

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

SEVENTEENTH CONGRESS
Third Regular Session

HOUSE BILL NO. 8321



Introduced by **HON. LUIS RAYMUND "LRAY" F. VILLAFUERTE, JR.**

EXPLANATORY NOTE

The Philippines is considered to be one of the mineral endowed countries in the world. Yet, the over-all contribution of metallic mining to our Gross Domestic Product (GDP) is as small as less than half a percent on average in the last five years. This fact alone begs for a revised mining tax structure that provides for a better revenue sharing between the mining industry and the government.

However, the revision of our existing mining taxes should consider the over-all intention of our government to reform our existing tax regimes. For example, the new mining tax structure has to necessarily address the doubling of the Excise Tax from 2% to 4% of gross revenue as a result of the TRAIN law, which has in fact already adversely affected mining operations.

Moreover, this proposal does away with small-scale mining operations as it would be too complex to cover. It also does not include non-metallic producers to be consistent as well with the government's Build Build Build program. For example, quarry operators for limestone and aggregates are necessary for cement production. To include these would simply result in further inflationary pressures on the economy.

Based on the foregoing, and over and above the doubling of Excise Tax Rate to 4%, this measure proposes the following:

A margin based Royalty applied to net income from mining operators at a rate of 1% to 5%, and applicable to all metallic operations outside of mineral reservations.

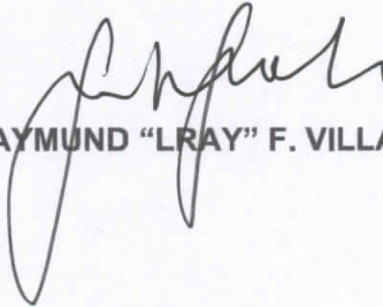
As previously mentioned, this proposal already considers other impositions. The application of 5% Royalty across the board, on top of other impositions, would bring the total to above 10%.

In addition, a margin-based Royalty applied to income is the same structure that is used by large mining countries such as Chile, Peru, South Africa and Canada. In fact, the proposed rate still results in a higher Average Effective Tax Rate (AETR) of 78.1% compared to the aforementioned major mining countries.

This proposal likewise anticipates the impending passage of TRABAHO Bill, in which there will be no incentives at all for the mining industry should it not be included in the Strategic Investments Priority Plan.

This representation believes that this measure is a step towards furthering quality investments in the mineral sector and preventing closure of big operations by providing a tax scheme that is internationally competitive.

The approval of this bill is earnestly sought.

A handwritten signature in black ink, appearing to read 'Lray', with a large, stylized loop at the end.

LUIS RAYMUND "LRAY" F. VILLAFUERTE, JR.

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

SEVENTEENTH CONGRESS
Second Regular Session

HOUSE BILL NO. 8321

Introduced by **HON. LUIS RAYMUND "LRAY" F. VILLAFUERTE, JR.**

AN ACT
ESTABLISHING A UNIFORM TAXATION OF METALLIC MINING OPERATIONS,
AND FOR OTHER PURPOSES

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

SECTION 1. The chapter title of Chapter VII Title VI of the National Internal Revenue Code of 1997 (NIRC), as amended, is hereby changed to TAXATION OF MINERAL PRODUCTS.

SECTION 2. A new section designated as Section 151-A under Chapter VII Title VI of the NIRC, as amended, is hereby inserted and shall read as follows:

"SEC. 151-A. ROYALTY. -

A. FOR ALL METALLIC MINING OPERATIONS OUTSIDE OF MINERAL RESERVATIONS. - MINING CONTRACTORS OF 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 MINING OPERATIONS WITHIN MINERAL RESERVATIONS. - MINING CONTRACTORS WITHIN MINERAL RESERVATIONS SHALL PAY TO THE GOVERNMENT A ROYALTY EQUIVALENT TO FIVE PERCENT (5%) OF THE GROSS OUTPUT OF THE MINERALS OR MINERAL PRODUCTS EXTRACTED OR PRODUCED BY THE MINING OPERATIONS, EXCLUSIVE OF ALL OTHER TAXES;

C. FOR PURPOSES OF THIS AND SUBSEQUENT SECTIONS IN THIS CHAPTER –

- (1) **"MARGIN"** SHALL MEAN THE RATIO OF INCOME FROM MINING OPERATIONS BEFORE CORPORATE INCOME TAX TO GROSS OUTPUT.
- (2) **"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 ARE SOLD OR CONSIGNED ABROAD BY THE MINING CONTRACTOR UNDER C.I.F. 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) **"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 FTAA 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 FTAA AND IN THE APPLICABLE IMPLEMENTING RULES AND REGULATIONS;
- (e) ROYALTY PAYMENTS TO CLAIMOWNERS OR 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 FTAA, 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.

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

(4) **'MINING CONTRACTOR'** SHALL MEAN A QUALIFIED PERSON ACTING ALONE OR IN CONSORTIUM WHO IS A PARTY TO A MINERAL AGREEMENT OR FINANCIAL OR TECHNICAL ASSISTANCE AGREEMENT (FTAA).

EACH MINING OPERATIONS, WHICH ARE SUBJECT TO A MINERAL AGREEMENT OR FTAA, 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 FTAA IT HOLDS OR IS A PARTY TO.

