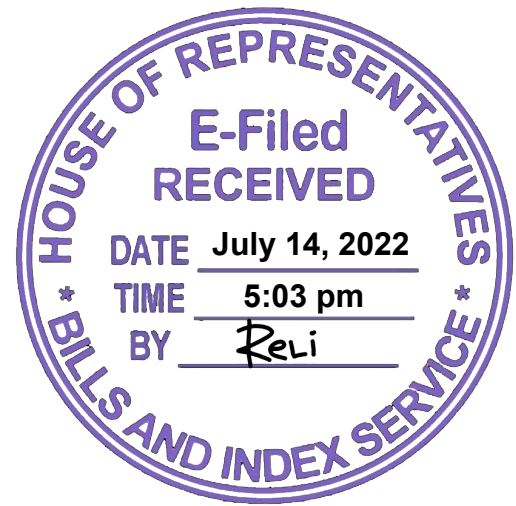


Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

NINETEENTH CONGRESS
First Regular Session

HOUSE BILL NO. 2014



Introduced by **HON. LUIS RAYMUND “LRAY” F. VILLAFUERTE, JR.,**
HON. MIGUEL LUIS R. VILLAFUERTE, HON. TSUYOSHI ANTHONY G.
HORIBATA AND HON. NICOLAS ENCISO VIII

EXPLANATORY NOTE

The Philippines is considered to be one of the mineral endowed countries in the world. Yet, the overall 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 overall 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 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 is applied to net income from mining operators at a rate of 1% to 5%, and is 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%.

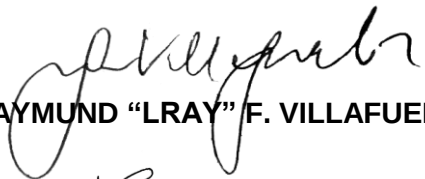
In addition, a margin-based Royalty applied to income is the same structure that is used by large mining countries such as Chile, Peru, South Africa, and Canada. In fact,

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 toward furthering quality investments in the mineral sector and preventing the closure of big operations by providing an internationally competitive tax scheme.

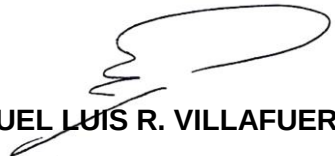
The approval of this bill is earnestly sought.



LUIS RAYMUND "LRAY" F. VILLAFUERTE, JR.



TSUYOSHI ANTHONY G. HORIBATA



MIGUEL LUIS R. VILLAFUERTE



NICOLAS ENCISO VIII

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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. 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. –**

(A) 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;

(B) 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%

(C) 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;

(D) 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 NEC ESSARY 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 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. 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 taxpayer with respect to each other 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 therein, 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.* – A valid mineral agreement and technical assistance agreement existing prior to the effectivity of this Act shall continue to be governed by its 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 agreement and mineral agreement.

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 required for registration and secured from the Bureau of Internal Revenue.

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 of the “Philippine Mining Act of 1995,” and health service 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 to the Mines and Geosciences Bureau by a contractor/permit holder/lessee operating within a mineral reservation.

(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,