

Implications of Executive Order No. 41, s. 2023¹ Prohibiting the Collection of Pass-Through Fees on National Roads and Urging Local Government Units to Suspend the Collection of Any Form of Fees Upon All Types of Vehicles Transporting Goods Under Section 153 or 155 of Republic Act No. 7160 or the “Local Government Code of 1991”*

I. Salient Features

Executive Order (EO) No. 41, issued on 25 September 2023, aims to prohibit local government units (LGUs) from collecting toll fees and charges upon all motor vehicles transporting goods or merchandise while passing through any national roads and such other roads not constructed and funded by LGUs pursuant to Section 155 of Republic Act (RA) No. 7160, otherwise known as the Local Government Code (LGC) of 1991, as amended. The EO instructs the LGUs to suspend or discontinue the collection of fees, such as but not limited to sticker fees, discharging fees, delivery fees, market fees, toll fees, entry fees, or Mayor’s Permit fees, that are imposed upon all motor vehicles transporting goods and passing through any local public roads constructed and funded by said LGUs. (Section 1)

The EO also orders the Department of the Interior and Local Government (DILG) to secure copies of the existing ordinances of all LGUs on the collection of pass-through fees imposed upon motor vehicles, including those issued pursuant to Sections 153 and 155 of RA 7160, as amended; additionally, the DILG shall take appropriate actions to ensure that LGUs act within the scope of their prescribed authorities under Sections 133(e), 153, and 155 of RA 7160. (Sections 2 and 3)

II. Implications

Sections 153 to 155 of the LGC of 1991, as amended, cover the sections for common revenue-raising powers. Section 153 states that LGUs may impose and collect such reasonable

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fees and charges for services rendered. Additionally, Section 154 provides that LGUs may fix the rates for the operation of public utilities owned, operated, and maintained by them within their jurisdiction. Lastly, Section 155 states that for toll fees or charges, the Sanggunian may prescribe the terms and conditions and fix the rates for the imposition of toll fees or charges for the use of any public road, pier, wharf, waterway, bridge, ferry, or telecommunication system funded and constructed by the LGU concerned. However, the section also provides that when public safety and welfare so require, the Sanggunian concerned may discontinue the collection of the tolls, and thereafter the said facility shall be free and open for public use.

The issuance of EO 41 was intended to reduce transport and logistics costs and ensure the efficient movement of goods across the regions as one of the pillars of the 8-Point Socioeconomic Agenda of the Administration and revitalizing local industries under the Philippine Development Plan 2023 to 2028, respectively. It seeks to prevent trade restrictions that may result in higher commodity prices for consumers. Specifically, since the EO was implemented towards the end of the year, one of the goals might be to ease the inflationary impact of the holiday season.

According to the Metropolitan Manila Development Authority, as cited by Ong (2023), there will be an increase in deliveries, commerce, and all types of vehicles that will pass through national roads in the coming months, which would have racked up the prices of goods and commodities, and the implementation of the EO will help reduce the prices of such. Additionally, the Department of Trade and Industry Undersecretary for Communications Kim D. Lokin stated that EO 41 will also help in addressing the cost of doing business in the country, benefiting both consumers and sellers alike [Presidential Communications Office (PCO), 2023]. He also mentioned the City Government of Manila as the first LGU to issue compliance to the EO, encouraging others to follow suit (PCO, 2023).

It is safe to assume that LGUs may expect a decrease in their local collections of fees and taxes related to pass-through fees for the end of the year and for the succeeding years to come, as the implementation of EO 41 is an indefinite one.

However, the collection from pass-through fees should not be confused with the annual fixed tax on delivery trucks and vans mentioned in Section 141 of the LGC of 1991, as amended. Previously, the DILG, through its Legal Opinion No. 8, s. 2023, clarified DILG Memorandum Circular (MC) 2018-133 which contained the guidelines regarding LGU imposition and collection of illegal fees and taxes relative to the transport of goods and products. The legal opinion mentioned that the MC only prohibited the collection of pass-through fees and not the annual fixed tax for every delivery truck and van as contemplated in Section 141 of the LGC of 1991, as amended (DILG, 2023). In light of the similar provisions of EO 41 and DILG MC 2018-133, it is put forward that the collection of the annual fixed tax on delivery trucks and vans is still not prohibited even with the issuance of EO 41.

The collection from the annual fixed tax on delivery trucks and vans is only meager as compared to other taxes imposed by LGUs, and it is projected that the prohibition on the collection of pass-through fees and taxes may not cause a huge decrease in the overall LGU revenues. As shown in Table 1, tax on delivery trucks and vans is second to professional tax in

terms of the lowest average collection for the years 2018 to 2022, contributing an average contribution of only 3.94% to other taxes collected by LGUs.

Table 1

Total Revenues of LGUs, By Source, CY 2018-2022 (In Million Pesos)

Source	2018	2019	2020	2021	2022*	Average
Local sources	217,948.79	251,286.56	249,467.11	252,667.55	279,079.78	250,089.96
Tax revenues	156,889.63	182,666.16	189,266.20	189,861.02	205,992.86	184,935.17
Property taxes	68,545.88	77,057.23	75,664.14	85,766.15	94,106.70	80,228.02
Business tax (per Section 143 of the LGC of 1991, as amended)	79,767.18	96,207.77	105,207.20	95,742.63	102,395.06	95,863.97
Other taxes	8,576.57	9,401.16	8,394.86	8,352.24	9,491.10	8,843.19
Amusement tax	980.50	1,142.19	308.07	65.34	517.89	602.80
Franchise tax	2,466.14	2,439.44	2,464.39	2,351.19	2,524.17	2,449.06
Tax on delivery trucks & vans	329.12	355.67	327.87	353.41	376.00	348.41
Tax on sand, gravel & other quarry resources	1,463.51	1,569.21	1,631.00	1,984.74	2,023.36	1,734.36
Community tax	2,124.75	2,414.96	2,393.74	2,324.16	2,448.26	2,341.18
Professional tax	121.86	142.05	133.78	137.66	143.06	135.68
Others	1,090.68	1,337.65	1,136.02	1,135.73	1,458.36	1,231.69
Non-tax revenues	61,059.16	68,620.39	60,200.92	62,806.53	73,086.92	65,154.79
Regulatory fees	13,952.84	15,876.86	14,159.46	15,621.30	17,135.25	15,349.14
Service/User charges	19,143.93	22,325.58	19,009.52	20,323.93	25,479.63	21,256.52
Income from economic enterprises	23,371.82	24,427.47	20,805.33	21,754.43	25,448.20	23,161.45
Other income/receipts	4,590.58	5,990.48	6,226.60	5,106.87	5,023.83	5,387.67

