particular class.[87]

R.A. No. 9337 is also equitable. The law is equipped with a threshold margin. The

VAT rate of 0% or 10% (or 12%) does not apply to sales of goods or services with gross annual sales or receipts not exceeding ₱1,500,000.00.[88] Also, basic marine and agricultural food products in their original state are still not subject to the tax,[89] thus ensuring that prices at the grassroots level will remain accessible. As was stated in *Kapatiran ng mga Naglilingkod sa Pamahalaan ng Pilipinas, Inc. vs. Tan*:[90]

> The disputed sales tax is also equitable. It is imposed only on sales of goods or services by persons engaged in business with an aggregate gross annual sales exceeding ₱200,000.00. Small corner *sari-sari* stores are consequently exempt from its application. Likewise exempt from the tax are sales of farm and marine products, so that the costs of basic food and other necessities, spared as they are from the incidence of the VAT, are expected to be relatively lower and within the reach of the general public.

It is admitted that R.A. No. 9337 puts a premium on businesses with low profit margins, and unduly favors those with high profit margins. Congress was not oblivious to this. Thus, to equalize the weighty burden the law entails, the law, under Section 116, imposed a 3% percentage tax on VAT-exempt persons under Section 109(v), *i.e.*, transactions with gross annual sales and/or receipts not exceeding ₱1.5 Million. This acts as a equalizer because in effect, bigger businesses that qualify for VAT coverage and VAT-exempt taxpayers stand on equal-footing.

Moreover, Congress provided mitigating measures to cushion the impact of the imposition of the tax on those previously exempt. Excise taxes on petroleum products[91] and natural gas[92] were reduced. Percentage tax on domestic carriers was removed.[93] Power producers are now exempt from paying franchise tax.[94]

Aside from these, Congress also increased the income tax rates of corporations, in order to distribute the burden of taxation. Domestic, foreign, and non-resident corporations are now subject to a 35% income tax rate, from a previous 32%.[95] Intercorporate dividends of non-resident foreign corporations are still subject to 15% final withholding tax but the tax credit allowed on the corporation's domicile was increased to 20%.[96] The Philippine Amusement and Gaming Corporation (PAGCOR) is not exempt from income taxes anymore.[97] Even the sale by an artist of his works or services performed for the production of such works was not spared.

All these were designed to ease, as well as spread out, the burden of taxation, which would otherwise rest largely on the consumers. It cannot therefore be gainsaid that R.A. No. 9337 is equitable.

C. Progressivity of Taxation

Lastly, petitioners contend that the limitation on the creditable input tax is anything but regressive. It is the smaller business with higher input tax-output tax ratio that will suffer the consequences.

Progressive taxation is built on the principle of the taxpayer's ability to pay. This principle was also lifted from Adam Smith's *Canons of Taxation*, and it states:

> I. The subjects of every state ought to contribute towards the support of the government, as nearly as possible, in proportion to their respective abilities; that is, in proportion to the revenue which they respectively enjoy under the protection of the state.

Taxation is progressive when its rate goes up depending on the resources of the person

affected.[98]

The VAT is an antithesis of progressive taxation. By its very nature, it is regressive. The principle of progressive taxation has no relation with the VAT system inasmuch as the VAT paid by the consumer or business for every goods bought or services enjoyed is the same regardless of income. In

other words, the VAT paid eats the same portion of an income, whether big or small. The disparity lies in the income earned by a person or profit margin marked by a business, such that the higher the income or profit margin, the smaller the portion of the income or profit that is eaten by VAT. *A converso*, the lower the income or profit margin, the bigger the part that the VAT eats away. At the end of the day, it is really the lower income group or businesses with low-profit margins that is always hardest hit.

