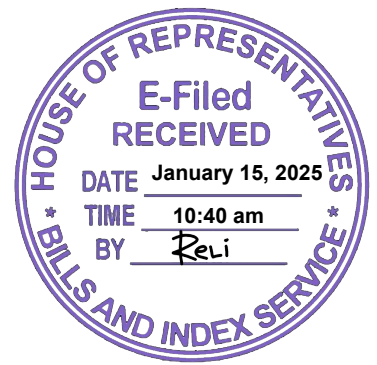


NINETEENTH CONGRESS)
REPUBLIC OF THE PHILIPPINES)
Third Regular Session)



HOUSE OF REPRESENTATIVES

Introduced by Representative Rufus B. Rodriguez

House Bill No. **11288**

EXPLANATORY NOTE

The power of taxation is often referred to as the power to destroy, and therefore it must be exercised with caution to avoid unintended and unnecessary harm to a taxpayer's interests. Destroying legitimate businesses through excessive taxation, while illicit traders continue to dominate the market, is unacceptable. Such actions are counterproductive and undermine the nation's goal of fostering a stronger economy, which ultimately benefits the greater public.

With the end view of reducing tobacco consumption and increasing government revenue to finance the country's universal health care program, the Philippine tobacco industry has been continuously subjected to a series of legislative reforms which increase excise tax impositions. From 2017 to 2023, the aggregate tax rate imposed per tobacco product increased by 100%. This resulted in most of the popular cigarette packs in the Philippines ranking as the most expensive cigarette packs among the member-countries of the Association of Southeast Asian Nation in terms of price in relation to income of individuals, at 6.8%.

While it is in the country's legitimate interest to impose higher taxes to sin products, the increase in the amount of excise taxes imposed on registered cigarette products unintendedly resulted in the proliferation of illicit and counterfeit products due to their low-entry point and affordability. A study of the historical incidence of illicit cigarettes traded in the Philippines showed that the total industry volume of illicit trade in the country more than doubled from 5.3% in 2020 to 13.2% in 2023. The number of smokers of illicit cigarettes likewise increased to an average of 13.9% in the same year.

The twin objectives of the Sin Tax Law, which are to raise government revenues and protect public health, have come under immense strain from illicit trade. Due to the prevalence of illicit tobacco products, the government's excise tax collection has been declining since 2022. From a peak collection of Php176 billion in 2021, tobacco excise revenues declined to Php160 billion in 2022. In 2023, the Bureau of Internal Revenue ("BIR") reported that the government has lost around 15.9% or Php25.5 billion in revenue due to illicit trade in cigarettes, ending collections in 2023 with Php135 billion. This lost revenue amounting to billions of pesos adversely affected the government's funding for health programs.

Public health initial gains were reflected in the World Health Organization ("WHO") Global Adult Tobacco Survey ("GATS") for the Philippines with smoking prevalence declining in the studies made in 2009, 2015 and 2021 from 29.70%, 23.8%, and finally down to 19.5% in 2021, respectively. This decline is validated by a similar trend in the Department of Science and Technology-Food and Nutrition Research Institute ("DOST-FNRI") National Nutrition Survey, which showed a downward trend in adult smoking prevalence from 31% in 2008, to 25.4% in 2013 (a year after the passage of the Sin Tax Law), and further down to 18.5% in 2021. However, the DOST-FNRI 2023 National Nutrition Survey showed a huge leap in smoking prevalence from 19.0% in 2021 to 24.4% in 2023. This shows that the Philippines is almost back to 2013 levels of smoking prevalence.

Further, despite the legitimate objective behind the annual excise tax increase of discouraging nicotine consumption, a remarkable shift to e-cigarettes has been noted among legal age smokers. According to the GATS, e-cigarette usage in the Philippines has doubled from 2015 to 2021 with 2.1% or 1.6 million Filipinos using e-cigarette products. More recent data from the 2023 Survey of the DOST-FNRI shows that 8.9% of legal age smokers use e-

cigarettes, which translates to a sevenfold increase from the 2021 data of 1.2%. This likewise led to the proliferation of unregistered vapor products in the market which entice the public, especially the minors, due to their affordability, high volume capacity, high puff count, fruity flavors, and accessibility. The same DOST-FNRI 2023 National Nutrition Survey shows that 4.8% of adolescents aged 10-19 years old are current smokers, with 39.9% of adolescents using e-cigarettes. This is a huge jump from 2021 which found that 2.3% of adolescents were current smokers with only 7.5% preferring e-cigarettes, which translates to more than fivefold increase in just two years. Even with the advent of Revenue Memorandum Circular No. 59-2024 requiring all vapor products sold in the market to bear internal revenue stamps, several non-compliant products which are presumed to be without the requisite excise tax payments, remain available in the market.

