Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City, Metro Manila

TWENTIETH CONGRESS
First Regular Session

HOUSE BILL NO. 5212

Introduced by **Representative FERDINAND L. HERNANDEZ**

AN ACT
AMENDING SECTIONS 144, 145, 263-A AND 289 OF REPUBLIC ACT NO. 8424, AS AMENDED, OTHERWISE KNOWN AS THE NATIONAL INTERNAL REVENUE CODE OF 1997, AND FOR OTHER PURPOSES

EXPLANATORY NOTE

SUMMARY: This bill is both a tax rationalization measure (to stop leakage and simplify collection) and a social equity measure (to redirect and expand revenues toward farmer support, health, and education in tobacco-producing provinces), through the following means:

1. Plug revenue leaks by eliminating the dual tax treatment of nicotine salt and freebase nicotine products and imposing a single uniform excise tax rate (₱10.00/ml) on all vapor products, thereby closing loopholes exploited through mislabeling and misdeclaration;

2. Strengthen enforcement by simplifying BIR's task of monitoring compliance (no need to chemically differentiate nicotine types), tightening floor price rules, and requiring that floor/minimum prices also reflect production costs and trade margins, thus curbing undervaluation and dumping of untaxed products;

3. Safeguard government revenue streams to ensure sustainable funding for health and social programs, especially those undermined by losses from illicit trade in cigarettes and vapes;

4. Enhance public health protections by discouraging the circulation of illicit and unregulated vape products, while recognizing that regulated vapor products present significantly lower harm than combustible cigarettes for adult smokers seeking alternatives;

5. Level the playing field for legitimate businesses by ensuring that compliant manufacturers and traders are not undercut by illicit operators selling misdeclared or untaxed products;

6. Expand the allowable uses of Virginia tobacco excise revenue shares by:

    6.1 Providing cash and educational assistance not only to displaced tobacco farmers but also to those engaged in other crops or fishing, and their children;

    6.2 Introducing support for medical and educational facility improvements in tobacco-producing provinces; and

    6.3 Sustaining infrastructure, livelihood, and agro-industrial projects that benefit farming communities.

7. Promote fair competition and economic sustainability by aligning excise tax rules and minimum price regulations with the Anti-Agricultural Economic Sabotage Act, thereby discouraging economic sabotage in the tobacco and vape sectors.

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Due to the prevalence of illicit tobacco products, the government's excise tax collection has been declining since 2022. In 2023, the Bureau of Internal Revenue (BIR) reported that the government has lost around PhP25.5 billion in revenue due to illicit trade in cigarettes[1]. This lost revenue amounting to billions of pesos adversely affected the government's funding for health programs.

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 Global Adult Tobacco Survey (GATS), adult e-cigarette use in the Philippines to just over 2% in 2021—equivalent to about 1.6 million Filipinos.[2] This likewise led to the proliferation of unregistered vape products in the market which entice the public, especially minors, due to their affordability, high puff count, enticing flavors, and accessibility.

Even with the issuance of BIR Revenue Memorandum Circular No. 59-2024[3] requiring all vape products sold in the market to bear internal revenue stamps, several non-compliant products, presumed to be untaxed, remain available in the market. This alarming trend poses an additional burden to the implementation of the government's health programs, as illicit products do not undergo product safety and quality assurance tests.

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

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[1] https://www.philstar.com/business/2024/05/30/2358917/government-loses-p25-billion-revenues-illicit-cigarette-trade?utm_source=chatgpt.com
[2] https://gsthr.org/countries/profile/phl/2/?utm_source=chatgpt.com
[3] https://www.ntrc.gov.ph/images/BIR/RMC/2024/RMC%20No.%2059-2024.pdf?utm_source=chatgpt.com

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. Originally, it was believed that nicotine salt products posed a higher risk of lung injury (hence, higher tax rate). However, investigations of the 2019 outbreak of e-cigarette or vaping-associated lung injury (EVALI) by the U.S. Centers for Disease Control and Prevention (CDC) and peer-reviewed studies in the *New England Journal of Medicine* found that the primary cause was vitamin E acetate used in illicit THC products—not nicotine salts.[4] This reduces the evidentiary basis for treating nicotine-salt liquids as inherently more harmful than freebase liquids, and thus for taxing them differently.

In view of the foregoing, the Bill seeks to impose a uniform excise tax rate of Ten Pesos (₱10.00) per milliliter on all vapor products, regardless of nicotine type or formulation, thereby removing the current dual tax regime.

Under Republic Act No. 11467, nicotine salt products were previously taxed at ₱52.00 per milliliter effective 2023, while freebase nicotine products were taxed at ₱60.00 per 10 milliliters (equivalent to ₱6.00 per milliliter). This disparity incentivized mislabeling and misdeclaration of nicotine type to benefit from the lower effective rate. By replacing the split system with a single uniform rate, the measure closes the loophole that has been exploited by illicit traders and ensures that all vapor liquids are taxed equally.

This approach will plug revenue leakages from misdeclaration, simplify enforcement for the BIR, and uphold the principle of uniformity in taxation.

The Bill also provides for the adjustment of the computation of floor or minimum price of covered products to take into account not only the excise and value-added taxes, but also reasonable production costs and trade margins based on the lowest-price brand registered with the BIR. This measure is intended to align with the Anti-Agricultural Economic Sabotage Act (RA 12022) and prevent dumping of untaxed or undervalued products.

In addition, the Bill expands the purposes for which special financial support to Virginia tobacco-producing provinces may be used. Specifically, it provides cash and educational assistance not only to tobacco farmers who cease production, but also to those engaged in other crops or fishing, and their children. It also introduces programs to improve the medical and educational facilities of hospitals and schools in Virginia tobacco-producing provinces.