Nevertheless, the Constitution does not really prohibit the imposition of indirect taxes, like the VAT. What it simply provides is that Congress shall "evolve a progressive system of taxation." The Court stated in the *Tolentino case*, thus:

> The Constitution does not really prohibit the imposition of indirect taxes which, like the VAT, are regressive. What it simply provides is that Congress shall 'evolve a progressive system of taxation.' The constitutional provision has been interpreted to mean simply that 'direct taxes are . . . to be preferred [and] as much as possible, indirect taxes should be minimized.' (E. FERNANDO, THE CONSTITUTION OF THE PHILIPPINES 221 (Second ed. 1977)) Indeed, the mandate to Congress is not to prescribe, but to evolve, a progressive tax system. Otherwise, sales taxes, which perhaps are the oldest form of indirect taxes, would have been prohibited with the proclamation of Art. VIII, §17 (1) of the 1973 Constitution from which the present Art. VI, §28 (1) was taken. Sales taxes are also regressive.
>
> Resort to indirect taxes should be minimized but not avoided entirely because it is difficult, if not impossible, to avoid them by imposing such taxes according to the taxpayers' ability to pay. In the case of the VAT, the law minimizes the regressive effects of this imposition by providing for zero rating of certain transactions (R.A. No. 7716, §3, amending §102 (b) of the NIRC), while granting exemptions to other transactions. (R.A. No. 7716, §4 amending §103 of the NIRC)[99]

CONCLUSION

It has been said that taxes are the lifeblood of the government. In this case, it is just an enema, a first-aid measure to resuscitate an economy in distress. The Court is neither blind nor is it turning a deaf ear on the plight of the masses. But it does not have the panacea for the malady that the law seeks to remedy. As in other cases, the Court cannot strike down a law as unconstitutional simply because of its yokes.

> Let us not be overly influenced by the plea that for every wrong there is a remedy, and that the judiciary should stand ready to afford relief. There are undoubtedly many wrongs the judicature may not correct, for instance, those involving political questions. . . .
>
> Let us likewise disabuse our minds from the notion that the judiciary is the repository of remedies for all political or social ills; We should not forget that the Constitution has judiciously allocated the powers of government to three distinct and separate compartments; and that judicial interpretation has tended to the preservation of the independence of the three, and a zealous regard of the prerogatives of each, knowing full well that one is not the guardian of the others and that, for official wrong-doing, each may be brought to account, either by impeachment, trial or by the ballot box.[100]

The words of the Court in *Vera vs. Avelino*[101] holds true then, as it still holds true now. All things considered, there is no *raison d'être* for the unconstitutionality of R.A. No. 9337.

WHEREFORE, Republic Act No. 9337 not being unconstitutional, the petitions in G.R. Nos. 168056, 168207, 168461, 168463, and 168730, are hereby **DISMISSED**.

There being no constitutional impediment to the full enforcement and implementation of R.A. No. 9337, the temporary restraining order issued by the Court on July 1, 2005 is **LIFTED** upon finality of herein decision.

SO ORDERED.

MA. ALICIA AUSTRIA-MARTINEZ
Associate Justice

WE CONCUR:

HILARIO G. DAVIDE, JR.
Chief Justice

REYNATO S. PUNO
Associate Justice

ARTEMIO V. PANGANIBAN
Associate Justice

LEONARDO A. QUISUMBING
Associate Justice

CONSUELO YNARES-SANTIAGO
Associate Justice

ANGELINA SANDOVAL-GUTIERREZ
Associate Justice

ANTONIO T. CARPIO
Associate Justice

RENATO C. CORONA
Associate Justice

CONCHITA CARPIO-MORALES
Associate Justice

ROMEO J. CALLEJO, SR.
Associate Justice

ADOLFO S. AZCUNA
Associate Justice

DANTE O. TINGA
Associate Justice

MINITA V. CHICO-NAZARIO
Associate Justice

CANCIO C. GARCIA
Associate Justice

C E R T I F I C A T I O N

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

HILARIO G. DAVIDE, JR.
Chief Justice

[1] Entitled "An Act Amending Sections 27, 28, 34, 106, 107, 108, 109, 110, 111, 112, 113, 114, 116, 117, 119, 121, 148, 151, 236, 237, and 288 of the National Internal Revenue Code of 1997, As Amended and For Other Purposes."

[2] Entitled, "An Act Restructuring the Value-Added Tax, Amending for the Purpose Sections 106, 107, 108, 110 and 114 of the National Internal Revenue Code of 1997, As Amended, and For Other Purposes."