To address the foregoing issues, it is imperative for the government to recalibrate its existing revenue measures and ensure that our tax laws do not unduly incentivize nor give premium to the illicit traders at the expense of legitimate businesses. Accordingly, this Bill allows legitimate businesses to recapture their market share by granting a suspension of one year to the automatic annual increase of five percent (5%) tax imposed among tobacco products, heated tobacco products, vapor products, cigars, and cigarettes.

Through the proposed temporary suspension, the price gap of a legitimate cigarette product compared to illicit cigarettes is expected to be smaller which will benefit majority of Filipino smokers who come from lower-socioeconomic brackets with little disposable income for discretionary purchases, such as cigarettes. This is expected to encourage the consumers of illicit cigarettes to shift into purchasing legitimate products.

Furthermore, there has been a proliferation of mislabeled vapor products, where some items are mislabeled as containing only freebase or conventional nicotine but actually contain salt nicotine, to evade the imposition of higher taxes. This, thus, resulted in millions of excise taxes evaded by illicit traders who exploit the regulatory gaps under Republic Act No. 11467 and its implementing rules. Consequently, these illicit traders capitalize on such regulatory gaps to evade higher taxes imposed on certain nicotine varieties, ultimately undermining public health efforts and fair market practices.

It is also important to emphasize that the distinction between salt nicotine and freebase or conventional nicotine under Republic Act No. 11467, no longer has a valid basis. Thus, we believe that having a unified tax rate for all vapor products will substantially address the problem of misdeclaration by unscrupulous traders and, therefore, will be more beneficial for the government. This is also in accordance with the principle of uniformity in taxation, where articles or kinds of property of the same class are taxed at the same rate.

Aside from the concerns on government revenue and increased usage, illicit trade is a threat to national security. Illicit trade of tobacco products, which may now include vapor products, have been linked to the financing of terrorist organizations. As early as 2015, the United States Department of Homeland Security has acknowledged the growing threat of illicit tobacco trafficking. In its paper, *The Global Illicit Trade in Tobacco: A Threat to National Security*, it was stated that tobacco smuggling may fuel transnational crime, corruption, and terrorism and, as it converges with other criminal activities, it tends to undermine the rule of law and the licit market economy, and creates greater insecurity and instability in many of today's security "hot spots" around the world.

All told, this Bill seeks to lessen the burden on the legitimate businesses, level the playing field, discourage illegal trading practices, ensure fair competition in the market, and strengthen national security. This measure is intended to support the sustainability and growth of legitimate enterprises, while ensuring receipt of government revenue through just and equitable taxes.

In view of the foregoing, the immediate passage of this Bill is earnestly sought.


RUFUS B. RODRIGUEZ

NINETEENTH CONGRESS)
REPUBLIC OF THE PHILIPPINES)
Third Regular Session)

HOUSE OF REPRESENTATIVES

Introduced by Representative Rufus B. Rodriguez

House Bill No. **11288**

AN ACT

AMENDING SECTIONS 144, 145, 147 AND 263-A OF THE NATIONAL INTERNAL REVENUE CODE, AS AMENDED, AND FOR OTHER PURPOSES

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

SEC. 1. Section 144 of the National Internal Revenue Code of 1997, as amended by Republic Act. No. 11467, is hereby further amended to read as follows:

“Sec. 144. Tobacco Products, Heated Tobacco Products, and Vapor Products. —

“(A) Tobacco Products. —

“x x x

The rates of tax imposed under this Section shall be increased by four percent (4%) every year thereafter effective on January 1, 2014, through revenue regulations issued by the Secretary of Finance.

