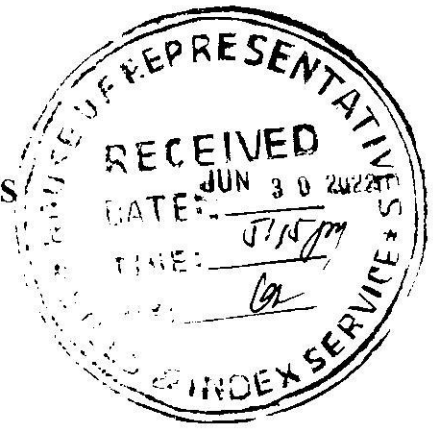


Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

Nineteenth Congress
First Regular Session

HOUSE BILL NO. 373



Introduced by **Representative JOEY SARTE SALCEDA**

AN ACT
ESTABLISHING THE FISCAL REGIME FOR THE MINING INDUSTRY

EXPLANATORY NOTE

The Philippines is one of the world's most mineral-rich countries, with nine million hectares of its 30 million hectares total land area having high mineral potential.¹ With so much room for growth, the mining industry has great potential to generate more revenues for the government through taxes, provide employment opportunities, and build up the country's gross international reserves through the industry's mandated sale of gold to the *Bangko Sentral ng Pilipinas* under Republic Act No. 7076, or the People's Small-Scale Mining Act of 1991.

Optimum utilization of our minerals cannot be made possible due to gaps in our current laws and regulations. The adverse effects of environmental degradation and climate change must also be addressed to promote sustainable economic development and social equity. Despite lifting the moratorium on the grant of mineral agreements imposed by Executive Order No. 79, s. 2012 through President Rodrigo Roa Duterte's Executive Order No. 130 last April 2021, legislation on the mining fiscal regime remains imperative for a more equitable revenue-sharing between the industry and the government.

Thorough discussions and consultations with all stakeholders during the 17th Congress yielded House Bill No. 8400, which was passed on Third Reading. This proposed measure is the result of further refinements and improvements introduced to said bill in the 18th Congress by the House Committee on Ways and Means, under the leadership of this Representation, as House Bill No. 6135.

This measure proposes the imposition of royalty payments of (1) three percent (3%) on gross output of large-scale metallic mining operations within mineral reservations, (2) graduated rates on the profit margin of large-scale metallic mining operations outside mineral reservations, and (3) 1/10 of one percent (1%) of gross output of small-scale metallic mining operations. A margin-based windfall profits tax gained on all mining operations shall also be imposed. For tax purposes, small-scale miners must register with the Mining Board of the concerned local government unit and the Mines and Geosciences Bureau.

¹ Mines and Geosciences Bureau (March 2022)

Additionally, ring-fencing is proposed to prevent the consolidation of income and expenses of all mining projects by the same taxpayer, thereby ensuring that losses from other mining projects could not be deducted from the more profitable ones. Thin capitalization shall also be introduced so businesses will not depend on excessive debt funding, which may lead to high interest expense deductions and the resultant reduction of corporate tax liability.

The bill also exempts mining contractors from the confidentiality clauses of the National Internal Revenue Code of 1997, as amended, and institutionalizes the Philippine Extractive Industry Transparency Initiative (PH-EITI). With the expected increase in mining activities due to the lifting of the nine-year moratorium on the grant of new mineral agreements, an institutionalized EITI shall provide a framework for the good governance of our mineral resources and ensure transparency and accountability from the government and the extractive industry. Better resource governance equates to higher revenue generation from the sector.

Lastly, the measure proposes to create a Natural Resource Trust Fund from the revenues collected from the margin-based royalty to fund projects that will redound to the benefit of local governments directly affected by mining activities. The trust fund shall serve as inter-generation savings to protect the environment and provide the needs of host local government units, given the non-renewable nature of mineral resources.

In view of the necessity to promote economic recovery amidst continuing threats to growth, such as the COVID-19 pandemic, and to boost the mining industry's potential contribution to the country's gross domestic product while safeguarding our mineral resources and the rights of host communities, the passage of this bill is earnestly sought.



