TWENTIETH CONGRESS)
REPUBLIC OF THE PHILIPPINES)
First Regular Session)

HOUSE OF REPRESENTATIVES

Introduced by Representative Rufus B. Rodriguez and Representative Maximo B. Rodriguez, Jr.

House Bill No. 5364

EXPLANATORY NOTE

The proliferation of illicit tobacco products has resulted in a sustained decline in excise tax collections beginning in 2022. In 2023, the Bureau of Internal Revenue (BIR) reported that the government incurred a revenue loss of approximately 15.9% or PhP 25.5 billion attributable to the illicit trade of cigarettes. This foregone revenue, running into billions of pesos, has adversely impacted the capacity of the State to fund vital health programs.

Notwithstanding the legitimate objective of the annual increase in excise taxes to discourage nicotine consumption, there has been a significant shift among adults of legal age from combustible cigarettes to electronic cigarettes. Based on the Global Adult Tobacco Survey, e-cigarette use in the Philippines doubled between 2015 and 2021, with 2.1% or 1.6 million Filipinos reported as users. This development has likewise facilitated the influx of unregistered and non-compliant vape products in the domestic market. Such products, by reason of their affordability, high puff count, enticing flavors, and widespread accessibility, are particularly attractive to minors. Despite the issuance of Revenue Memorandum Circular No. 59-2024, which mandates that all vape products bear internal revenue stamps, a considerable number of non-compliant products—presumed untaxed—continue to circulate in the market. These illicit products evade regulatory oversight, thereby posing serious threats to public health as they do not undergo the requisite safety and quality assurance testing.

Equally alarming is the practice of mislabeling vapor products. Certain traders deliberately misrepresent products as containing only freebase nicotine when, in truth, such products contain nicotine salts, with the intent of evading the higher excise tax imposed thereon. This practice has resulted in the evasion of millions of pesos in excise taxes and is facilitated by regulatory gaps under Republic Act No. 11467 and its implementing rules, compounded by the present technical incapacity of regulatory authorities to distinguish between nicotine salts and freebase nicotine. As a consequence, illicit traders exploit these gaps, to the detriment of public health objectives, fair competition, and government revenue collection.

In view of the foregoing, this Bill seeks to:

1. **Abolish the excise tax distinction between nicotine salts and freebase nicotine** by prescribing a uniform tax rate for all vapor products, in consonance with the constitutional principle of uniformity and equality in taxation;

2. **Prescribe a differentiated and lower excise tax rate for vapor products, consistent with international harm reduction principles**. Public Health England and recent United Kingdom data affirm that electronic cigarettes are approximately 95% less harmful than combustible cigarettes and are more effective than conventional nicotine replacement therapies. Similarly, the Tax Foundation recommends lower taxation for vapor products to reflect their reduced harm and externalities. The proposed adjustment seeks to encourage smokers to shift to less harmful alternatives, without compromising safeguards to prevent youth initiation; and

3. **Revise the computation of the floor or minimum price** of covered products to incorporate reasonable production costs and trade margins, anchored on the lowest-priced brand registered with the BIR. This amendment shall ensure consistency with Republic Act No. 12022, otherwise known as the *Anti-Agricultural Economic Sabotage Act.

Taken together, the proposed measure endeavors to alleviate the burden on legitimate businesses, promote fair competition, and deter illicit trade practices that expose consumers to unregulated and unsafe products. At the same time, it guarantees the continued collection of just and equitable revenues that are indispensable for the financing of essential government programs.

In view of the foregoing, immediate approval of this measure is earnestly requested.

RUFUS B. RODRIGUEZ

MAXIMO B. RODRIGUEZ, JR.

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

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 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 (₱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 EVERY YEAR 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. *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 5. *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 6. *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 7. *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,