"PROVIDED, THAT THE INCREASE IN THE RATE OF TAX IMPOSED UNDER THIS SUBSECTION SHALL NOT APPLY FOR THE PERIOD EFFECTIVE JANUARY 1, 2026 UNTIL DECEMBER 31, 2026; PROVIDED FURTHER THAT THE RATE OF TAX UNDER THIS SUBSECTION SHALL BE INCREASED BY SIX PERCENT (6%) BEGINNING JANUARY 1, 2027 AND BIENNIALY OR EVERY TWO YEARS THEREAFTER: PROVIDED FINALLY, THAT ON YEARS WITHOUT A SCHEDULED INCREASE IN THE RATE OF TAX AS PROVIDED HEREIN EXCEPT ON THE YEAR 2026, THE PRESIDENT, UPON THE RECOMMENDATION OF THE SECRETARY OF FINANCE, MAY INCREASE THE TAX RATE BY UP TO FIVE PERCENT (5%) IN CASE THE ACTUAL NATIONAL GOVERNMENT DEFICIT OF THE PREVIOUS YEAR EXCEEDS THE PROGRAMMED DEFICIT BY AN EQUIVALENT OF TWO PERCENT (2%) OF THE GROSS DOMESTIC PRODUCT OF THE PREVIOUS YEAR.

“x x x

“(B) Heated Tobacco Products. — There shall be levied, assessed and collected on heated tobacco products an excise tax at the rate prescribed below:

“x x x

The rates of tax imposed under this Subsection shall be increased by five percent (5%) every year effective on January 1, 2024 through revenue regulations issued by the Secretary of Finance.

"PROVIDED, THAT THE INCREASE IN THE RATE OF TAX IMPOSED UNDER THIS SUBSECTION SHALL NOT APPLY FOR THE PERIOD EFFECTIVE JANUARY 1, 2026 UNTIL DECEMBER 31, 2026; PROVIDED FURTHER THAT THE RATE OF TAX UNDER THIS SUBSECTION SHALL BE INCREASED BY SIX PERCENT (6%) BEGINNING JANUARY 1, 2027 AND BIENNIALLY OR EVERY TWO YEARS THEREAFTER: PROVIDED FINALLY, THAT ON YEARS WITHOUT A SCHEDULED INCREASE IN THE RATE OF TAX AS PROVIDED HEREIN EXCEPT ON THE YEAR 2026, THE PRESIDENT, UPON THE RECOMMENDATION OF THE SECRETARY OF FINANCE, MAY INCREASE THE TAX RATE BY UP TO FIVE PERCENT (5%) IN CASE THE ACTUAL NATIONAL GOVERNMENT DEFICIT OF THE PREVIOUS YEAR EXCEEDS THE PROGRAMMED DEFICIT BY AN EQUIVALENT OF TWO PERCENT (2%) OF THE GROSS DOMESTIC PRODUCT OF THE PREVIOUS YEAR.

"X X X

"The Bureau of Internal Revenue is mandated to issue a revenue regulation prescribing the floor price or the minimum price of heated tobacco products taking into account THE APPLICABLE TAXES, REASONABLE PRODUCTION COST, AND TRADE MARGINS FOR THE LOWEST PRICED BRANDS REGISTERED WITH THE BIR [the sum of the excise and value-added taxes as provided herein].

"(C) Vapor Products — There shall be levied, assessed and collected on vapor products [an excise tax at the rates prescribed below] CONTAINING ANY LIQUID SUBSTANCE, REGARDLESS OF NICOTINE CONTENT, INCLUDING NICOTINE-FREE LIQUIDS OR ANY SIMILAR PRODUCT, WHETHER CLASSIFIED AS NICOTINE SALT OR SALT NICOTINE, OR CONVENTIONAL 'FREEBASE' OR 'CLASSIC' NICOTINE, OR OTHER SIMILAR SUBSTANCES, DEVICES, OR INNOVATIONS THAT ARE INTENDED TO BE USED AS A SUBSTITUTE FOR CIGARETTES OR OTHER TOBACCO PRODUCTS, AN EXCISE TAX AT THE RATE OF SIXTY-SIX PESOS AND FIFTEEN CENTAVOS (P66.15) PER MILLILITER OR A FRACTION THEREOF, EFFECTIVE IMMEDIATELY OR UPON THE EFFECTIVITY OF THIS ACT.