[3] Entitled, "An Act Amending Sections 106, 107, 108, 109, 110 and 111 of the National Internal Revenue Code of 1997, As Amended, and For Other Purposes."

[4] Entitled, "An Act Amending Sections 27, 28, 34, 106, 108, 109, 110, 112, 113, 114, 116, 117, 119, 121, 125, 148, 151, 236, 237 and 288 of the National Internal Revenue Code of 1997, As Amended, and For Other Purposes."

[5] Section 26, R.A. No. 9337.

[6] TSN, July 14, 2005.

[7] Section 125 of the National Internal Revenue Code, as amended, was not amended by R.A. No. 9337, as can be gleaned from the title and body of the law.

[8] Section 105, National Internal Revenue of the Philippines, as amended.

[9] *Ibid*.

[10] Deoferio, Jr., V.A. and Mamalateo, V.C., *The Value Added Tax in the Philippines* (First Edition 2000).

[11] Maceda vs. Macaraig, Jr., G.R. No. 88291, May 31, 1991, 197 SCRA 771.

[12] Maceda vs. Macaraig, Jr., G.R. No. 88291, June 8, 1993, 223 SCRA, 217.

[13] *Id*., Deoferio, Jr., V.A. and Mamalateo, V.C., *The Value Added Tax in the Philippines* (First Edition 2000).

[14] Commissioner of Internal Revenue vs. Seagate, G.R. No. 153866, February 11, 2005.

[15] Kapatiran ng mga Naglilingkod sa Pamahalaan ng Pilipinas, Inc. vs. Tan, G.R. Nos. L-81311, L-81820, L-81921, L-82152, June 30, 1988, 163 SCRA 371.

[16] Entitled, "An Act Restructuring the Value-Added Tax (VAT) System, Widening its Tax Base and Enhancing its Administration, And for these Purposes Amending and Repealing the Relevant Provisions of the National Internal Revenue Code, as amended, and for other Purposes."

[17] Entitled, "An Act Amending Republic Act No. 7716, otherwise known as the Value-Added Tax Law and Other Pertinent Provisions of the National Internal Revenue Code, as Amended."

[18] Entitled, "An Act Amending the National Internal Revenue Code, as Amended, and for other Purposes."

[19] Story, Commentaries 835 (1833).

[20] G.R. No. 147387, December 10, 2003, 417 SCRA 503.

[21] *Id*., pp. 529-530.

[22] *Supra*., Note 20.

[23] G.R. No. 115455, August 25, 1994, 235 SCRA 630.

[24] *Id*., p. 670.

[25] Wester's Third New International Dictionary, p. 1897.

[26] TSN, Bicameral Conference Committee on the Disagreeing Provisions of Senate Bill No. 1950 and House Bill Nos. 3705 and 3555, May 10, 2005, p. 4.

[27] *Id*., p. 3.

[28] Sponsorship Speech of Representative Teves, in behalf of Representative Jesli Lapus, TSN, January 7, 2005, pp. 34-35.

[29] G.R. No. 105371, November 11, 1993, 227 SCRA 703.

[30] *Supra*, Note 23.

[31] *Id*., p. 668.

[32] *Id*., p. 671.

[33] *Id*., pp. 661-663.

[34] Transcript of Session Proceedings, January 7, 2005, pp. 19-20.

[35] Journal of the Senate, Session No. 67, March 7, 2005, pp. 727-728.

[36] *Id*., p. 726.

[37] *See* Angara vs. Electoral Commission, No. 45081, July 15, 1936, 63 Phil. 139, 156.