JOEY SARTE SALCEDA

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

SECTION 1. Section 34(B) of the National Internal Revenue Code of 1997, as amended, is hereby 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) FOR PURPOSES OF THIS SECTION, THE TERM –

- (1) *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**
- (2) *ASSOCIATE* SHALL MEAN 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**
- (3) *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**
- (4) *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**
- (5) *EQUITY* SHALL MEAN 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**

“(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

SEC. 2. The chapter title of Chapter VII, Title VI of the National Internal Revenue Code of 1997 (NIRC), as amended, is hereby amended to read as follows:

“CHAPTER VII – [EXCISE TAX ON MINERAL PRODUCTS] TAXATION OF MINERAL PRODUCTS”.

SEC. 3. The section title of Section 151, 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. 4. A new section shall be inserted as Section 151-A of the National Internal Revenue Code of 1997, as amended, to read as follows:

“SEC. 151-A. *ROYALTY.* – 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 TO 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;

(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 SMALL-SCALE METALLIC MINING OPERATIONS. –
MINING CONTRACTORS OF SMALL-SCALE METALLIC
MINING OPERATIONS SHALL PAY TO THE GOVERNMENT A
ROYALTY EQUIVALENT TO ONE-TENTH (1/10) OF ONE
PERCENT (1%) OF GROSS OUTPUT;**

(C) FOR THE PURPOSES OF THIS SECTION, THE TERM –

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

**(2) *INCOME FROM MINING OPERATIONS* SHALL MEAN THE
GROSS OUTPUT LESS DEDUCTIBLE EXPENSES WHICH
INCLUDES:**

**(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 OR
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 OR TECHNICAL ASSISTANCE AGREEMENT AND IN THE APPLICABLE IMPLEMENTING RULES AND REGULATIONS;
 - (e) ROYALTY PAYMENTS TO CLAIM OWNERS 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 FINANCIAL OR 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.
- (3) *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. 5. A new section shall be inserted as Section 151-B of the National Internal Revenue Code of 1997, as amended, to read as follows:

"SEC. 151-B. *WINDFALL PROFITS TAX* –

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%

SEC. 6. *Each Mining Operation Treated as a Separate Taxable Entity.* – Each mining operation, which is subject to a Mineral Agreement or Financial or Technical Assistance Agreement, shall be treated as a separate taxable entity. A mining contractor shall be treated as a separate taxpayer with respect to each and every Mineral Agreement or Financial or Technical Assistance Agreement it holds or is a party to. If a Mineral Agreement or Financial or 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 or 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 or 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 these provide that terms and conditions resulting from repeal or amendment of 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 for Taxation Purposes.* – All persons engaged in small-scale mining activities shall register with the Mines and Geosciences Bureau (MGB) and with the Mining Board of the concerned local government unit in accordance with Republic

Act No. 7076 or the “People’s Small-Scale Mining Act of 1991,” 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. *Disposition of Royalties for the Natural Resource Trust Fund.* – The provisions of existing laws to the contrary notwithstanding, the revenues collected from the margin-based royalty paid by the large-scale metallic mining operations outside of mineral reservations shall accrue to the Natural Resource Trust Fund under this Act. The Bureau of Treasury shall create a Special Account on said revenues and shall serve as its fund manager.

The Natural Resource Trust Fund shall be remitted to the Bureau of Treasury within the first quarter of the succeeding income year. The fund shall redound to the benefit of provinces, cities, municipalities, and barangays directly affected by mining operations which shall commence three (3) years after the effectivity of this Act, and every six (6) years thereafter.

The Natural Resource Trust Fund shall be used by the local government unit concerned to support educational programs, technological research programs of local relevance, disaster risk management, rehabilitation of abandoned mines before the enactment of Republic Act No. 7942 or the “Philippine Mining Act of 1995,” and health services programs of the communities directly affected by mining activities: *Provided*, That the Department of Budget and Management, in consultation with the Department of Environment and Natural Resources and the Department of Finance, shall issue rules and regulations governing the allocation and disbursement of the fund allocated to provinces, cities, municipalities, and barangays not later than one hundred and eighty (180) days from the effectivity of this Act.

SEC. 12. *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. 13. *Repealing Clause.* –

(A) The second paragraph of Section 5 of Republic Act No. 7942, otherwise known as the Philippine Mining Act of 1995 is hereby amended to assign the Bureau of Internal Revenue as the collecting agent of the payment of royalty.

(B) Section 13 of Department of Environment and Natural Resources Administrative Order No. 2010-21 is hereby amended insofar as it governs the payment of 5% royalty by contractors/permit holders/lessees within mineral reservations.

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

Approved,