~~["(1) Nicotine Salt or Salt Nicotine.— There shall be levied, assessed and collected on any liquid substance, regardless of nicotine content, including nicotine-free liquids or any similar product, further classified as nicotine salt or salt nicotine, an excise tax based on the following schedules:~~

~~"Effective on January 1, 2020, Thirty-seven pesos (P37.00) per milliliter or a fraction thereof;~~

~~"Effective on January 1, 2021, Forty-two pesos (P42.00) per milliliter or a fraction thereof;~~

~~"Effective on January 1, 2022, Forty-seven pesos (P47.00) per milliliter or a fraction thereof; and~~

~~"Effective on January 1, 2023, Fifty-two pesos (P52.00) per milliliter or a fraction thereof.~~

~~"Provided, That the rates of tax imposed under this Subsection shall be increased by five percent (5%) every year effective on January 1, 2024, through revenue regulations issued by the Secretary of Finance.~~

~~“(2) Conventional ‘Freebase’ or ‘Classic’ Nicotine.— There shall be levied, assessed and collected on any liquid substance, regardless of nicotine content, including nicotine-free liquid or any similar product, further classified as conventional ‘freebase’ or ‘classic’ nicotine an excise tax based on the following schedules:~~

~~“Effective on January 1, 2020, Forty-five pesos (P45.00) per ten (10) milliliters or a fraction thereof;~~

~~“Effective on January 1, 2021, Fifty pesos (P50.00) per ten (10) milliliters or a fraction thereof;~~

~~“Effective on January 1, 2022, Fifty-five pesos (P55.00) per ten (10) milliliters or a fraction thereof; and~~

~~“Effective on January 1, 2023, Sixty pesos (P60.00) per ten (10) milliliters or a fraction thereof.~~

~~“Provided, That the rates of tax imposed under this Subsection shall be increased by five percent (5%) every year effective January 1, 2024, through revenue regulations to be issued by the Secretary of Finance.”]~~

"THE RATE OF TAX IMPOSED UNDER THIS SUBSECTION SHALL BE INCREASED BY SIX PERCENT (6%) BEGINNING JANUARY 1, 2027 AND BIENNIALY OR EVERY TWO YEARS THEREAFTER: PROVIDED, THAT ON YEARS WITHOUT A SCHEDULED INCREASE IN THE RATE OF TAX AS PROVIDED HEREIN, THE PRESIDENT, UPON THE RECOMMENDATION OF THE SECRETARY OF FINANCE, MAY INCREASE THE TAX RATE BY UP TO FIVE PERCENT (5%) IN CASE THE ACTUAL NATIONAL GOVERNMENT DEFICIT OF THE PREVIOUS YEAR EXCEEDS THE PROGRAMMED DEFICIT BY AN EQUIVALENT OF TWO PERCENT (2%) OF THE GROSS DOMESTIC PRODUCT OF THE PREVIOUS YEAR.

~~“x x x”~~

~~“The Bureau of Internal Revenue is mandated to issue a revenue regulation prescribing the floor price or the minimum price of vapor products taking into account **THE APPLICABLE TAXES, REASONABLE PRODUCTION COST, AND TRADE MARGINS FOR THE LOWEST PRICED BRANDS REGISTERED WITH THE BIR** [the sum of the excise and value-added taxes as provided herein].~~

SEC. 2. Section 145 of the National Internal Revenue Code of 1997, as amended by Republic Act No. 11346, is hereby further amended to read as follows:

“Sec. 145. Cigars and Cigarettes. –

“(A) Cigars. – There shall be levied, assessed and collected on cigars an excise tax **AS FOLLOWS:**

EFFECTIVE ON JANUARY 1, 2025, SIXTY-SIX PESOS AND FIFTEEN CENTAVOS (P66.15) PER CIGAR;
~~[in accordance with the following schedule:~~

