

**Republic of the Philippines**  
**HOUSE OF REPRESENTATIVES**  
*Quezon City*

**FIFTEENTH CONGRESS**

**Second Regular Session**

**House Bill No. 4971**

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**INTRODUCED BY REPRESENTATIVE ARTHUR C. YAP**

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**EXPLANATORY NOTE**

In very recent years, most especially during the previous administration, much emphasis was placed on the construction, development (and re-development) of expressways, highways or toll ways.

Thus, we have seen the North Luzon Expressway, being re-developed and becoming a world class superhighway, making travel up north very fast and comfortable. Almost simultaneous is the upgrading of the South Luzon Expressway, parallel with the elevated Skyway, which was also extended up to Alabang, Muntinlupa, thus trips to Southern Luzon are now a first class cruise.

Likewise, we have seen the inauguration of the Subic Clark Tarlac Expressway, connecting two very important transport and industrial hubs, the Diosdado Macapagal International Airport and the rest of the Clark Ecozone, to the Subic Bay Freeport. The said highway likewise extended the NLEX further up to northern portions of the Tarlac Province. In the South, the SLEX has been extended by the Southern Tagalog Arterial Road, thus making travel to Batangas City and the international port therein, also a breeze. Last would be the Manila-Cavite Expressway which has now been extended also up to Cavite City.

Soon, other toll ways, conceptualized and initiated during the previous administration would be unveiled and operated. This would include a highway connecting the progressive southern provinces of Cavite and Laguna, and another in the north that would commence from Tarlac to Pangasinan and all the way to La Union.

For those living in suburban Metro Manila and nearby provinces, the use of expressways has become, not just a luxury, but a necessity. They now go to work, school and other daily and routine place of destinations with ease and speed using the toll ways.

For those from the provinces, these expressways have been catalysts of their local industries' growth and development. Investments are now flourishing in the countryside connected by these highways, generating income for the government, and more important, creating jobs by the millions. The goods from the provinces, especially the perishable ones like agricultural produce, are brought cheaper and faster to the center of

trade and commerce, which is Metro Manila. Also, international and domestic tourism thrives as travel destinations can easily be reached.

However, since government coffers are very inadequate, if not scarce, most of these projects are undertaken using the Build Operate and Transfer or similar schemes. Private funding and undertaking is utilized, similar to the Public Private Partnership being advocated by the present administration.

In such cases, even though these expressways are basic government infrastructures, they cannot be used for free. Motorists and the commuting public pay toll fees for their use.

Yet, there are many people who complain about the expensive toll fees for the use of the above mentioned expressways. And indeed this assertion is not without basis. The toll fees of around P3 per kilometer for small or class 1 vehicles, P6 for medium sized vehicles and P9 for large trucks, are quite costly.

And now, there is the impending imposition of the Expanded Value Added Tax (EVAT) on toll fees.

On July 13, 2010, the incumbent Commissioner of the Bureau of Internal Revenue issued Revenue Memorandum Circular 63-2010. This Circular imposed the payment of EVAT on toll fees. The Commissioner justified this imposition by stating that that Section 108 of the National Internal Revenue Code (NIRC) allows the imposition of EVAT on all services for a fee.

A petition was filed with the Supreme Court against the said Memorandum Circular. Unfortunately, the highest court of the land recently denied the petition and upheld the imposition of EVAT on toll fees.

The decision noted the absence of legislation against VAT on toll and said that every activity that can be imagined as a form of service rendered for a fee should be deemed included or "VATable" unless some provision of law especially excludes it.

This proposed legislation would now be the legislation against EVAT on toll.

In the most recent State of the Nation Address, the President mentioned that his administration would not pursue the passage of new tax laws.

However, contrary to such pronouncement, the BIR is still contemplating on pursuing the imposition of the EVAT on toll.

Of course, technically, it is true that the EVAT on toll is not a new tax imposition. This is because the SC decision stated that it can be imposed without the passage of a new tax measure. Nevertheless, its implementation now would be, for all intents and purposes, amount to a new tax imposition on the public. This is since said tax has not been previously imposed.

