

Republic of the Philippines
HOUSE OF REPRESENTATIVES



THIRTEENTH CONGRESS

First Regular Session

HOUSE BILL NO. 3138

Introduced by Congressman Juan C. Ponce Enrile, Jr.

EXPLANATORY NOTE

Our modern society has, over the past two decades, been struggling with various health issues. Pre-eminent among these is the battle against the hazardous effects of smoking. Of late, health officials assert that smoking is now a major cause of lung cancer in the Philippines. There are varied estimates pertaining to the number of deaths in the country arising from lung cancer; one estimate alone says that it is between fifty (50) to one hundred (100) daily.

The Philippine Lung Center estimates that 17,238 new cases will occur in 2005. The median survival time is six (6) months. Five-year survival rate is 5.28%. Ten-year survival is only 2.68%. Incidence rises steeply at age 40. Of the new cases in 2005, 13,273 will be males and 3,965 will be females. In the same year, 15,881 deaths are expected.

For its part, the World Health Organization (WHO) reports that lung cancer and other tobacco-related diseases kill 20,000 Filipinos yearly and costs the government approximately Forty Six Billion Pesos (P46 billion) annually. It is also estimated that of the number of deaths from smoking-related diseases, about 99% come from the C, D, and E classes of our society.

At present, there are an estimated 23.8 million adult smokers in the Philippines. One percent (1%) of the figure belongs to the A and B classes; 6% come from class C; 66%, from class D; and, 27%, from class E.

In terms of age, 24% of smokers belong to ages 24 years and below; 15% belong to ages 25 to 29 years; 25% belong to ages 30 to 39 years; and 36% belong to ages forty years and above. As far as gender is concerned, 85% are male smokers and 15% are female smokers.

Ranged against a backdrop of our present economic and fiscal difficulties, the health concern above-described must be addressed by the Government with candor and practicality. Amidst the stark decrease in investments, employment, purchasing power, and the severe weakening of the Philippine Peso, the Government must now look at *excise taxation* as a means of addressing both issues.

The inefficiencies in the structure and the administration of our revenue-generating statutes have made excise taxes very ineffective. This is especially true for excise taxes on tobacco products, specifically excise taxes on machine packed cigarettes.

The Philippines' excise taxes on machine packed cigarettes do not deter individuals from smoking cigarettes. Nor do these excise taxes contribute sufficient revenue for the government to compensate for the enormous social cost which cigarette smoking inflicts on society.

In 2003, tax revenue from tobacco products was a measly 0.46% of our Gross Domestic Product. This ratio is almost equal to the tax-to-GDP ratio obtaining twenty (20) years ago.

The deficient performance of excise taxes on tobacco products is mainly attributable to the complex structure of these taxes. The use of price as the basis in taxing sin products is not effective and advantageous to the government. It definitely benefits the producers, importers and other major players, but not the government.

This is marked in the case of machine packed cigarettes. The complicated structure of the excise tax thereon allows for manipulation and misdeclaration of prices and production volumes. It also encourages shifting from one price classification to another whenever it is advantageous to the producers, importers, or other players.

The erratic annual revenue of government from sales of tobacco products covering the years 1996 to 2003 is largely due to such manipulation, misdeclaration and shifting from one classification to another.

In 1996, the government collected P14.936 billion out of an aggregate sales of 77.035 billion sticks of cigarettes; in 1997, P16.020 billion out of an aggregate sales of 67.815 billion sticks; in 1998, P16.743 billion out of an aggregate sales of 70.748 billion sticks; in 1999, P16.504 billion out of an aggregate sales of 71.483 billion sticks; in 2000, P17.407 billion out of an aggregate sales of 70.866 billion sticks; in 2001, P19.420 billion out of an aggregate sales of 78.963 billion sticks; in 2002, P20.064 billion out of an aggregate sales of 83.828 billion sticks; and in 2003, P19.695 billion out of an aggregate sales of 88.266 billion sticks. These figures include both machine and hand packed cigarettes.

