

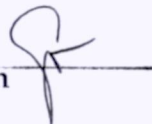
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SENATE

S. No. 2235

(In substitution of S.B. Nos. 225, 927, and 1979 taking into consideration  
H.B. No. 8400)

RECEIVED BY:



Prepared by the Committee on Ways and Means with Senators Drilon, Recto, Sotto  
III, and Angara as authors

AN ACT  
ESTABLISHING THE FISCAL REGIME FOR THE MINING INDUSTRY

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

1        **SECTION 1.** The chapter title of Chapter VII Title VI of the National Internal  
2 Revenue Code of 1997, as amended, is hereby amended to read as follows:

3        "CHAPTER VII - [EXCISE TAX ON MINERAL PRODUCTS] **TAXATION OF**  
4 **MINERAL PRODUCTS.**"

5        **SEC. 2.** Sec. 151 of Chapter VII, Title VI of the National Internal Revenue Code of  
6 1997, as amended, is hereby amended to read as follows:

7        "SEC. 151. *TAX ON Mineral Products.* -"

8        **SEC. 3.** A new section designated as Section 151-A under Chapter VII, Title VI of  
9 the National Internal Revenue Code of 1997, as amended, is hereby inserted and shall  
10 read as follows:

11        "SEC. 151-A. **ROYALTY.** -

12        **A. FOR ALL LARGE-SCALE METALLIC MINING OPERATIONS OUTSIDE**  
13 **OF MINERAL RESERVATIONS. - MINING CONTRACTORS OF LARGE-**  
14 **SCALE METALLIC MINING OPERATIONS OUTSIDE OF MINERAL**  
15 **RESERVATIONS SHALL PAY TO THE GOVERNMENT A MARGIN-BASED**

1 ROYALTY ON INCOME FROM MINING OPERATIONS IN ACCORDANCE  
2 WITH THE FOLLOWING TABLE:

MARGIN	ROYALTY
1% UP TO 10%	1.00%
ABOVE 10% UP TO 20%	1.50%
ABOVE 20% UP TO 30%	2.00%
ABOVE 30% UP TO 40%	2.50%
ABOVE 40% UP TO 50%	3.00%
ABOVE 50% UP TO 60%	3.50%
ABOVE 60% UP TO 70%	4.00%
ABOVE 70%	5.00%

3 B. FOR LARGE-SCALE METALLIC MINING OPERATIONS WITHIN  
4 MINERAL RESERVATIONS. - MINING CONTRACTORS OF LARGE-  
5 SCALE METALLIC MINING OPERATIONS WITHIN MINERAL  
6 RESERVATIONS SHALL PAY TO THE GOVERNMENT A ROYALTY  
7 EQUIVALENT TO THREE PERCENT (3%) OF THE GROSS OUTPUT OF  
8 THE MINERALS OR MINERAL PRODUCTS EXTRACTED OR PRODUCED  
9 BY THE MINING OPERATIONS, EXCLUSIVE OF ALL OTHER TAXES;

10 C. FOR SMALL-SCALE METALLIC MINING OPERATIONS WITHIN OR  
11 OUTSIDE MINERAL RESERVATIONS. - MINING CONTRACTORS OF  
12 SMALL-SCALE METALLIC WITHIN OR OUTSIDE MINERAL  
13 RESERVATIONS SHALL PAY TO THE GOVERNMENT A ROYALTY  
14 EQUIVALENT TO ONE TENTH (1/10) OF ONE PERCENT (1%) OF GROSS  
15 OUTPUT;

16 D. FOR PURPOSES OF THIS SECTION AND SECTION 151-B, THE TERM -

17 (1) 'MARGIN' SHALL MEAN THE RATIO OF INCOME FROM MINING  
18 OPERATIONS BEFORE CORPORATE INCOME TAX TO GROSS OUTPUT;

19 (2) 'GROSS OUTPUT' SHALL MEAN THE ACTUAL MARKET VALUE OF  
20 MINERALS OR MINERAL PRODUCTS FROM EACH MINE OR MINERAL  
21 LAND OPERATED AS A SEPARATE ENTITY, WITHOUT ANY



1 DEDUCTION FOR MINING, PROCESSING, REFINING, TRANSPORTING,  
2 HANDLING, MARKETING OR ANY OTHER EXPENSES: *PROVIDED*,  
3 THAT OF THE MINERALS OR MINERAL PRODUCTS SOLD OR  
4 CONSIGNED ABROAD BY THE MINING CONTRACTOR UNDER COST,  
5 INSURANCE OR FREIGHT (CIF) TERMS, THE ACTUAL COST OF OCEAN  
6 FREIGHT AND INSURANCE SHALL BE DEDUCTED: *PROVIDED*,  
7 *FURTHER*, THAT IN THE CASE OF MINERAL CONCENTRATES WHICH  
8 ARE NOT TRADED IN COMMODITY EXCHANGES IN THE PHILIPPINES  
9 OR ABROAD, SUCH AS COPPER CONCENTRATES, THE ACTUAL  
10 MARKET VALUE SHALL BE WORLD PRICE QUOTATIONS OF THE  
11 REFINED MINERAL PRODUCTS CONTENT THEREOF PREVAILING IN  
12 THE SAID COMMODITY EXCHANGES, AFTER DEDUCTING THE  
13 SMELTING, REFINING, TREATMENT, INSURANCE, TRANSPORTATION  
14 AND OTHER CHARGES INCURRED IN THE PROCESS OF CONVERTING  
15 MINERAL CONCENTRATES INTO REFINED METAL TRADED IN THOSE  
16 COMMODITY EXCHANGES;