~~(1) — Effective on January 1, 2013~~

~~(a) — An *ad valorem* tax equivalent to twenty percent (20%) of the net retail price (excluding the excise tax and the value-added tax) per cigar; and~~

~~(b) — In addition to the *ad valorem* tax herein imposed, a specific tax of Five pesos (P5.00) per cigar.~~

~~In addition to the *ad valorem* tax herein imposed, the specific tax rate of Five pesos (P5.00) imposed under this subsection shall be increased by five percent (5%) effective on January 1, 2024 through revenue regulations issued by the Secretary of Finance;]~~

"THE RATE OF TAX IMPOSED UNDER THIS SUBSECTION SHALL BE INCREASED BY SIX PERCENT (6%) BEGINNING JANUARY 1, 2027 AND BIENNIALLY OR EVERY TWO YEARS THEREAFTER: *PROVIDED*, THAT ON YEARS WITHOUT A SCHEDULED INCREASE IN THE RATE OF TAX AS PROVIDED HEREIN, THE PRESIDENT, UPON THE RECOMMENDATION OF THE SECRETARY OF FINANCE, MAY INCREASE THE TAX RATE BY UP TO FIVE PERCENT (5%) IN CASE THE ACTUAL NATIONAL GOVERNMENT DEFICIT OF THE PREVIOUS YEAR EXCEEDS THE PROGRAMMED DEFICIT BY AN EQUIVALENT OF TWO PERCENT (2%) OF THE GROSS DOMESTIC PRODUCT OF THE PREVIOUS YEAR."

(2) "x x x

"(B) Cigarettes Packed by Hand. – There shall be levied, assessed and collected on cigarettes packed by hand an excise tax based on the following schedules:

Effective on January 1, 2020, Forty-Five pesos (P45.00) per pack;

Effective on January 1, 2021, Fifty pesos (P50.00) per pack;

Effective on January 1, 2022, Fifty-five pesos (P55.00) per pack;

Effective on January 1, 2023, Sixty pesos (P60.00) per pack;

The rates of tax imposed under this subsection shall be increased by five percent (5%) every year effective on January 1, 2024, through revenue regulations issued by the Secretary of Finance; ***PROVIDED*, THAT THE SCHEDULED YEARLY INCREASE SHALL NOT APPLY FOR THE PERIOD EFFECTIVE JANUARY 1, 2026 UNTIL DECEMBER 31, 2026; *PROVIDED FURTHER* THAT A SIX PERCENT (6%) INCREASE ON THE SPECIFIC TAX RATE SHALL BE IMPOSED BEGINNING JANUARY 1, 2027 AND BIENNIALLY OR EVERY TWO YEARS THEREAFTER: *PROVIDED FINALLY*, THAT ON YEARS WITHOUT A SCHEDULED INCREASE IN THE RATE OF TAX AS PROVIDED HEREIN EXCEPT ON THE YEAR 2026, THE PRESIDENT, UPON THE RECOMMENDATION OF THE SECRETARY OF FINANCE, MAY INCREASE THE TAX RATE BY UP TO FIVE PERCENT (5%) IN CASE THE ACTUAL NATIONAL GOVERNMENT DEFICIT OF THE PREVIOUS YEAR EXCEEDS THE PROGRAMMED DEFICIT BY AN EQUIVALENT OF TWO PERCENT (2%) OF THE GROSS DOMESTIC PRODUCT OF THE PREVIOUS YEAR.**

"x x x

“(C) **Cigarettes Packed by Machine.** - There shall be levied, assessed and collected on cigarettes packed by machine a tax at the rates prescribed below:

Effective on January 1, 2020, Forty-Five pesos (P45.00) per pack;

Effective on January 1, 2021, Fifty pesos (P50.00) per pack;

Effective on January 1, 2022, Fifty-five pesos (P55.00) per pack;

Effective on January 1, 2023, Sixty pesos (P60.00) per pack;

