

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

16TH CONGRESS
Second Regular Session

HOUSE BILL NO. **5496**



Introduced by **REP. EVELINA G. ESCUDERO**

EXPLANATORY NOTE

Section 17 of R.A. No. 7076 (the People's Small-scale Mining Act of 1991) provides that "all gold produced by small-scale miners in any mineral area shall be sold to the Central Bank, or its duly authorized representatives, which shall buy it at prices comparative with those prevailing in the world market regardless of volume or weight."

RA No. 7076 was enacted to help promote, develop, protect and rationalize viable small-scale mining activities in order to generate more employment opportunities and provide an equitable sharing of the nation's wealth and natural resources in the Philippines. The above-quoted provision, in particular, seeks to ensure that small-scale miners would be able to receive a fair price for their gold.

Another key benefit of R.A. No. 7076 is that it enables the Bangko Sentral ng Pilipinas (BSP) to build up the country's gross international reserves (GIR) by buying domestically produced gold from small-scale miners using pesos.

Beginning 11 July 2011, the BSP started to withhold and remit to the National Government 2% excise tax and 5% creditable withholding tax (CWT) on its purchase of gold from small-scale miners and traders. As a result, the volume of gold sold to BSP declined drastically. Compared to BSP's total gold purchases in 2010 of 918,110 troy ounces, purchases decreased by 98% to 20,354 troy ounces in 2014.¹ In terms of value, from the 2010 figure of ₱49,543 million, BSP only purchased ₱984 million worth of gold in 2014. Evidently, small-scale miners and traders had opted to sell their gold elsewhere rather than to the BSP.

The taxation of the sale of gold to BSP affects the lives of many Filipinos. Small-scale mining makes up about 75% of total gold mining production.² It is estimated that

¹Based on data provided by the Regional Monetary Affairs Sub-Sector (RMAS). Translated in terms of gold bars, from a total of 2,237.12 equivalent gold bars in 2010, only 43.89 gold bars were sold to BSP in 2014.

500,000³ small-scale gold miners in the Philippines operate in 30 out of the 80 provinces.⁴ An estimated 75% of the miners in the country are engaged in subsistence mining, 15% are small individual or family businesses and the remaining 10% are established commercial mining firms.⁵

The estimate average annual income of a small-scale miner amounts to ₱64,942 or around ₱250 per day. This amount is less than the current average minimum wage outside of National Capital Region at ₱287 per day, which is exempted from income tax. However, as a result of the taxation of gold sold to BSP, traders who still sell gold to the BSP pass on the taxes to the small-scale miners who are already engaged in subsistence mining. Moreover, selling elsewhere may not fetch the international market prices at which the BSP buys gold. Therefore, taxation of the sale of gold to BSP may further marginalize those already engaged in subsistence mining.

As for the BSP, it has, for practical purposes, lost the opportunity to build up its gold reserves using pesos. Buying gold from the domestic market results in a rise in the GIR, unlike buying using foreign currency, which simply alters the composition of the GIR. Meanwhile, purchasing gold using dollars acquired from the market affects the money supply. To keep money supply manageable and maintain growth would entail additional cost for the BSP. Moreover, the BSP buys gold as part of its international reserves as gold still represents the ultimate form of payment in the world. Central banks have long held on to gold as part of their international reserves for the following reasons: (1) Asset diversification – “Do not keep your eggs in one basket” to protect the value of total reserve portfolio; (2) Economic security – gold value is less volatile as compared to the value of currencies; and (3) Physical security – gold maintains an intrinsic value and is less susceptible to foreign exchange controls. Finally, the BSP’s gold refinery facility is currently operating at below capacity. With the contraction in the volume of gold to the BSP, it may have to raise gold refining charges, which would further discourage small-scale miners and their traders from selling to the BSP.

As regards actual NG collections, while BSP remitted the significant amount of P205 million in taxes for the period of July to December 2011, its remittances for the same period in 2013 went down by 82% to a mere P36 million, and has since plateaued at this amount.

Indubitably, the dwindling tax collections of the National Government from the sale of gold to BSP should not take precedence over the undue burden that the tax collection has caused to BSP and the small-scale miners.

²Mining Industry Statistics, Mining and Geosciences Bureau, DENR (2010).

³Largest measurable estimate based on Daniel, A. and Keevil, N.; “Big Issues in Small Mining: Mercury, Cyanide and the Technical Case for Recognition of Small Mining in the Philippines;” Liu Research Institute for Global Issues, University of British Columbia - Philippine Studies Series, 28 February 2013.

⁴Mendoza, H.D.; “Eco-Friendly Recovery of Gold and Copper for Small-Scale Mining Industry; Department of Mining, Metallurgical, and Materials Engineering, University of the Philippines; 27 June 2014

⁵A Background Study on the small-scale gold mining operations in Benguet and South Cotabato and their impact on the economy, the environment and the community by the Alternate Forum for Research in Mindanao (2012).