IF A MINERAL AGREEMENT OR FTAA IS RENEWED, THE RENEWAL SHALL BE TREATED AS PART OF THE ORIGINAL AGREEMENT."

SECTION 3. A new section designated as Section 151-B under Chapter VII Title VI of the NIRC, 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 31, CHAPTER V, TITLE II OF THIS CODE:

MARGIN	RATE
more than 35% up to 40%	1%
more than 40% to 45%	2%
more than 45% to 50%	3%
more than 50% to 55%	4%
more than 55% to 60%	5%
more than 60% to 65%	6%
more than 65% to 70%	7%
more than 70% to 75%	8%
more than 75% to 80%	9%
more than 80%	10%

SECTION 4. The NIRC, as amended, is hereby further amended by introducing a new Paragraph (4) under Section 34 (B), Chapter VII, Title II, which shall read as follows:

(4) LIMITATION OF INTEREST EXPENSE DEDUCTIONS FOR MINING CONTRACTORS

- (i) 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.
- (ii) IF THE DEBT-TO-EQUITY RATIO OF A MINING CONTRACTOR EXCEEDS 3 TO 1 FOR AN INCOME YEAR, SUBSECTION (1) 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.
- (iii) IN THIS SECTION-

"ARM'S LENGTH DEBT AMOUNT", IN RELATION TO A MINING CONTRACTOR, MEANS 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;

'ASSOCIATE', IN RELATION TO A PERSON, MEANS ANY OTHER PERSON WHO ACTS OR MAY ACT IN ACCORDANCE WITH THE DIRECTIONS, REQUESTS, SUGGESTIONS, OR WISHES OF THE FIRST-MENTIONED PERSON, AND THE FIRST-MENTIONED PERSON IS AN ASSOCIATE OF THE SECOND MENTIONED PERSON;

'DEBT', IN RELATION TO A MINING CONTRACTOR, MEANS 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;

'DEBT OBLIGATION' MEANS 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;

'EQUITY', IN RELATION TO A MINING CONTRACTOR, MEANS THE GREATEST AMOUNT, AT ANY TIME DURING AN INCOME YEAR, OF THE EQUITY 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.

SECTION 5. Section 287 (A) of the NIRC, as amended, is hereby amended and shall read as follows:

"(A) AMOUNT OF SHARE OF LOCAL GOVERNMENT UNITS. - LOCAL GOVERNMENT UNITS SHALL, IN ADDITION TO THE INTERNAL REVENUE

ALLOTMENT, HAVE A SHARE OF FIFTY PERCENT (50%) OF THE GROSS COLLECTION DERIVED BY THE NATIONAL GOVERNMENT FROM THE PRECEDING FISCAL YEAR FROM EXCISE TAXES ON MINERAL PRODUCTS, ROYALTIES, AND SUCH OTHER TAXES, FEES OR CHARGES, INCLUDING RELATED SURCHARGES, INTERESTS OR FINES, AND FROM ITS SHARE IN ANY CO-PRODUCTION, JOINT VENTURE OR PRODUCTION SHARING AGREEMENT IN THE UTILIZATION AND DEVELOPMENT OF THE NATIONAL WEALTH WITHIN THEIR TERRITORIAL JURISDICTION."

SECTION 6. *Pollution control devices.* - Pollution control devices acquired, constructed or installed by mining contractors shall not be considered as improvements on the land or building where they are placed, and shall not be subject to real property and other taxes or assessments: Provided, however, that payment of mine wastes and tailings fees is not exempted.

SECTION 7. *Depreciation of Properties Used in Mining Operations.* - An allowance for depreciation in respect of all properties used in mining operations, shall be computed as follows:

- (a) At the normal rate of depreciation if the expected life is ten (10) years or less;
or
- (b) Depreciated over any number of years between five (5) years and the expected life if the latter is more than ten (10) years, and the depreciation thereon allowed as deduction from taxable income: Provided, That the contractor notifies the Commissioner at the beginning of the depreciation period which depreciation rate allowed by this Section will be used.

SECTION 8. The fiscal regime and revenue sharing arrangement provided herein and the applicable terms and conditions provided under existing laws shall be embodied in the mineral agreements and FTAA's entered into by the government.

SECTION 9. Valid mineral agreements and FTAA's existing prior to the effectivity of this Act shall continue to be governed by their respective terms and conditions,

including their recovery period in fiscal regimes, unless such mineral agreements and FTAAAs expressly 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 mineral agreement and FTAAAs, Provided, further, that the application of the provisions of this Act to existing mineral agreements and FTAAAs shall not have the effect of impairing or reducing vested rights.

SECTION 10. *Implementing Rules and Regulations.* - The Department of Finance, in 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.

SECTION 11. *Separability Clause.* – Should any provision herein be declared unconstitutional, the same shall not affect the validity of the other provisions of this Act.

SECTION 12. *Repealing Clause.* – All laws, decrees, orders, rules, and regulations or other issuances or parts inconsistent with the provisions of this Act are hereby repealed, amended, or modified accordingly.

SECTION 13. *Effectivity Clause.* – This Act shall take effect in fifteen (15) days after publication in the Official Gazette or in one (1) newspaper of general circulation in the Philippines.

Approved,