“The rates of tax imposed under this subsection shall be increased by five percent (5%) every year effective on January 1, 2024, through revenue regulations issued by the Secretary of Finance; **PROVIDED, THAT THE SCHEDULED YEARLY INCREASE SHALL NOT APPLY FOR THE PERIOD EFFECTIVE JANUARY 1, 2026 UNTIL DECEMBER 31, 2026; PROVIDED FURTHER THAT A SIX PERCENT (6%) INCREASE ON THE SPECIFIC TAX RATE SHALL BE IMPOSED BEGINNING JANUARY 1, 2027 AND BIENNIALY OR EVERY TWO YEARS THEREAFTER; PROVIDED FINALLY, THAT ON YEARS WITHOUT A SCHEDULED INCREASE IN THE RATE OF TAX AS PROVIDED HEREIN EXCEPT ON THE YEAR 2026, THE PRESIDENT, UPON THE RECOMMENDATION OF THE SECRETARY OF FINANCE, MAY INCREASE THE TAX RATE BY UP TO FIVE PERCENT (5%) IN CASE THE ACTUAL NATIONAL GOVERNMENT DEFICIT OF THE PREVIOUS YEAR EXCEEDS THE PROGRAMMED DEFICIT BY AN EQUIVALENT OF TWO PERCENT (2%) OF THE GROSS DOMESTIC PRODUCT OF THE PREVIOUS YEAR.**

“X X X”

“**THE BUREAU OF INTERNAL REVENUE IS MANDATED TO ISSUE A REVENUE REGULATION PRESCRIBING THE FLOOR PRICE OR THE MINIMUM PRICE OF CIGARETTES TAKING INTO ACCOUNT THE APPLICABLE TAXES, REASONABLE PRODUCTION COST, AND TRADE MARGINS FOR THE LOWEST PRICED BRANDS REGISTERED WITH THE BIR.**

Selling of **CIGARETTES AT A PRICE LOWER THAN THE FLOOR PRICE OR MINIMUM PRICE PRESCRIBED BY THE BUREAU OF INTERNAL REVENUE** shall be prohibited. The seller of such products shall be punished with a fine of not less than ten (10) times the amount of excise plus value-added taxes due but not less than Two hundred thousand pesos (P200,000.00) nor more than Five hundred thousand pesos (500,000.00), and imprisonment of not less than four (4) years but not more than six (6) years.

~~The BIR is mandated to issue revenue regulation prescribing the cigarette floor price or the minimum cigarette price taking into account the sum of the excise and value-added taxes as provided herein.~~

xxx”

SEC. 3. Section 147 of the National Internal Revenue Code of 1997, as amended by Republic Act No. 11346, is hereby further amended to read as follows:

“**SEC. 147. Definition of Terms.** When used herein and in statements or official forms prescribed hereunder, the following terms shall have the meaning indicated:

(a)

(b) 'Cigarettes' mean all rolls of finely-cut leaf tobacco, or any substitute therefor, wrapped in paper or in any other material that are consumed via combustion of the tobacco, **INCLUDING "ROLL-YOUR-OWN" TOBACCO PRODUCTS."**

"xxx"

SEC. 4. Section 263-A of the National Internal Revenue Code of 1997, as amended by Republic Act No. 11346, is hereby further amended to read as follows:

"Sec. 263-A. Selling of Heated Tobacco Products and Vapor Products at a lower PRICE LOWER THAN the combined excise and value-added taxes FLOOR PRICE OR MINIMUM PRICE. – Any person who sells heated tobacco products and vapor products at a price lower than the ~~combined excise and value-added taxes~~ **FLOOR PRICE OR MINIMUM PRICE PRESCRIBED BY THE BUREAU OF INTERNAL REVENUE** shall be punished with a fine of not less than ten (10) times the amount of excise plus value-added taxes due but not less than Two hundred thousand pesos (P200,000.00) nor more than Five hundred thousand pesos (500,000.00), and imprisonment of not less than four (4) years but not more than six (6) years.

SEC. 5. Separability Clause. - If any provision of this Act is declared unconstitutional or invalid, other parts or provision hereof not affected thereby shall continue to be in full force and effect.

SEC. 6. Repealing Clause. - All laws, orders, issuances, circulars, rules and regulation or parts thereof, which are inconsistent with the provisions of this Act are hereby repealed or modified accordingly.

SEC. 7. Effectivity. - This Act shall take effect fifteen (15) days after its publication in the Official Gazette or in a newspaper of general circulation.

Approved,