Note. * - Preliminary data.

Basic data was retrieved from the Bureau of Local Government Finance as of 18 October 2023.

It is important to note that the types of pass-through fees should be clarified. In a previous legal opinion by the DILG (2012), they mentioned the following:

“Pass-through fees are TAXES, FEES, CHARGES, AND OTHER IMPOSITIONS UPON GOODS CARRIED INTO OR OUT OF, OR PASSING THROUGH the territorial jurisdiction of the LGUs in the guise of a toll, charges for wharfage or other taxes, fees, or charges in any form upon goods or merchandise.

Taxes, fees, or charges on trucks carrying raw materials and cement finished products imposed by LGUs through ordinances, as in this case, are in the nature of pass-through fees and thus considered illegal impositions/collections which run counter to Section 133(e) of the Local Government Code of 1991 (the “Code”).

It should be noted that illegal fees or illegal collections are those imposed by the LGUs which are not covered by their specific taxing powers or common taxing powers. This also covers the imposition of the taxes, fees and charges enumerated under Section 133 of the Code. In addition to the foregoing, a tax, fee, or charge may be considered an illegal collection if it is imposed by the LGU absent any ordinance directing the imposition of the same.

Nevertheless, LGUs may regulate the USE of their roads or other public facilities as provided under Section 155 of the Code through the imposition of toll fees or charges thereon, PROVIDED THAT IT IS FUNDED AND CONSTRUCTED BY THE LOCAL GOVERNMENT UNIT concerned.” (DILG Legal Opinion No. 003-12).

The difference between the pass-through fees and the annual fixed tax on delivery trucks and vans was clearly explained in DILG Legal Opinion No. 082-11, wherein it was clarified by the DILG that the delivery truck of EMBU Integrated and Trading Corporation made to pay an annual fixed tax, surcharge, and interest in the province of Laguna does not fall within the category of an alleged illegal collection by the province, highlighting the fact that what was imposed was “fixed tax on delivery trucks, vans, or any vehicle carrying goods as enumerated under Section 141 of the LGC of 1991, as amended, and other products as determined through an ordinance by the Sangguniang Panlalawigan.”

In Guinobatan, Albay, a similar case wherein it is ambiguous whether the toll fees on vehicles passing through barangay roads owned and operated by Muladbucad Grande are imposed in Barangay Ordinance No. 02, s. 2009, was considered a pass-through fee or a toll fee for the use of barangay roads owned by Muladbucad Grande. The DILG (2012) stated that the ordinance seemingly transgresses Section 133(e) of the LGC of 1991, as amended, and should “initiate the rectification of the ordinance in compliance with pertinent provisions of the Code.”

The suspension of LGUs’ imposition and collection of illegal fees and taxes is already provided in DILG MC 151-11, wherein it is stated that local executives are enjoined to:

- a. refrain from enforcing any existing ordinance authorizing the levy of fees and taxes on inter-province transport of goods, regulatory fees from passengers in local ports, and other additional taxes, fees or charges in any form upon transporting goods and passengers; and
- b. cause the immediate repeal of the ordinance imposing the above-cited fees and taxes.

This is reiterated further in DILG MC 2017-023, which stresses that the imposition of “various fees, taxes, and other charges on transporting goods and passengers carried into or out, or passing through, their respective territorial jurisdictions,” is beyond the scope of LGUs’ taxing powers. DILG MC 2017-023 enjoined local chief executives to refrain from enforcing and to repeal any existing ordinance which authorizes the levy of fees and taxes on inter-province transport of goods, regulatory fees from passengers in local ports, and other additional taxes, fees, or charges in any form upon transporting goods and passengers. The MC highlighted Section 133(e) of the LGC of 1991, as amended, which states that LGUs are prohibited from levying taxes, fees, and charges, and other impositions upon goods carried out into or out of, or passing through, the territorial jurisdictions of LGUs in the guise of charges for wharfage, tolls for bridges or otherwise, or other taxes, fees, or charges in any form whatsoever upon such goods or merchandise.

In the case of *Palma Development Corporation vs. Municipality of Malangas, Zamboanga del Sur* (2003), an issue was raised as to whether the Municipal Revenue Code No. 09, series of 1993, subsequently approved by the Sangguniang Panlalawigan of Zamboanga del Sur in Resolution No. 1330 dated 04 August 1994, section 5G.1, was valid. The section provides an imposition of service fees for the use of municipal roads or streets leading to the wharf and to any point along the shorelines within the jurisdiction of the municipality; and for police surveillance on all goods and all equipment harbored or sheltered on the premises of the wharf and others within the jurisdiction of the said municipality. The court explained that the use of municipal roads leading to the wharf is valid based on Sections 153 and 155 of the LGC of 1991, as amended, while the provision of a service fee for police surveillance on goods runs contrary to Section 133 of the LGC of 1991, as amended.

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