Worse than this, the present tax structure provides no mechanism at all that will allow the government to adjust the tax rates to make them fairer and more effective. There is no way under the current system to make them correspond to changes in price levels either.

Hence, this Bill seeks to simplify the structure and administration of the tax on machine packed cigarettes through the following provisions:

1. The Bill proposes to rationalize and adjust the distorted structure of the rates of excise tax on machine packed cigarettes (specially the multi-tiered rates) so that said excise tax will ultimately be single rate.

The four-tiered rates in our present system had been promoting distortions in prices and production volumes. They encourage production of low-priced cigarettes, which account for a 48% share of the market in 2003, from only 28.8% in 1996.

The disparities in excise tax rates for various classes of machine packed cigarettes attract creative tax avoidance, if not outright tax evasion. They do not promote effective tax administration and compliance.

The adoption of a uniform tax rate is thus imperative.

2. The Bill also proposes to adopt a mechanism that will provide an automatic adjustment of tax rates relative to inflation every two (2) years starting in 2013.

Section 109(z) of the National Internal Revenue Code provides for the use of the Consumer Price Index (CPI) as published by the National Statistics Office in the adjustment of sales of small traders to its current value. The indexation provision of this bill uses the CPI to adjust the tax rates to enhance buoyancy of revenues in relation to price changes. Some governments, such as New Zealand, Australia, and the United Kingdom, use indexation as an effective tool to sustain a buoyant tax collection through time.

3. It further proposes to protect the government from frontloading of cigarette production or importation in anticipation of increases in tax rates. It is estimated that government lost more than One Billion Pesos in 1997 alone as a result of this practice.

The proposal is estimated to generate P18.04 billion in additional revenues in 2005, P3.3 billion yearly in 2006, 2007 and 2008, P4.9 billion in 2009 and P6.5 billion in 2010.

As a revenue safeguard, the Bill provides that machine packed cigarettes which are currently subject, if any, to a higher tax rate than the proposed rates must continue to be subject to the higher rate.

This Bill will promote revenue-productivity, enhanced tax administration and simplicity in tax structure. Its provisions will likewise redound to the benefit of the tobacco farmers, especially those in the North, by virtue of the applicable provisions of Republic Act No. 7171.

In view of the foregoing, approval of this Bill is earnestly sought.



JUAN C. PONCE ENRILE, Jr.

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

THIRTEENTH CONGRESS
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HOUSE BILL NO. 3138

Introduced by Congressman JUAN C. PONCE ENRILE, JR.

AN ACT
FURTHER AMENDING SECTION 145 OF THE NATIONAL INTERNAL
REVENUE CODE OF 1997

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

SECTION 1. Section 145 of the National Internal Revenue Code of 1997 is hereby **FURTHER** amended to read as follows:

"SEC. 145. *Cigars and Cigarettes.* –

(A) *Cigars.* [There] **BEGINNING ON JANUARY 1, 2005, THERE** shall be levied, assessed and collected on cigars a tax of [One peso (₱1.00)] **ONE PESO AND FIFTY CENTAVOS (P1.50)** per cigar[;].

THE TAX RATE SPECIFIED IN PARAGRAPH (A) HEREOF FOR THE CALENDAR YEAR 2005 SHALL BE ADJUSTED EFFECTIVE ON JANUARY 1, 2007, BY USING FOR THAT PURPOSE THE AVERAGE OF THE INCREASES IN THE CONSUMER PRICE INDICES OF THE TWO IMMEDIATELY PRECEDING CALENDAR YEARS; AND EVERY TWO YEARS THEREAFTER, THE LAST PRECEDING ADJUSTED RATE SHALL BE ADJUSTED BY USING FOR THAT PURPOSE THE AVERAGE OF THE INCREASES IN THE CONSUMER PRICE INDICES OF THE TWO IMMEDIATELY PRECEDING CALENDAR YEARS FOLLOWING THE LAST ADJUSTMENT.