The proposed legislation would have the effect of assisting the BSP in the fulfillment of its mandate under its charter, returning to the formal sector the sale of gold from small-scale mining and supporting the trade of small-scale miners as originally envisioned under R.A. No. 7076.

In view of the foregoing, immediate approval of this bill into law is earnestly sought.



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Introduced by **REP. EVELINA G. ESCUDERO**

AN ACT
PROMOTING SMALL SCALE MINING BY EXEMPTING FROM THE PAYMENT
OF INCOME AND EXCISE TAXES THE SALE OF GOLD PURSUANT TO
REPUBLIC ACT NO. 7076, OTHERWISE KNOWN AS THE PEOPLE'S SMALL-
SCALE MINING ACT, AMENDING FOR THE PURPOSE SECTIONS 32 AND 151
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:

SECTION 1. *Amendment of Section 32 of the National Internal Revenue Code –*
Section 32(B)(7) of the National Internal Revenue Code of 1997, as amended, is hereby
further amended to read as follows:

SECTION 32. Gross Income. —

x xx

(B) Exclusions from Gross Income. — The following items shall not
be included in gross income and shall be exempt from taxation under this
Title:

x xx

(7) Miscellaneous Items. —

x xx

(1) *INCOME DERIVED FROM THE SALE OF GOLD PURSUANT*
TO REPUBLIC ACT (R.A.) NO. 7076 – INCOME DERIVED FROM THE
FOLLOWING TRANSACTIONS PURSUANT TO R.A. NO. 7076,
OTHERWISE KNOWN AS THE PEOPLE'S SMALL-SCALE MINING
ACT OF 1991:

1) THE SALE OF GOLD TO THE BANGKO SENTRAL NG
PILIPINAS BY REGISTERED SMALL-SCALE MINERS, AS
DEFINED UNDER R.A. 7076, AND ACCREDITED TRADERS;
AND

2) THE SALE OF GOLD BY REGISTERED SMALL-SCALE MINERS TO ACCREDITED TRADERS FOR EVENTUAL SALE TO THE BANGKO SENTRAL NG PILIPINAS.

SEC. 2. *Amendment of Section 151 of the National Internal Revenue Code* – Section 151 of the National Internal Revenue Code of 1997, as amended, is hereby further amended to read as follows:

SECTION 151. Mineral Products. —

x xx

(C) NOTWITHSTANDING THE FOREGOING, GOLD WHICH IS SOLD, OR EVENTUALLY SOLD, TO THE BANGKO SENTRAL NG PILIPINAS, IN ACCORDANCE WITH SECTION 32(B)(7)(i), SHALL BE EXEMPT FROM THE PAYMENT OF EXCISE TAX: *PROVIDED, HOWEVER*, THAT IF EXCISE TAX DUE THEREON HAD BEEN PAID PRIOR TO THE SALE OF GOLD TO THE BANGKO SENTRAL NG PILIPINAS, THE TAXPAYER MAY FILE A CLAIM FOR REFUND OR CREDIT WITH THE COMMISSIONER FOR THE EXCISE TAX PAID.”

SEC. 3. *Tax Incentives and Privileges of Small-Scale Miners.* – In addition to the foregoing, and notwithstanding the existing provisions of Republic Act (R.A.) No. 6938, as amended, and other applicable laws, the sale of gold by registered small-scale miners, as defined under R.A. No. 7076, to accredited traders for eventual sale to the *Bangko Sentral ng Pilipinas* shall enjoy the same tax treatment and privileges given to the direct sale of gold to the *Bangko Sentral ng Pilipinas* under the Tax Code.

SEC. 4. *Presumption on the Source of Gold.* – All gold sold to the *Bangko Sentral ng Pilipinas* by accredited traders shall be presumed to have been purchased by said traders from small-scale miners.

SEC. 5. *Implementing Rules and Regulations.* – Within sixty (60) days after the effectivity of this Act, the Governor of the *Bangko Sentral ng Pilipinas*, the Secretary of Environment and Natural Resources, the Secretary of Interior and Local Government and the Commissioner of Internal Revenue shall recommend to the Secretary of Finance, for promulgation, the necessary rules and regulations necessary for the effective implementation of this Act. The rules and regulations shall include provisions for the registration and accreditation requirements of small-scale miners and traders in order to avail of the tax exemptions under this Act.

SEC. 6. *Repealing Clause.* – All laws, executive/administrative orders, rules, regulations and other issuances or parts thereof, which are inconsistent with the provisions of this Act, are hereby revoked, repealed or modified accordingly.

SEC. 7. *Separability Clause.* – Should any provision herein be declared unconstitutional, the same shall not affect the validity of the other provisions of this Act.

SEC. 8. *Effectivity.* – This law shall take effect fifteen (15) days after its publication in the Official Gazette or in a newspaper of general circulation.

Approved,