REPUBLIC ACT NO. 7369
AN ACT GRANTING TAX AND DUTY EXEMPTION AND TAX CREDIT ON CAPITAL EQUIPMENT

Section 1. Paragraph (c), Article 39, Title III of the Omnibus Investment Code of 1987 is hereby amended to read as follows:

"(c) Tax and Duty Exemption on Imported Capital Equipment. ~ Until December 31, 1994, importations of machinery and equipment and accompanying spare parts of new and expanding registered enterprise shall be exempt to the extent of One hundred percent (100%) of the customs duties and national internal revenue tax payable thereon: *Provided*, That the importation of machinery and equipment and accompanying spare parts shall comply with the following conditions:

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

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

(3) The approval of the Board was obtained by the registered enterprise for the importation of such machinery, equipment and spare parts." In granting the approval of the importations under this paragraph, the Board may require international canvassing but if the total cost of the capital equipment or industrial plant exceeds US$5,000,000.00, the Board shall apply or adopt the provisions of Presidential Decree Numbered 1764 on International Competitive Bidding.

If the registered enterprise sells, transfers or disposes these machinery, equipment and spare parts without prior approval of the Board within five (5) years from the date of acquisition, the registered enterprise and the vendee, transferee, or assignee shall be solidarily liable to pay twice the amount of the tax exemption given it.

The Board shall allow and approve the sale, transfer, disposition of the said items within the said period of five (5) years if made:

(aa) to another registered enterprise or registered domestic producer enjoying similar incentives;

(bb) for reason of proven technical obsolescence; or

(cc) for purposes of replacement to improve and/or expand the operations of the registered enterprises."

Sec. 2. Paragraph (d), Article 39, Title III of the same Code, is likewise amended to read as follows:

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

Sec. 3. For a period of three (3) years starting January 1, 1995, the following imported articles shall be exempt from duties imposed under Section 104 of the Tariff and Customs Code of 1978, as amended, and all kinds of levies provided by law or presidential decree; *Provided, however*, That the National Economic and Development Authority may, upon due notice and public hearing, and in consultation with concerned government agencies, exclude any item from the foregoing list, subject to the condition that the machinery or equipment is being manufactured domestically in sufficient quantity, of comparable quality and at a reasonable price.

Sec. 4. Pursuant to the preceding Section, a domestic manufacturer of any of the articles enumerated therein shall be entitled to a tax credit equivalent to one hundred percent (100%) of the national internal revenue taxes, customs duties and levies actually paid on the raw materials used in the manufacture of the article. The purchaser of such article shall likewise be entitled to a tax credit of one hundred percent (100%) of the value of the National Internal Revenue taxes, customs duties imposed thereon under Section 104 of the Tariff and Customs Code of 1978, as amended, and levies provided by law or presidential decree had such article been imported.

Sec. 5. As used in this Act, the term domestic manufacturer shall mean a citizen of the Philippines, a partnership or any other association organized under Philippine laws, with at least sixty percent (60%) of its capital owned and controlled by citizens of the Philippines; a corporation or cooperative organized under Philippine laws with at least sixty percent (60%) of its capital stock outstanding and entitled to vote owned and held by citizens of the Philippines, and with at least sixty percent (60%) of the members of its Board of Directors being citizens of the Philippines.

Sec. 6. The Board of Investments (BOI) shall issue certificates for the tax credit mentioned in Section 4 hereof after evaluation as to whether the manufactured article falls under Section 3 of this Act; *Provided*, *however*, That the domestic manufacturer has not availed of tax credits thereon under any other investment incentive law, order, rule or regulation: *Provided*, *further*, That availment of the tax credit provided for under this Act shall bar the availment of tax credits under such other laws, orders, rules or regulations.

Sec. 7. The BOI shall formulate and publish guidelines for the implementation of this Act in the Official Gazette and in any newspaper of general circulation within ninety (90) days after its approval.

Sec. 8. All laws, decrees, orders, issuances and rules and regulations or parts thereof inconsistent with this Act are hereby repealed or modified accordingly.

Sec. 9. This Act shall take effect fifteen (15) days after the implementing rules have been published and shall be in effect for five (5) years from the date of its approval.

Approved April 10, 1992