(B) *Cigarettes Packed by Hand.* [There] **BEGINNING ON JANUARY 1, 2005, THERE** shall be levied, assessed and collected on cigarettes packed by hand a tax of [Forty centavos (₱0.40)] **SIXTY CENTAVOS (P0.60)** per pack[;].

THE TAX RATE SPECIFIED IN PARAGRAPH (B) HEREOF FOR THE CALENDAR YEAR 2005 SHALL BE ADJUSTED EFFECTIVE ON JANUARY 1, 2007, BY USING FOR THAT PURPOSE THE AVERAGE OF THE INCREASES IN THE CONSUMER PRICE

INDICES OF THE TWO IMMEDIATELY PRECEDING CALENDAR YEARS; AND EVERY TWO YEARS THEREAFTER, THE LAST PRECEDING ADJUSTED RATE SHALL BE ADJUSTED BY USING FOR THAT PURPOSE THE AVERAGE OF THE INCREASES IN THE CONSUMER PRICE INDICES OF THE TWO IMMEDIATELY PRECEDING CALENDAR YEARS FOLLOWING THE LAST ADJUSTMENT.

(C) *Cigarettes Packed by Machine.* [There] **BEGINNING ON JANUARY 1, 2005, THERE** shall be levied, assessed and collected on cigarettes packed by machine a tax at the rates prescribed below:

[(1) If the net retail price (excluding the excise tax and the value-added tax) is above Ten pesos (₱10.00) per pack, the tax shall be Twelve pesos (₱12.00) per pack;]

[(2) If the net retail price (excluding the excise tax and the value-added tax) exceeds Six pesos and fifty centavos (₱6.50) but does not exceed Ten pesos (₱10.00) per pack, the tax shall be Eight pesos (₱8.00) per pack;]

[(3) If the net retail price (excluding the excise tax and the value-added tax) is Five pesos (₱5.00) but does not exceed Six pesos and fifty centavos (₱6.50) per pack, the tax shall be Five pesos (₱5.00) per pack;]

[(4) If the net retail price (excluding the excise tax and the value-added tax) is below Five pesos (₱5.00) per pack, the tax shall be One peso (₱1.00) per pack;]

[Variants of existing brands of cigarettes which are introduced in the domestic market after the effectivity of R.A. No. 8420 shall be taxed under the highest classification of any variant of that brand.]

[The excise tax from any brand of cigarettes within the next three (3) years from the effectivity of R.A. 8240 shall not be lower than the tax which is due from each brand on October 1, 1996: *Provided, however,* That in cases where the excise tax rates imposed in paragraphs (1), (2), (3) and (4) hereinabove will result in an increase in excise tax of more than seventy percent (70%), for a brand of cigarette, the increase shall take effect in two tranches: fifty percent (50%) of the increase shall be effective in 1997 and one hundred percent (100%) of the increase shall be effective in 1998.]

[Duly registered or existing brands of cigarettes or new brands thereof packed by machine shall only be packed in twenties.]

[The rates of excise tax on cigars and cigarettes under paragraphs (1), (2), (3) and (4) hereof, shall be increased by twelve percent (12%) on 1, 2000.]

[New brands shall be classified according to their current retail price.]

[For the above purposes, "*net retail price*" shall mean the price at which the cigarette is sold on retail in twenty (20) major supermarkets in Metro Manila (for brands of cigarettes marketed nationally), excluding the amount intended to cover the applicable excise tax and the value-added tax. For brands which are marketed only outside Metro Manila, the "*net retail price*" shall mean the price at which the

cigarette is sold in five (5) major supermarkets in the region excluding the amount intended to cover the applicable excise tax and the value-added tax.]

[The classification of each brand of cigarettes based on its average retail price as of October 1, 1996 as set forth in Annex D shall remain in force until revised by Congress.]

["*Variant of a brand*" shall refer to a brand on which a modifier is prefixed and/or suffixed to the root name of the brand and/or a different brand which carries the same logo or design of the existing brand.]