[38] Defensor-Santiago vs. Commission on Elections, G.R. No. 127325, March 19, 1997, 270 SCRA 106, 153; People vs. Rosenthal, Nos. 46076 & 46077, June 12, 1939, 68 Phil. 328; ISAGANI A. CRUZ, Philippine Political Law 86 (1996). Judge Cooley enunciates the doctrine in the following oft-quoted language: "One of the settled maxims in constitutional law is, that the power conferred upon the legislature to make laws cannot be delegated by that department to any other body or authority. Where the sovereign power of the state has located the authority, there it must remain; and by the constitutional agency alone the laws must be made until the Constitution itself is changed. **The power to whose judgment, wisdom, and patriotism this high prerogative has been intrusted cannot relieve itself of the responsibility by choosing other agencies upon which the power shall be devolved, nor can it substitute the judgment, wisdom, and patriotism of any other body for those to which alone the people have seen fit to confide this sovereign trust**." (Cooley on Constitutional Limitations, 8th ed., Vol. I, p. 224)

[39] United States vs. Barrias, No. 4349, September 24, 1908, 11 Phil. 327, 330.

[40] 16 Am Jur 2d, Constitutional Law, § 337.

[41] Pelaez vs. Auditor General, No. L-23825, December 24, 1965, 122 Phil. 965, 974 citing Calalang vs. Williams, No. 47800, December 2, 1940, 70 Phil. 726; Pangasinan Transp. Co. vs. Public Service Commission, No. 47065, June 26, 1940, 70 Phil. 221; Cruz vs. Youngberg, No. 34674, October 26, 1931, 56 Phil. 234; Alegre vs. Collector of Customs, No. 30783, August 27, 1929, 53 Phil. 394 *et seq*.

[42] Pelaez vs. Auditor General, *supra*, citing People vs. Lim Ho, No. L-12091-2, January 28, 1960, 106 Phil. 887; People vs. Jolliffee, No. L-9553, May 13, 1959, 105 Phil 677; People vs. Vera, No. 45685, November 16, 1937, 65 Phil. 56; U.S. vs. Nag Tang Ho, No. L-17122, February 27, 1922, 43 Phil. 1; Compañia General de Tabacos vs. Board of Public Utility, No. 11216, March 6, 1916, 34 Phil. 136 *et seq*.

[43] Edu vs. Ericta, No. L-32096, October 24, 1970, 35 SCRA 481, 497.

[44] Eastern Shipping Lines, Inc. vs. POEA, No. L-76633, October 18, 1988, 166 SCRA 533, 543-544.

[45] No. 45685, November 16, 1937, 65 Phil. 56.

[46] *Id*., pp. 115-120.

[47] *Supra*, note 43.

[48] *Id*., pp. 496-497.

[49] 16 C.J.S., Constitutional Law, § 138.

[50] *Ibid*.

[51] 16 Am Jur 2d, Constitutional Law § 340.

[52] Yajus vs. United States, 321 US 414, 88 L Ed 834, 64 S Ct. 660, 28 Ohio Ops 220.

[53] Province of Batangas vs. Romulo, G.R. No. 152774, May 27, 2004; Enriquez vs. Court of Appeals, G.R. No. 140473, January 28, 2003, 396 SCRA 377; Codoy vs. Calugay, G.R. No. 123486, August 12, 1999, 312 SCRA 333.

[54] Province of Batangas vs. Romulo, *supra*; Quisumbing vs. Meralco, G.R. No. 142943, April 3, 2002, 380 SCRA 195; Agpalo, Statutory Construction, 1990 ed., p. 45.

[55] Villena vs. Secretary of Interior, No. 46570, April 21, 1939, 67 Phil 451, 463-464.

[56] Alunan vs. Mirasol, G.R. No. 108399, July 31, 1997, 276 SCRA 501, 513-514, citing Panama Refining Co. vs. Ryan, 293 U.S. 388, 79 L.Ed. 469 (1935).

[57] Compañia General de Tabacos de Filipinas vs. The Board of Public Utility Commissioners, No. 11216, 34 Phil. 136; Cruz vs. Youngberg, No. 34674, October 26, 1931, 56 Phil. 234; People vs. Vera, No. 45685, November 16, 1937, 65 Phil. 56, 113; Edu vs. Ericta, No. L-32096, October 24, 1970, 35 SCRA 481; Tatad vs. Secretary of the Department of Energy, G.R. No. 124360, November 5, 1997, 281 SCRA 330; Alunan vs. Mirasol, *supra*.