And unfortunately, the reality is that the motorists and the commuting public can no longer afford an increase in the price of toll fees. This is especially in these trying times when prices of basic goods and services are skyrocketing. There is no abatement in the increase in the prices of food and groceries, petroleum or gasoline, and utilities such as electricity and water.

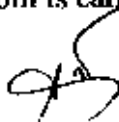
Furthermore, an increase in the price of the toll fees, brought about by the imposition of EVAT, would bring a rippling effect of increasing transport fares and prices of other basic commodities and services. And, coupled by the inelasticity of wages,

the ordinary consumer and the general public would not just be overwhelmed, but may simply break down.

It is conceded that the government is in dire need of additional revenue to finance its operations. Maybe, the option for the government is the much bandied about plugging of loopholes in the tax collection system. It cannot be in the form of new impositions to the general public, whether it would be in a new tax law or in an administrative circular interpreting an existing tax law.

The Highest Court noted that the executive exercises exclusive discretion in matters pertaining to the implementation and execution of tax laws. Consequently, the executive is more properly suited to deal with the immediate and practical consequences of the EVAT imposition.

This representation cannot risk a decision of the executive to impose this EVAT on toll ways and is even of the strong opinion that Congress should preemptively act against it. It is in this view that the immediate passage of the bill is earnestly sought.



**ARTHUR C. YAP**  
*Representative*

**Republic of the Philippines**  
**HOUSE OF REPRESENTATIVES**  
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**FIFTEENTH CONGRESS**

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**AN ACT**  
**PROMOTING THE WELFARE OF MOTORISTS AND THE**  
**COMMUTING PUBLIC, ADVANCING COUNTRYSIDE**  
**DEVELOPMENT BY EXEMPTING FROM PAYMENT OF THE**  
**EXPANDED VALUE ADDED TAX THE USE OF TOLL WAYS,**  
**AMENDING FOR THE PURPOSE SECTION 109 OF THE**  
**NATIONAL INTERNAL REVENUE CODE, AS AMENDED, AND**  
**FOR OTHER PURPOSES**

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

1           **SECTION 1. *Short Title.*** – This Act shall be known as the “EVAT Exemption on  
2 Toll Ways Act of 2011”.

3           **SECTION 2. *Declaration of Policy.*** – It is hereby declared the policy of the State  
4 to promote the welfare and alleviate the burden of motorists and the commuting public  
5 and to advance the development of the countryside by making the use of basic public  
6 infrastructure, including toll ways, inexpensive. The use of toll ways shall hereinafter be  
7 exempted from payment of the expanded value added tax (EVAT), other taxes and duties.

8           **SECTION 3. *Amendment of Section 109 of the National Internal Revenue***  
9 ***Code.*** – Section 109 of the National Internal Revenue Code or Presidential Decree No.  
10 1158, as, as amended by among others, Republic Act No. 8424 or the Tax Reform Act of  
11 1997, and Republic Act No. 9337 or the Value Added Tax Reform Act , is hereby further  
12 amended, to read as follows:

1           **"SEC. 109. *Exempt Transactions.*** — (1) Subject to the  
2 provisions of Subsection (2) hereof, the following transactions shall be  
3 exempt from the value-added tax:

4           "(A) xxx

5           (W) Fees and other charges collected from the use of toll ways or  
6 similar expressways that are constructed, maintained and operated by  
7 private tollway operators at their own expense under the Build Operate  
8 and Transfer and other similar schemes.

9           xxx"

10          **SECTION 4. *Separability Clause.*** - If any provision of this Act, or any parts  
11 thereof, is declared unconstitutional, the same shall not affect the validity and effectivity  
12 of the other portions.

13          **SECTION 5. *Repealing Clause.*** - All laws, executive orders, presidential  
14 decrees, proclamations, rules, regulations, issuances and enactments of parts thereof  
15 inconsistent with this Act are hereby repealed or modified accordingly.

16          **SECTION 6. *Effectivity.*** - This Act shall take effect fifteen (15) days from its  
17 complete publication in the Official Gazette or in a newspaper of general circulation in  
18 the Philippines, whichever comes earlier.

**APPROVED.**