

EIGHTEENTH CONGRESS)
REPUBLIC OF THE PHILIPPINES)
First Regular Session)



HOUSE OF REPRESENTATIVES

Introduced by Representative Rufus B. Rodriguez

House Bill No. 4874

EXPLANATORY NOTE

This bill seeks to rationalize the mining industry's fiscal regime in order to enhance government's equitable share in the utilization of the natural resources particularly on the mining industry and ensure that mining contractors shoulder the environmental costs of their activities and fund the necessary environmental protection programs as well as developing technology that may mitigate adverse impacts of the mining industry.

However, there is a need to differentiate metallic and non-metallic mining. The imposition of the proposed margin-based royalty and windfall profit tax on non-metallic mining operations would be confiscatory and would affect inflation on prime commodities whose composition originate from minerals produced by the non-metallic mining industry.

Metallic mining involves the extraction of metallic minerals which are the type of minerals that are composed of metals while non-metallic mining involves the extraction of minerals that do not comprise of metals. The latter types of minerals are used in various industries to manufacture different domestically used products. Examples of such kind of minerals are limestone, shale and silica which are highly used in the manufacturing of cement as well as basalt which generally comprises 60% to 70% of the concrete.

The manner of conducting the respective mining operations of metallic and non-metallic minerals also differs. The extensive processes required of metallic minerals result in creation of more waste. Thus, metallic mining has a greater environmental impact. Further, based on the current market trend of the respective mining products in the country, almost all of the metallic mineral products are exported or sold overseas which has a minimal effect on the business of employment downstream while almost all of the non-metallic mineral products are sold locally and used in the manufacture of different domestic products such as fertilizers, ready mix plants, asphalt plant, aggregates plants and cement. The downstream industry of the non-metallic mines is also the backbone of the BUILD, BUILD, BUILD program of the current administration. Thus, any increase in taxes on non-metallic mining will have an impact on the prices of these domestic products and will obviously have an enormous impact on government projects, not to mention that non-metallic mineral products are already loaded with 12% VAT.

In addition, the imposition of additional taxes will further put mining operations under Mineral Production Sharing Agreements (MPSA) in a bad position in terms of its competitiveness. For the implementation of the Social Development Management Program (SDMP) alone, MPSA holders already spends 1.5% of its direct mining cost for community alleviation. Further, MPSA holders also spend for their Final Mine Rehabilitation Development Plan and other environmental contingency funds. On the contrary, while small-scale mining operators (those operating under quarry permits) delivers more than 50% of the market supply, the above stated expenditures imposed on MPSA holders are not imposed. Therefore, the mining industry operating under MPSA could not compete commercially with small scale operations.

It is therefore clear that there is a huge difference between the minerals produced by the two mining operations. Thus, imposing a single fiscal regime applicable to all metallic and non-metallic mining operations, either within or outside mining reservations, without valid qualification or distinction, would not at all be fair to non-metallic mining permit holders whose mineral products are highly demanded for local use.

Also, Republic Act No. 10963 already increased the excise taxes on non-metallic minerals and quarry resources by one hundred percent (100%). The imposition of the additional margin-based royalty and windfall profit tax will also result to higher domestic prices of many prime commodities, especially cement and aggregates, which will make these commodities or products less competitive in the regional market. The tax burden will be shifted or passed on to the end consumers who are generally domestic based contrary to the metallic mining industry whose products are exported overseas catering to the demands of the global market.

In view of the foregoing, the immediate approval of this measure is earnestly requested while recognizing the exclusion of the non-metallic mining industry from the proposed fiscal regime.



RUFUS B. RODRIGUEZ

EIGHTEENTH CONGRESS)
REPUBLIC OF THE PHILIPPINES)
First Regular Session)

HOUSE OF REPRESENTATIVES

Introduced by Representative Rufus B. Rodriguez

House Bill No. 4874

AN ACT
ESTABLISHING THE FISCAL REGIME FOR THE MINING INDUSTRY

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

SECTION 1. *Title.* – The chapter title of Chapter VII, Title VI of the National Internal Revenue Code of 1997, as amended, is hereby amended to read as follows:

"CHAPTER VII – [EXCISE TAX ON MINERAL PRODUCTS] TAXATION OF MINERAL PRODUCTS"

