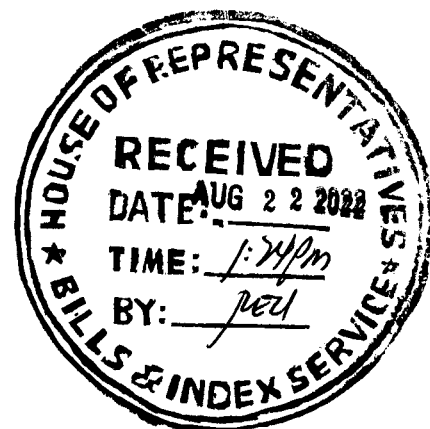




Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

NINETEENTH CONGRESS
First Regular Session

House Bill No. **3888**



Introduced by REP. LEX ANTHONY CRIS A. COLADA

EXPLANATORY NOTE

Section 1 Article XII of the 1987 Philippine Constitution states that the goals of the national economy are a more equitable distribution of opportunities, income, and wealth; a sustained increase in the amount of goods and services produced by the nation for the benefit of the people; and an expanding productivity as the key to raising the quality of life for all, particularly the underprivileged.

It was only last April 2021 when the moratorium on the issuance of new mining permits was lifted by virtue of Executive Order No. 130. Undoubtedly, the moratorium have caused hindrance to the nation in attracting quality direct investments in the mining industry. The very reason why mining industries merely contributes 1% of the national economy.

Currently, the mining industry is one of the heavily taxed industry for both national and local government. National government imposes corporate income tax, value-added tax, excise tax, royalty tax under Republic Act No. 7942, otherwise known as the Philippine Mining Act, other fees and charges in relation to mining operations. On the other hand, local governments imposes occupation fee, business tax, real property tax, community tax, registration fee, wharfage fee, permit fee, extraction fee, sand and gravel tax and other local taxes.

This measure seeks to rationalize and institute a single fiscal regime applicable to all metallic mining operations whether operating inside or outside mineral reservation. It is the version where both the government can collect more revenues while the mining sector will grow and will be developed.

Hence, this bill imposes a 10% royalty tax for large scale metallic mining operations operating inside and outside the mineral reservation in lieu of value added tax, excise and royalty tax imposed under R.A. No. 7942. On the other hand, small scale mining operations will now be governed under this bill.

In view of the foregoing, the passage of this bill is earnestly urged.



LEX ANTHONY CRIS A. COLADA
Party-list, AAMBIS-OWA



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House Bill No. 3888

INTRODUCED BY REP. LEX ANTHONY CRIS A. COLADA

AN ACT
ESTABLISHING THE FISCAL REGIME FOR THE MINING INDUSTRY

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. Section 151 (A), Chapter VII, Title VI of the National Internal Revenue Code of 1997, as amended, is hereby amended to read as follows:

“SEC. 151. Mineral Products. – (A) Rates of Tax. - There shall be levied, assessed and collected on minerals, mineral products and quarry resources, excise tax as follows:

(1) x x x

(2) x x x

(3) On [all] **THE IMPORTATION OF** metallic minerals, a tax based on the ~~[actual market value of the gross output thereof at the time of removal, in the case of those locally extracted or produced; or the]~~ value used by the Bureau of Customs in determining tariff and customs duties, net of excise tax and value-added tax, ~~[in the case of importation,]~~ in accordance with the following schedule;

(a) Copper and other metallic minerals, ~~[four percent (4%)]~~ **SEVEN PERCENT (7%)**;

(b) Gold and chromite, ~~[four percent (4%)]~~ **SEVEN PERCENT (7%)**.

(4) x x x."

SEC. 3. Royalty Tax on Mineral Products. – (A) For large scale metallic mining operations operating inside and outside mineral reservations. – Mining contractors of large-scale metallic mining operations operating inside and outside mineral reservations shall pay to the government a royalty equivalent to ten percent (10%) of the gross output of the minerals or mineral products extracted or produced by the mining operations. Said tax shall be in lieu of all taxes, fees and charges of any kind, nature or description levied, established or collected by the national government including the imposition of the value-added tax, excise tax and royalty tax under Republic Act No. 7942, otherwise known as the Philippine Mining Act of 1995 in relation to its mining operations.

(B) For small-scale metallic and non-metallic mining operations. – Mining contractors of small-scale 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. 4. *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 (FTAA) 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. 5. *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. 6. *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. 7. *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. 8. *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. 9. *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. 10. *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. 11. *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. 12. *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. 13. *Effectivity.* – This Act shall take effect fifteen (15) days after its publication in the *Official Gazette* or in a newspaper of general circulation.

Approved,