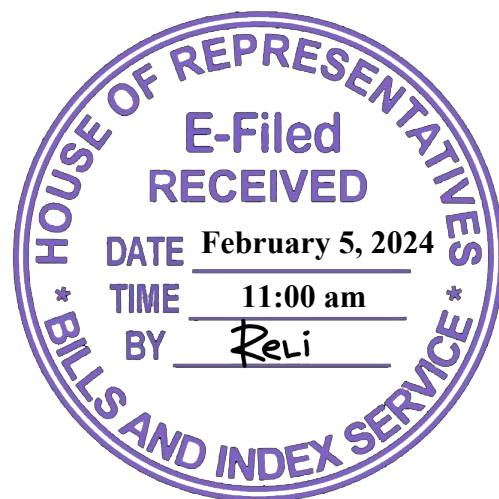


Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

Nineteenth Congress
Second Regular Session

House Bill No. **9866**



Introduced by **Representative JOEY SARTE SALCEDA**

**AN ACT
ESTABLISHING A REGULATORY REGIME FOR ELECTRONIC CIGARETTE
MANUFACTURING, AND FOR OTHER PURPOSES**

EXPLANATORY NOTE

The e-cigarette industry's global market size was USD 17.9 billion in 2022, and is expected to reach USD 38.6 billion in 2030, with a growth rate of 10.1% during 2022–2030. Meanwhile, by 2025, the conventional tobacco sector is expected to decline by 0.6 percent in total sales volumes.

Clearly, substitution effects are already setting in, alongside the proliferation of cheap disposable electronic cigarettes. In fact, a US-HHS study in 2019 shows that when the price of cigarette pack of 10 hits USD 1.00, people start preferring e-cigarettes more.

These substitutions effects are having real implications on the collection of tobacco excise taxes.

In fact, tobacco excise tax collections declined from P176 billion in 2021, to P160 billion in 2022, to potentially just P142 billion in 2023. Further declines are expected if the substitution to cheaper electronic cigarettes persists.

Part of the substitution is due to the tax burden of convention tobacco. Around 72% of the total price of a cigarette stick is attributable to tax, while the tax burden on imported 'freebase' electronic cigarettes is just around 23% -- assuming taxes are paid.

The problem with imported electronic cigarettes, however, is that the enforcement of the excise taxes imposed under the National Internal Revenue Code is difficult. First, e-commerce sales of individual devices from abroad are subject to the de minimis exemptions under the Customs Modernization and Tariff Act. E-commerce sites also continue to misclassify electronic cigarettes as "electronics" or "toys" in their sites.

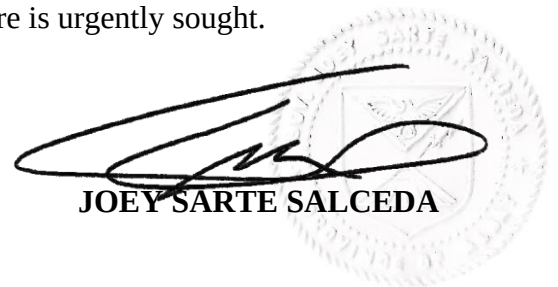
Second, electronic cigarettes have been subject to widespread smuggling. Around 1.4 million pieces of 10 milliliter (ml) disposable vape pods were seized from an October 27 raid

in a warehouse storing devices marked “Flava.” Tax authorities have been able to enforce tax laws on conventional tobacco better due to the presence of domestic manufacturing companies that can be held to account under Philippine laws, and whose premises can be better monitored.

Finally, because these imported devices are not made in the Philippines, authorities are unsure about product safety and quality. Philippine product standards are difficult to enforce on these devices.

Because the proverbial toothpaste is out of the tube, and the shift from conventional tobacco to electronic cigarettes has become an inevitability, the government must consider alternative policies that will enable it to enforce laws on electronic cigarettes more effectively. The presence of an electronic cigarette manufacturer primarily intending to export will help address the issue of widespread smuggling of electronic cigarettes while also earning foreign currency for the country.

In view of the foregoing, the approval of this measure is urgently sought.



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

SECTION 1. *Short Title.* – This Act shall be known as the “Electronic Cigarette Manufacturing Act.”

SEC. 2. *Declaration of Policy.* – The State recognizes the need for a well-regulated electronic cigarette industry that meets national and international standards for product quality and safety, is able to compete for market share in the global electronic cigarette industry, and fulfills its tax and regulatory obligations with Philippine authorities.

SEC. 3. *Definitions.* – As used in this Act:

(a) “*Electronic cigarette*” refers to any electronic device that simulates the act of tobacco smoking, and which may or may not contain nicotine: *Provided*, that the Bureau of Product Standards of the Department of Trade and Industry may further define the term or create categories under it;

(b) “*Electronic cigarette manufacturer*” refers to an entity engaged in the production or assembly of electronic cigarettes from raw materials or purchased parts and subassemblies;

SEC. 4. *Regulation.* – In addition to this Act, the manufacture of electronic cigarettes, whether for export markets or for domestic consumption, shall be subject to Republic Act No. 11900 or the “Vaporized Nicotine and Non-Nicotine Products Regulation Act,” and other relevant laws, rules, and regulations.