SEC. 2. Section 151 of Chapter VII, Title VI of the National Internal Revenue Code of 1997, as amended, is hereby amended to read as follows:

"SEC. 151. TAX ON Mineral Products. —"

SEC. 3. – A new section designated as Section 151–A under Chapter VII, Title VI of the National Internal Revenue Code of 1997, as amended, is hereby inserted and shall read as follows:

"SEC. 151–A. ROYALTY. —"

"(A) FOR LARGE-SCALE METALLIC MINING OPERATIONS OUTSIDE OF MINERAL RESERVATIONS. - MINING CONTRACTORS OF LARGE-SCALE METALLIC MINING OPERATIONS OUTSIDE OF MINERAL RESERVATIONS SHALL PAY TO THE GOVERNMENT A MARGIN-BASED ROYALTY ON INCOME FROM MINING OPERATIONS IN ACCORDANCE WITH THE FOLLOWING TABLE:

MARGIN	ROYALTY
1% UP TO 10%	1.00%
ABOVE 10% UP TO 20%	1.50%
ABOVE 20% UP TO 30%	2.00%
ABOVE 30% UP TO 40%	2.50%
ABOVE 40% UP TO 50%	3.00%
ABOVE 50% UP TO 60%	3.50%
ABOVE 60% UP TO 70%	4.00%
ABOVE 70%	5.00%

"(B) FOR LARGE-SCALE METALLIC MINING OPERATIONS WITHIN MINERAL RESERVATIONS. - MINING CONTRACTORS OF LARGE-SCALE METALLIC MINING OPERATIONS WITHIN MINERAL RESERVATIONS SHALL PAY TO THE GOVERNMENT A ROYALTY EQUIVALENT THREE PERCENT (3%) OF THE GROSS OUTPUT OF THE MINERALS OR MINERAL PRODUCTS EXTRACTED OR PRODUCED BY THE MINING OPERATIONS, EXCLUSIVE OF ALL OTHER TAXES;

"(C) FOR SMALL-SCALE METALLIC MINING OPERATIONS WITHIN OR OUTSIDE MINERAL RESERVATIONS. - MINING CONTRACTORS OF SMALL-SCALE METALLIC MINING OPERATIONS WITHIN OR OUTSIDE MINERAL RESERVATIONS SHALL PAY TO THE GOVERNMENT A ROYALTY EQUIVALENT TO ONE-TENTH (1/10) OF ONE PERCENT (1%) OF GROSS OUTPUT;

"(D) WHEN USED IN THIS SECTION AND IN SECTION 151-B OF THIS CHAPTER.-

"(1) THE TERM 'MARGIN' SHALL MEAN THE RATIO OF INCOME FROM MINING OPERATIONS BEFORE CORPORATE INCOME TAX TO GROSS OUTPUT.

"(2) THE TERM 'GROSS OUTPUT' SHALL MEAN THE ACTUAL MARKET VALUE OF MINERALS OR MINERAL PRODUCTS FROM EACH MINE OR MINERAL LAND OPERATED AS A SEPARATE ENTITY, WITHOUT ANY DEDUCTION FOR MINING, PROCESSING, REFINING, TRANSPORTING, HANDLING, MARKETING, OR ANY OTHER EXPENSES: *PROVIDED*, THAT OF THE MINERALS OR MINERAL PRODUCTS SOLD OR CONSIGNED ABROAD BY THE MINING CONTRACTOR UNDER COST, INSURANCE AND FREIGHT (CIF) TERMS, THE ACTUAL COST OF OCEAN FREIGHT AND INSURANCE SHALL BE DEDUCTED: *PROVIDED, FURTHER*, THAT IN THE CASE OF MINERAL CONCENTRATES WHICH ARE NOT TRADED IN COMMODITY EXCHANGES IN THE PHILIPPINES OR ABROAD, SUCH AS COPPER CONCENTRATES, THE ACTUAL MARKET VALUE SHALL BE WORLD PRICE QUOTATIONS OF THE REFINED MINERAL PRODUCTS CONTENT THEREOF PREVAILING IN THE SAID COMMODITY EXCHANGES, AFTER DEDUCTING THE SMELTING, REFINING, TREATMENT, INSURANCE, TRANSPORTATION AND OTHER CHARGES INCURRED IN THE PROCESS OF CONVERTING MINERAL CONCENTRATES INTO REFINED METAL TRADED IN THOSE COMMODITY EXCHANGES.