(1) FOR THOSE FALLING UNDER SUB-PARAGRAPH (1) OF PARAGRAPH (C) OF SECTION 145 OF THE NATIONAL INTERNAL REVENUE CODE AS OF DECEMBER 31, 2004 -- EFFECTIVE JANUARY 1, 2005, THIRTEEN PESOS AND FIFTY CENTAVOS (P13.50) PER PACK. THIS RATE SHALL REMAIN UNTIL ADJUSTED IN THE YEAR 2013, IN ACCORDANCE WITH THIS ACT.

(2) FOR THOSE FALLING UNDER SUB-PARAGRAPH (2), PARAGRAPH (C) OF SECTION 145 OF THE NATIONAL INTERNAL REVENUE CODE AS OF DECEMBER 31, 2004--

EFFECTIVE ON JANUARY 1, 2005, NINE PESOS AND FIFTY CENTAVOS (P9.50) PER PACK;

EFFECTIVE ON JANUARY 1, 2006, TEN PESOS (P10.00) PER PACK;

EFFECTIVE ON JANUARY 1, 2007, TEN PESOS AND FIFTY CENTAVOS (P10.50) PER PACK;

EFFECTIVE ON JANUARY 1, 2008, ELEVEN PESOS (P11.00) PER PACK;

EFFECTIVE ON JANUARY 1, 2009, TWELVE PESOS (P12.00) PER PACK; AND

EFFECTIVE ON JANUARY 1, 2010, THIRTEEN PESOS AND FIFTY CENTAVOS (P13.50) PER PACK.

(3) FOR THOSE FALLING UNDER SUB-PARAGRAPHS (3) AND (4) OF SECTION 145 OF THE NATIONAL INTERNAL REVENUE CODE AS OF DECEMBER 31, 2004--

EFFECTIVE ON JANUARY 1, 2005, SIX PESOS (P6.00) PER PACK;

EFFECTIVE ON JANUARY 1, 2006, SEVEN PESOS AND FIFTY CENTAVOS (P7.50) PER PACK;

EFFECTIVE ON JANUARY 1, 2007, NINE PESOS (P9.00) PER PACK;

EFFECTIVE ON JANUARY 1, 2008, TEN PESOS AND FIFTY CENTAVOS (P10.50) PER PACK;

EFFECTIVE ON JANUARY 1, 2009, TWELVE PESOS (P12.00) PER PACK; AND

EFFECTIVE ON JANUARY 1, 2010, THIRTEEN PESOS AND FIFTY CENTAVOS (P13.50) PER PACK.

(4) FOR SALEM 100, SALEM MK, SALEM MK BOX 20's, AND SALEM LTS BOX 20's --

EFFECTIVE ON JANUARY 1, 2005 UNTIL DECEMBER 31, 2006, SEVEN PESOS AND FIFTY CENTAVOS (P7.50) PER PACK;

EFFECTIVE ON JANUARY 1, 2007, NINE PESOS (P9.00) PER PACK;

EFFECTIVE ON JANUARY 1, 2008, TEN PESOS AND FIFTY CENTAVOS (P10.50) PER PACK;

EFFECTIVE ON JANUARY 1, 2009, TWELVE PESOS (P12.00) PER PACK; AND

EFFECTIVE ON JANUARY 1, 2010, THIRTEEN PESOS AND FIFTY CENTAVOS (P13.50) PER PACK.

BRANDS OF CIGARETTES PACKED BY MACHINE, INCLUDING THEIR VARIANTS, SHALL CONTINUE TO PAY THE CORRESPONDING EXCISE TAX DUE ON EACH PACK OF CIGARETTES UNDER THOSE BRANDS ON DECEMBER 31, 2004, IF SUCH EXCISE TAX IS HIGHER THAN THE EXCISE TAX FOR EACH PACK OF CIGARETTES OF SUCH BRANDS UNDER THE NEW RATES PROVIDED UNDER SUB-PARAGRAPHS (1), (2), (3), AND (4) OF PARAGRAPH (C) HEREOF.