SEC. 5. *Product Standards.* – The Bureau of Product Standards of the Department of Trade and Industry shall develop a Philippine National Standard for electronic cigarettes that is consistent with international trade standards. The standard shall be periodically updated to

reflect advancements in the global and local electronic cigarette industry, as well as the requirements of trading partners.

SEC. 6. *Electronic cigarette manufacturing for export.* – The manufacturing site or premises of electronic cigarette manufacturers that produce electronic cigarettes intended for export shall be treated as a separate customs territory governed under the Philippine Economic Zone Authority:

Provided, that the electronic cigarette manufacturer's export and domestic sales shall be conducted through separate corporations: *Provided further*, that domestic sales shall be subject to all applicable taxes under the National Internal Revenue Code, as amended.

SEC. 7. *Fiscal incentives for e-cigarette export.* – For the free flow of goods into these premises, the importation of capital equipment, raw materials, accessories, and spare parts required for the manufacture and subsequent export of electronic cigarettes by electronic cigarette manufacturers shall be exempt from duties, and its local purchases shall be value-added tax (VAT) zero-rated.

The export sales corporation of the electronic cigarette manufacturer shall be entitled to an Income Tax Holiday of seven (7) years, and may elect to be under the Enhanced Deductions or Special Corporate Income Tax (SCIT) regime for a period of ten (10) years under Title XIII of the National Internal Revenue Code, as amended.

During the period of availment of the income tax holiday and SCIT or enhanced deductions, the electronic cigarette manufacturer shall be exempt from all local taxes, fees, and charges: *Provided*, that during the income tax holiday or enhanced deductions period, the electronic cigarette manufacturer shall pay a tax of two percent (2%) of total sales, which shall be collected by the Philippine Economic Zone Authority and remitted to the Local Government Unit where the electronic cigarette manufacturer is located.

The fiscal incentives of the export sales corporation of the electronic cigarette manufacturer may be extended by the President for a period of up to forty (40) years consistent with Section 301 of the National Internal Revenue Code when the following conditions are satisfied:

- (1) The project has a comprehensive sustainable development plan with clear inclusive business approaches, and high level of sophistication and innovation; and
- (2) Minimum investment capital of Fifty billion pesos (P50,000,000,000.00) or its equivalent in US dollars, or a minimum direct local employment generation of at least ten thousand (10,000) within three (3) years from the issuance of the certificate of entitlement: *Provided*, that the exercise of the President's power to extend the fiscal incentives of electronic cigarette manufacturers shall not require prior recommendation from the Fiscal Incentives Review Board.

The domestic sales corporation of the electronic cigarette manufacturer shall not be precluded from applying for fiscal incentives it may be eligible for.

The Department of Trade and Industry and other relevant investment promotion agencies shall extend export marketing and promotion support to export sales corporations of electronic cigarette manufacturers.

SEC. 8. *Customs and tax enforcement.* – To ensure customs protection and enforcement, there shall be a permanent customs control or customs office at the perimeter of the electronic cigarette manufacturer’s premises. Points of exit from the manufacturing premises and towards the Philippine customs territory shall be subject to monitoring and inspection by the Bureau of Customs and other law enforcement agencies.

There shall also be a revenue officer on premise from the Bureau of Internal Revenue, positioned at points of exit and at offices and warehouses for domestic sales, to monitor and enforce tax laws on domestic sales of electronic cigarettes.

SEC. 9. *Special visas.* – The Philippine Economic Zone Authority shall issue the following visas:

“(1) Special skills visa for foreign nationals who possess highly specialized skills as determined to be necessary or strategic by the Authority in the operation of electronic cigarette manufacturer;

“(2) Executive working visa for foreign nationals holding executive positions, including presidents, vice-presidents, treasurers, managers, or their equivalents, and to non-resident aliens employed in supervisory, technical, and advisory positions in the electronic cigarette manufacturer.

The Authority and the Bureau of Immigration shall formulate the necessary guidelines for the submission and approval of applications, the extent of allowed activities under the visa, and the rules for monitoring of visa grantees under this Section: *Provided*, that the visa application shall be sponsored by the electronic cigarette manufacturer. “

SEC. 10. *Implementing Rules and Regulations (IRR).* – Within ninety (90) days from the effectivity of this Act, the Department of Trade and Industry, the Department of Finance, and the Philippine Economic Zone Authority shall promulgate the rules and regulations to effectively implement the provisions of this Act.

SEC. 11. *Separability Clause.* – If any provision or part hereof is held invalid or unconstitutional, the remainder of the law or the provision not otherwise affected shall remain valid and subsisting.

SEC. 12. *Repealing Clause.* – Except as otherwise expressly provided in this Act, all other laws, decrees, executive orders, proclamations and administrative regulations or parts thereof inconsistent herewith are hereby repealed or modified accordingly.

SEC. 13. *Effectivity Clause.* – This Act shall take effect fifteen (15) days after its publication in at least two (2) national newspapers of general circulation.

Approved,