All told, this Bill seeks to address tax leakages, close regulatory gaps, curb illicit trade, protect consumers from unregistered and unsafe products, ensure fair competition among legitimate industry players, and provide adequate government revenue to fund essential programs.

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

FERDINAND L. HERNANDEZ

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[4] https://archive.cdc.gov/www_cdc_gov/tobacco/basic_information/e-cigarettes/severe-lung-disease.html?utm_source=chatgpt.com

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

SECTION. 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.—**

"x x x

"(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 TYPE, INCLUDING NICOTINE-FREE LIQUIDS OR ANY SIMILAR PRODUCT, WHETHER CLASSIFIED AS NICOTINE SALT OR SALT NICOTINE OR CONVENTIONAL 'FREEBASE' OR 'CLASSIC' NICOTINE, AN EXCISE TAX AT THE RATE OF TEN PESOS (₱10.00) PER MILLILITER OR A FRACTION THEREOF, EFFECTIVE IMMEDIATELY.**

~~["(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 (₱37.00) per milliliter or a fraction thereof;~~

~~"Effective on January 1, 2021, Forty-two pesos (₱42.00) per milliliter or a fraction thereof;~~
~~"Effective on January 1, 2022, Forty-seven pesos (₱47.00) per milliliter or a fraction thereof; and~~
~~"Effective on January 1,2023, Fifty-two pesos (₱52.00) 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 (₱45.00) per ten (10) milliliters or a fraction thereof;~~
~~"Effective on January 1, 2021, Fifty pesos (₱50.00) per ten (10) milliliters or a fraction thereof;~~
~~'Effective on January 1, 2022, Fifty-five pesos (₱55.00) per ten (10) milliliters of a fraction thereof; and~~
~~'Effective on January 1, 2023, Sixty pesos (₱60.00) 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 FIVE PERCENT (5%) BEGINNING JANUARY 1, 2027.

"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 sum of the excise and value-added taxes provided herein**, REASONABLE PRODUCTION COST**, **AND TRADE MARGINS BASED ON THE LOWEST PRICE BRAND REGISTERED WITH THE BUREAU OF INTERNAL REVENUE**.

"x x x

SECTION 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. –

"x x x"

Selling of tobacco products at a price lower than the combined excise and value-added taxes imposed under the law, **REASONABLE PRODUCTION COST, AND TRADE MARGINS BASED ON THE LOWEST PRICE BRAND REGISTERED WITH 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 (₱200,000.00) 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 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 sum of the excise and value-added taxes provided herein**, REASONABLE PRODUCTION COST, AND TRADE MARGINS BASED ON THE LOWEST PRICE BRAND REGISTERED WITH THE BUREAU OF INTERNAL REVENUE**.

"x x x"

SECTION 3. Section 263-A of the National Internal Revenue Code of 1997, as amended, 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 (₱200,000.00) 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.

"x x x."

SECTION 4. Section 289 of the National Internal Revenue Code of 1997, as amended, is hereby further amended to read as follows:

"Sec. 289. Special Financial Support to Beneficiary Provinces Producing Virginia Tobacco. –

"x x x

"Provided, That this Section shall be implemented in accordance with the guidelines of Memorandum Circular No. 61-A dated November 28, 1993, which amended Memorandum Circular No. 61, entitled 'Prescribing Guidelines for Implementing Republic Act No. 7171', dated January 1, 1992 and that the funds be utilized to further advance self-reliance and expand viable alternatives for Virginia-tobacco farmers and workers through:

"(1) Cooperative projects that will enhance better quality of products, increase productivity, guarantee the market and as a whole increase farmers' income;

"(2) Livelihood projects particularly the development of alternative farming systems to enhance farmers' income;

"(3) Agro-industrial projects that will enable tobacco farmers in the Virginia tobacco-producing provinces to be involved in the management and subsequent ownership of these projects such as post-harvest and secondary processing like cigarette manufacturing and by-product utilization;

"(4) Infrastructure projects such as farm-to-market roads, bridges, schools, hospitals, rural health facilities, **MULTIPURPOSE BUILDINGS, CURING BARNS** and irrigation systems;

"(5) Programs and projects that will promote, enhance, and develop the tourism potential of Virginia tobacco-growing provinces; [~~and~~]

"(6) Programs that will provide [~~financial~~] **CASH AND EDUCATIONAL** assistance for tobacco farmers [~~that were displaced or who cease to produce tobacco.~~], **INCLUDING THOSE WHO ARE ALSO PLANTERS OF OTHER CROPS, OR LIKEWISE ENGAGED IN FISHING, AND THEIR CHILDREN; AND**

"(7) PROGRAMS THAT WILL IMPROVE THE MEDICAL AND EDUCATIONAL FACILITIES OF HOSPITALS AND SCHOOLS IN VIRGINIA TOBACCO PRODUCING PROVINCES.

SECTION 5. *Implementing Rules and Regulations.* – Such rules and regulations, as may be necessary for the effective implementation of this Act, shall be promulgated by the Secretary of Finance upon the recommendation of the Commissioner of Internal Revenue.

SECTION 6. *Separability Clause.* - If any provision of this Act shall be held unconstitutional or invalid, the other provisions not otherwise affected shall remain in full force and effect.

SECTION 7. *Repealing Clause.* - All laws, 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.

SECTION 8. *Effectivity Clause*. **-** This Act is self-executory and shall take effect fifteen (15) days after its publication in at least two (2) newspapers of general circulation or the Official Gazette, without the need for the issuance of implementing rules and regulations.

Approved.