ANY NEW BRAND INTRODUCED INTO THE MARKET AFTER THE EFFECTIVITY OF THIS ACT SHALL BE SUBJECT TO THE HIGHEST TAX RATE UNDER SUB-PARAGRAPH (1) OF PARAGRAPH (C) HEREOF.

FOR EASY VERIFICATION AND IDENTIFICATION, ALL CIGARETTES PACKED BY MACHINES BEING MARKETED OR TO BE MARKETED IN THE PHILIPPINES, MUST CARRY EITHER AN EXISTING BRAND, A REGISTERED BRAND, OR A NEW BRAND, AND SHALL ONLY BE PACKED IN TWENTY STICKS OF CIGARETTES PER PACK.

THE TAX RATE SPECIFIED IN SUB-PARAGRAPHS (1), (2), (3), AND (4) OF PARAGRAPH (C) HEREOF FOR THE CALENDAR YEAR 2010 SHALL BE ADJUSTED EFFECTIVE ON JANUARY 1, 2013, BY USING FOR THAT PURPOSE THE AVERAGE OF THE INCREASES IN THE CONSUMER PRICE INDICES OF THE TWO IMMEDIATELY PRECEDING CALENDAR YEARS; AND EVERY TWO YEARS THEREAFTER, THE LAST PRECEDING ADJUSTED RATE SHALL BE ADJUSTED BY USING FOR THAT PURPOSE THE AVERAGE OF THE INCREASES IN THE CONSUMER PRICE INDICES OF THE TWO IMMEDIATELY PRECEDING CALENDAR YEARS FOLLOWING THE LAST ADJUSTMENT.

IN ALL CASES UNDER PARAGRAPHS (A), (B), AND (C) HEREOF, THE ADJUSTMENTS OF THE TAX RATES AS PROVIDED THEREIN SHALL BE DONE BY THE SECRETARY OF FINANCE, UPON THE RECOMMENDATION OF THE COMMISSIONER OF INTERNAL REVENUE AND THE HEAD OF THE NATIONAL STATISTICS OFFICE, AND EVERYTIME AN ADJUSTMENT OF ANY OF THE RATES IS MADE, THE SECRETARY OF FINANCE SHALL FORTHWITH ANNOUNCE THE NEWLY ADJUSTED TAX RATE THROUGH APPROPRIATE REVENUE REGULATIONS.

IN THE CASE OF MACHINE PACKED CIGARETTES, FROM THE APPROVAL OF THIS ACT UNTIL DECEMBER 31, 2010, NO MANUFACTURER, IMPORTER, OR WHOLESALER OF MACHINE PACKED CIGARETTES SHALL INCREASE ITS MONTHLY PRODUCTION, IMPORTATION, OR INVENTORY FROM THE FIRST OF JULY UNTIL DECEMBER THIRTY FIRST OF EVERY YEAR BY A QUANTITY THAT EXCEEDS THE AVERAGE MONTHLY GROWTH RATE OF ITS PRODUCTION, IMPORTATION, OR INVENTORY IN THE LAST TWO YEARS PRECEDING THE CURRENT YEAR.

THE SAME RULE SHALL APPLY FOR THE LAST YEAR OF THE PERIODIC TWO-YEAR INTERVAL IMMEDIATELY PRECEDING AN ADJUSTMENT OF THE TAX RATE PROVIDED FOR UNDER PARAGRAPHS (A), (B), AND (C) HEREOF.

ANY TOBACCO PRODUCTS (ESPECIALLY MACHINE PACKED CIGARETTES) PRODUCED, IMPORTED, OR HELD IN INVENTORY IN EXCESS OF THE SAID AVERAGE MONTHLY GROWTH RATE OF PRODUCTION, IMPORTATION, OR INVENTORY OF A MANUFACTURER, IMPORTER, OR WHOLESALER SHALL BE SUBJECT TO THE HIGHER TAX RATE OF THE IMMEDIATELY SUCCEEDING YEAR.