"(3) THE TERM 'INCOME FROM MINING OPERATIONS' SHALL MEAN THE GROSS OUTPUT LESS DEDUCTIBLE EXPENSES WHICH INCLUDE:

"(A) MINING, MILLING, TRANSPORT AND HANDLING EXPENSES TOGETHER WITH SMELTING AND REFINING COSTS OTHER THAN SMELTING AND REFINING COSTS PAID TO THIRD PARTIES;

"(B) GENERAL AND ADMINISTRATIVE EXPENSES ACTUALLY INCURRED BY THE MINING CONTRACTOR IN THE PHILIPPINES;

"(C) ENVIRONMENTAL EXPENSES OF THE MINING CONTRACTOR, INCLUDING SUCH EXPENSES NECESSARY TO FULLY COMPLY WITH ITS ENVIRONMENTAL OBLIGATIONS AS STIPULATED IN THE ENVIRONMENTAL PROTECTION PROVISION OF THE MINERAL AGREEMENT OR FINANCIAL AND TECHNICAL ASSISTANCE AGREEMENT AND IN THE APPLICABLE IMPLEMENTING RULES AND REGULATIONS;

"(D) EXPENSES FOR THE DEVELOPMENT OF HOST AND NEIGHBORING COMMUNITIES AND FOR THE DEVELOPMENT OF GEOSCIENCES AND MINING TECHNOLOGY, INCLUDING TRAINING COSTS AND EXPENSES AS STIPULATED IN THE MINERAL AGREEMENT OR

FINANCIAL AND TECHNICAL ASSISTANCE AGREEMENT AND IN THE APPLICABLE IMPLEMENTING RULES AND REGULATIONS;

"(E) ROYALTY PAYMENTS TO CLAIM OWNERS OF SURFACE LAND OWNERS RELATING TO THE CONTRACT AREA DURING THE OPERATING PERIOD, IF ANY;

"(F) CONTINUING EXPLORATION AND DEVELOPMENT EXPENSES WITHIN THE CONTRACT AREA AFTER THE PRE-OPERATING PERIOD;

"(G) INTEREST EXPENSES CHARGED ON LOANS OR SUCH OTHER FINANCING RELATED EXPENSES INCURRED BY THE MINING CONTRACTOR SUBJECT TO THE FINANCING REQUIREMENT IN THE MINERAL AGREEMENT OR FINANCIAL AND TECHNICAL ASSISTANCE AGREEMENT, WHICH SHALL NOT BE MORE THAN THE PREVAILING INTERNATIONAL RATES CHARGED FOR SIMILAR TYPES OF TRANSACTIONS AT THE TIME THE FINANCING WAS ARRANGED, AND WHERE SUCH LOANS ARE NECESSARY FOR THE OPERATION;

"(H) DEPRECIATION, DEPLETION, AND AMORTIZATION;

"(I) TAXES, DUTIES, FEES, AND CHARGES; AND

"(J) ALL OTHER COSTS AND EXPENSES RELATED TO MINING OPERATIONS AND SALE OF MINERALS AND MINERAL PRODUCTS.

"(4) THE TERM 'MINING CONTRACTOR' SHALL MEAN A QUALIFIED PERSON ACTING ALONE OR IN CONSORTIUM WHO IS A PARTY TO A MINERAL AGREEMENT OR FINANCIAL AND TECHNICAL ASSISTANCE AGREEMENT,"

SEC. 4. A new section designated as Section 151-B under Chapter VII, Title VI of the National Internal Revenue Code of 1997, as amended, is hereby inserted and shall read as follows:

"SEC. 151-B. *WINDFALL PROFITS TAX.* –

"(A) IN ADDITION TO THE TAXES IMPOSED UNDER THIS CODE, THERE IS HEREBY IMPOSED FOR EACH TAXABLE YEAR A MARGIN-BASED WINDFALL PROFITS TAX ON INCOME FROM MINING OPERATIONS BEFORE CORPORATE INCOME TAX, IN ACCORDANCE WITH THE FOLLOWING TABLE: *PROVIDED*, THAT IT SHALL BE DEDUCTIBLE FROM TAXABLE INCOME, AS DEFINED IN SECTION 32, CHAPTER V, TITLE II OF THIS CODE:

MARGIN	RATE
MORE THAN 35% UP TO 40%	1%
MORE THAN 40% UP TO 45%	2%
MORE THAN 45% UP TO 50%	3%
MORE THAN 50% UP TO 55%	4%
MORE THAN 55% UP TO 60%	5%
MORE THAN 60% UP TO 65%	6%
MORE THAN 65% UP TO 70%	7%
MORE THAN 70% UP TO 75%	8%
MORE THAN 75% UP TO 80%	9%
MORE THAN 80%	10%

SEC. 5. Section 34(B) of Chapter VII, Title II of the National Internal Revenue Code of 1997, as amended, is hereby further amended to read as follows:

"SEC. 34. Deductions from Gross Income. – x x x

"(A) Expenses. –

"x x x

"(B) Interest. –

"(1) x x x

"(2) x x x

"(3) x x x

"(4) LIMITATION OF INTEREST EXPENSE DEDUCTIONS FOR MINING CONTRACTORS:

"(A) IF A MINING CONTRACTOR HAS A DEBT-TO-EQUITY RATIO IN EXCESS OF 3 TO 1 AT ANY TIME DURING A TAXABLE YEAR, A DEDUCTION IS DISALLOWED AS A TAX-DEDUCTIBLE EXPENSE FOR THE INTEREST PAID BY THE MINING CONTRACTOR DURING THAT YEAR ON THAT PART OF THE DEBT THAT EXCEEDS THE 3 TO 1 RATIO FOR THE PERIOD THE RATIO WAS EXCEEDED.

"(B) IF THE DEBT-TO-EQUITY RATIO OF A MINING CONTRACTOR EXCEEDS 3 TO 1 FOR AN INCOME YEAR, SUBSECTION (A) DOES NOT APPLY, IF AT ALL TIMES, DURING THE YEAR, THE AMOUNT OF THE DEBT OF THE MINING CONTRACTOR DOES NOT EXCEED THE ARM'S LENGTH DEBT AMOUNT.

"(C) WHEN USED IN THIS SECTION. –

"THE TERM 'ARM'S LENGTH DEBT AMOUNT' SHALL MEAN THE AMOUNT OF DEBT THAT A BANK THAT IS NOT AN ASSOCIATE OF THE MINING CONTRACTOR WOULD BE PREPARED TO LEND TO THE MINING CONTRACTOR HAVING REGARD TO ALL THE CIRCUMSTANCES OF THE MINING CONTRACTOR.

"THE TERM 'ASSOCIATE' SHALL MEAN ANY OTHER PERSON WHO ACTS OR MAY ACT IN ACCORDANCE WITH THE DIRECTIONS, REQUESTS, SUGGESTIONS, OR WISHES OF THE FIRST-MENTIONED PERSONS, AND THE FIRST-MENTIONED PERSON IS AN ASSOCIATE OF THE SECOND-MENTIONED PERSON.

"THE TERM 'DEBT' SHALL MEAN THE GREATEST AMOUNT, AT ANY TIME DURING AN INCOME YEAR, OF THE DEBT OBLIGATIONS OF THE MINING CONTRACTOR ON WHICH INTEREST IS PAYABLE AS DETERMINED ACCORDING TO INTERNATIONAL FINANCIAL REPORTING STANDARDS.

"THE TERM 'DEBT OBLIGATION' SHALL MEAN AN OBLIGATION TO MAKE A REPAYMENT OF MONEY TO ANOTHER PERSON, INCLUDING AN OBLIGATION ARISING UNDER A PROMISSORY NOTE, BILL OF EXCHANGE, OR BOND, BUT NOT INCLUDING ACCOUNTS PAYABLE OR AN OBLIGATION TO MAKE REPAYMENT OF MONEY IN RESPECT OF WHICH NO INTEREST IS PAYABLE.