[58] Bowles vs. Willinghan, 321 US 503, 88 l Ed 892, 64 S Ct 641, 28 Ohio Ops 180.

[59] United Residents of Dominican Hill, Inc. vs. Commission on the Settlement of Land Problems, G.R. No. 135945, March 7, 2001, 353 SCRA 782; Commissioner of Internal Revenue vs. Santos, G.R. No. 119252, August 18, 1997, 277 SCRA 617, 630.

[60] Commission on Internal Revenue vs. American Express International, Inc. (Philippine Branch), G.R. No. 152609, June 29, 2005.

[61] Acting Commissioner of Customs vs. MERALCO, No. L-23623, June 30, 1977, 77 SCRA 469, 473.

[62] Respondents' Memorandum, pp. 168-169.

[63] *The Wealth of Nations*, Book V, Chapter II.

[64] Chavez vs. Ongpin, G.R. No. 76778, June 6, 1990, 186 SCRA 331, 338.

[65] TSN, Bicameral Conference Committee on the Disagreeing Provisions of Senate Bill No. 1950 and House Bill Nos. 3705 and 3555, April 25, 2005, pp. 5-6.

[66] G.R. No. 147387, December 10, 2003, 417 SCRA 503, 524.

[67] National Housing Authority vs. Reyes, G.R. No. L-49439, June 29, 1983, 123 SCRA 245, 249.

[68] Sison vs. Ancheta, G.R. No. L-59431, July 25, 1984, 130 SCRA 654, 661.

[69] Section 8, R.A. No. 9337, amending Section 110(A)(B),NIRC.

[70] *Ibid*.

[71] Commissioner of Internal Revenue vs. Benguet Corp., G.R. Nos. 134587 & 134588, July 8, 2005.

[72] United Paracale Mining Co. vs. Dela Rosa, G.R. Nos. 63786-87, April 7, 1993, 221 SCRA 108, 115.

[73] E.O. No. 273, Section 1.

[74] Section 5.

[75] Section 110(B).

[76] Journal of the Senate, Session No. 71, March 15, 2005, p. 803.

[77] *Id.*, Session No. 67, March 7, 2005, p. 726.

[78] *Id*., Session No. 71, March 15, 2005, p. 803.

[79] Revenue Regulations No. 14-2005, 4.114-2(a).

[80] Commissioner of Internal Revenue vs. Philam, G.R. No. 141658, March 18, 2005.

[81] Revenue Regulations No. 14-2005, Sec. 4. 114-2.

[82] Act V, Scene V.

[83] Philippine Rural Electric Cooperatives Association, Inc. vs. DILG, G.R. No. 143076, June 10, 2003, 403 SCRA 558, 565.

[84] Aban, Benjamin, *Law of Basic Taxation in the Philippines* (First Edition 1994).

[85] Philippine Judges Association case, *supra.*, note 29.

[86] Commissioner of Internal Revenue vs. Court of Appeals, G.R. No. 119761, August 29, 1996, 261 SCRA 236, 249.

[87] Kee vs. Court of Tax Appeals, No. L-18080, April 22, 1963, 117 Phil 682, 688.

[88] Section 7, R.A. No. 9337.

[89] *Ibid*.

[90] No. L-81311, June 30, 1988, 163 SCRA 371, 383.

[91] Section 17, R.A. No. 9337, amending Section 148, NIRC.

[92] Section 18, amending Section 151, NIRC.

[93] Section 14, amending Section 117, NIRC.

[94] Section 15, amending Section 119, NIRC.

[95] Sections 1 and 2, amending Sections 27 and 28, NIRC.

[96] Section 2, amending Section 28, NIRC.

[97] Section 1, amending Section 27(C), NIRC.

[98] Reyes vs. Almanzor, G.R. Nos. 49839-46, April 26, 1991, 196 SCRA 322, 327.

[99] Tolentino vs. Secretary of Finance, G.R. No. 115455, October 30, 1995, 249 SCRA 628, 659.

[100] Vera vs. Avelino, G.R. No. L-543, August 31, 1946, 77 Phil. 365.

[101] *Ibid*.