THE COMMISSIONER OF INTERNAL REVENUE SHALL TAKE, NOT LATER THAN THREE (3) DAYS IMMEDIATELY FOLLOWING THE APPROVAL OF THIS ACT, AN INVENTORY OF ALL TOBACCO PRODUCTS (ESPECIALLY MACHINE PACKED CIGARETTES) PRODUCED, IMPORTED, OR HELD BY MANUFACTURERS, IMPORTERS, OR WHOLESALERS. SUCH INVENTORY TAKING SHALL BE DONE REGULARLY EVERY MONTH THEREAFTER, USING FOR THAT PURPOSE ANY EFFECTIVE PROCESS, SUCH AS STAMPING MACHINES, TAMPER RESISTANT STAMPS ATTACHED TO EVERY PACK OF MACHINE PACKED CIGARETTES TO INDICATE PAYMENT OF TAX DUE, OR ANY SIMILAR DEVICE THAT WILL ENABLE THE COMMISSIONER OF INTERNAL REVENUE TO ACCOUNT FOR ALL TOBACCO PRODUCTS (ESPECIALLY MACHINE PACKED CIGARETTES) PRODUCED, IMPORTED, OR HELD BY MANUFACTURERS, IMPORTERS, OR WHOLESALERS DURING A GIVEN PERIOD AND TO ASSURE THE PAYMENT OF ALL EXCISE TAXES DUE THEREON.

Manufacturers, [and] importers, AND WHOLESALERS of [cigars and] cigarettes AND CIGARS, shall within thirty (30) days from the effectivity of [Republic Act No. 8240] THIS ACT and within the first five (5) days of every month thereafter submit to the Commissioner OF INTERNAL REVENUE a sworn statement of the QUANTITY OR volume of sales [for

each particular brand] of [cigars and /or] cigarettes **AND/OR CIGARS** sold at his establishment for the three-month period immediately preceding.

Any manufacturer, [or] importer, **OR WHOLESALE** who, in violation of this Section, knowingly misdeclares or misrepresents in his or its sworn statement herein required any pertinent data or information shall, upon discovery, be penalized by a summary cancellation or withdrawal of his or its permit to engage in business as manufacturer, [or] importer, **OR WHOLESALE** of [cigars or] cigarettes **OR CIGARS**.

Any **PERSON (WHETHER AN INDIVIDUAL**, corporation, association, or partnership) liable for any of the acts or omissions in violation of this Section shall be fined treble the **AGGREGATE** deficiency taxes, surcharges, and interest which may be assessed pursuant to this Section.

Any person liable for any of the acts or omissions prohibited under this Section shall be criminally liable and penalized under Section 254 of this Code. Any person who willfully aids or abets in the commission of any such act or omission shall be criminally liable in the same manner as the principal.

If the offender is not a citizen of the Philippines, he shall be deported immediately after serving the sentence without further proceedings for deportation."

SECTION 2. FIVE PERCENT (5%) OF THE INCREMENTAL REVENUE GENERATED UNDER THIS ACT OVER THE REVENUE OF THE GOVERNMENT FROM MACHINE PACKED CIGARETTES IN THE CALENDAR YEAR 2004 SHALL BE ALLOCATED EQUALLY TO THE PHILIPPINE LUNG CENTER, THE PHILIPPINE HEART CENTER, AND THE PHILIPPINE KIDNEY CENTER, FOR THEIR MODERNIZATION, AND ANOTHER FIVE PERCENT (5%) TO BE USED TO ASSIST AND MODERNIZE ALL REGIONAL HOSPITALS THROUGHOUT THE COUNTRY.

SECTION 3. All laws, acts, executive orders, rules and regulations inconsistent with the provisions of this Act are hereby repealed or modified accordingly.

SECTION 4. This Act shall take effect fifteen (15) days following its publication in at least two (2) newspapers of general circulation.

Approved,