"THE TERM 'EQUITY' SHALL MEAN THE GREATEST AMOUNT, AT ANY TIME DURING AN INCOME YEAR, OF THE MINING CONTRACTOR AS DETERMINED ACCORDING TO INTERNATIONAL FINANCIAL REPORTING STANDARDS AND INCLUDES AN OBLIGATION TO MAKE A REPAYMENT OF MONEY IN RESPECT OF WHICH NO INTEREST IS PAYABLE.

"(C) Taxes. –

"x x x

"(D) Losses. –

"x x x

"(E) Bad Debts. –

"x x x

"(F) Depreciation. –

"x x x
"(G) *Depletion of Oil and Gas Wells and Mines.* –
"x x x
"(H) *Charitable and Other Contributions.* –
"x x x
"(I) *Research and Development.* –
"x x x
"(J) *Pension Trusts.* – x x x
"(K) *Additional Requirements for Deductibility of Certain Payments.* – x x x
"(L) *Optional Standard Deduction.* – x x x
"(M) *Premium Payments on Health and/or Hospitalization insurance of an Individual Taxpayer.* – x x x."

SEC. 6. *Each Mining Operation Treated as a Separate Taxable Entity.* – Each mining operation, which is subject to a Mineral Agreement or Financial and Technical Assistance Agreement shall be treated as a separate taxable entity. A mining contractor shall be treated as if a separate taxpayer with respect to each and every Mineral Agreement or Financial and Technical Assistance Agreement it holds or is a party to.

If a Mineral Agreement or Financial and Technical Assistance Agreement is renewed, the renewal shall be treated as part of the original agreement.

SEC. 7. *Exemption from Confidentiality Clauses* – Mining contractors for all metallic and nonmetallic mining operations, whether large-scale or small-scale, shall observe fiscal transparency and comply with the requirements of the Extractive Industries Transparency Initiative (EITI) of government, and, for this purpose, shall be exempted from application of the confidentiality clauses of the National Internal Revenue Code of 1997, as amended, including Section 270 in relation to Section 71, to the extent of their participation in the EITI.

SEC. 8. *Fiscal Regime Under Financial and Technical Assistance Agreements and Other Mineral Agreements.* – The fiscal regime provided herein and the applicable terms and conditions provided under existing laws shall be embodied in the Mineral Agreements and Financial and Technical Assistance Agreements entered into by the government.

SEC. 9. *Vested Rights.* – Valid Mineral Agreements and Financial and Technical Assistance Agreements existing prior to the effectivity of this Act shall continue to be governed by their respective terms and conditions, except if they provide that any terms and conditions resulting from repeal or amendment of any existing laws or regulations or from the enactment of a new law or regulation shall be considered a part of said Financial and Technical Assistance Agreements and Mineral Agreements.

SEC. 10. *Registration of Small-scale Miners.* – All persons undertaking small-scale mining activities shall register as miners with the Mining Board of the concerned local government unit in accordance with Republic Act No. 7076, entitled "An Act Creating A People's Small-scale Mining Program and for Other Purposes". And with the Mines and Geosciences Bureau (MGB) and may organize themselves into cooperatives in order to qualify for the awarding of a people's small-scale mining contract.

The Mining Board shall submit an annual report to the MGB of all the small-scale mining contracts entered into for the small-scale utilization of a plot of mineral land including the respective production output, taxes, and fees paid.

For this purpose, a tax identification number shall be secured from the Bureau of Internal Revenue as a requirement for registration

SEC. 11. *Implementing Rules and Regulations.* – The Department of Finance, after consultation with other concerned government agencies, shall, within ninety (90) days from

the effectivity of this Act, promulgate rules and regulations to implement the intent and provisions of this Act.

SEC. 12. *Repealing Clause.* – All laws, decrees, executive orders, rules and regulations, or parts thereof, which are contrary to or inconsistent with this Act are hereby repealed, amended or modified accordingly.

SEC. 13. *Separability Clause.* – If any provision of this Act is declared unconstitutional or invalid, other parts or provisions hereof not affected thereby shall continue to be in full force and effect.

SEC. 14. *Effectivity.* – This Act shall take effect fifteen (15) days after its publication in the *Official Gazette* or in a newspaper of general circulation in the Philippines.

Approved,