17 (3) 'INCOME FROM MINING OPERATIONS' SHALL MEAN THE GROSS  
18 OUTPUT LESS DEDUCTIBLE EXPENSES, WHICH INCLUDE:

19 (A) MINING, MILLING, TRANSPORT AND HANDLING EXPENSES  
20 TOGETHER WITH SMELTING AND REFINING COSTS OTHER  
21 THAN SMELTING AND REFINING COSTS PAID TO THIRD  
22 PARTIES;

23 (B) GENERAL AND ADMINISTRATIVE EXPENSES ACTUALLY  
24 INCURRED BY THE MINING CONTRACTOR IN THE PHILIPPINES;

25 (C) ENVIRONMENTAL EXPENSES OF THE MINING  
26 CONTRACTOR, INCLUDING SUCH EXPENSES NECESSARY TO  
27 FULLY COMPLY WITH ITS ENVIRONMENTAL OBLIGATIONS AS  
28 STIPULATED IN THE ENVIRONMENTAL PROTECTION  
29 PROVISION OF THE MINERAL AGREEMENT OR FINANCIAL OR  
30 TECHNICAL ASSISTANCE AGREEMENT AND IN THE  
31 APPLICABLE IMPLEMENTING RULES AND REGULATIONS;

1 (D) EXPENSES FOR THE DEVELOPMENT OF HOST AND  
2 NEIGHBORING COMMUNITIES AND FOR THE DEVELOPMENT  
3 OF GEOSCIENCES AND MINING TECHNOLOGY, INCLUDING  
4 TRAINING COSTS AND EXPENSES AS STIPULATED IN THE  
5 MINERAL AGREEMENT OR FINANCIAL OR TECHNICAL  
6 ASSISTANCE AGREEMENT AND IN THE APPLICABLE  
7 IMPLEMENTING RULES AND REGULATIONS;

8 (E) ROYALTY PAYMENTS TO CLAIMOWNERS OR SURFACE LAND  
9 OWNERS RELATING TO THE CONTRACT AREA DURING THE  
10 OPERATING PERIOD, IF ANY;

11 (F) CONTINUING EXPLORATION AND DEVELOPMENT EXPENSES  
12 WITHIN THE CONTRACT AREA AFTER THE PRE-OPERATING  
13 PERIOD;

14 (G) INTEREST EXPENSES CHARGED ON LOANS OR SUCH OTHER  
15 FINANCING RELATED EXPENSES INCURRED BY THE MINING  
16 CONTRACTOR SUBJECT TO THE FINANCING REQUIREMENT IN  
17 THE MINERAL AGREEMENT OR FINANCIAL OR TECHNICAL  
18 ASSISTANCE AGREEMENT, WHICH SHALL NOT BE MORE THAN  
19 THE PREVAILING INTERNATIONAL RATES CHARGED FOR  
20 SIMILAR TYPES OF TRANSACTIONS AT THE TIME THE  
21 FINANCING WAS ARRANGED, AND WHERE SUCH LOANS ARE  
22 NECESSARY FOR THE OPERATION;

23 (H) DEPRECIATION, DEPLETION, AND AMORTIZATION;

24 (I) TAXES, DUTIES, FEES, AND CHARGES; AND

25 (J) ALL OTHER COSTS AND EXPENSES RELATED TO MINING  
26 OPERATIONS AND SALE OF MINERALS AND MINERAL  
27 PRODUCTS.

28 (4) 'MINING CONTRACTOR' SHALL MEAN A QUALIFIED PERSON  
29 ACTING ALONE OR IN CONSORTIUM WHO IS A PARTY TO A MINERAL



1       AGREEMENT   OR   FINANCIAL   OR   TECHNICAL   ASSISTANCE  
2       AGREEMENT.”

3       SEC. 4. A new section designated as Section 151-B under Chapter VII, Title VI of  
4       the National Internal Revenue Code of 1997, as amended, is hereby inserted and shall  
5       read as follows:

6       “SEC. 151-B. WINDFALL PROFITS TAX. –

7       (A) IN ADDITION TO THE TAXES IMPOSED UNDER THIS CODE,  
8       THERE IS HEREBY IMPOSED FOR EACH TAXABLE YEAR A MARGIN-  
9       BASED WINDFALL PROFITS TAX ON INCOME FROM MINING  
10      OPERATIONS BEFORE CORPORATE INCOME TAX, IN ACCORDANCE  
11      WITH THE FOLLOWING TABLE: *PROVIDED*, THAT IT SHALL BE  
12      DEDUCTIBLE FROM TAXABLE INCOME, AS DEFINED IN SECTION 31,  
13      CHAPTER V, TITLE II OF THIS CODE:

MARGIN	RATE
MORE THAN 35% UP TO 40%	1%
MORE THAN 40% UP TO 45%	2%
MORE THAN 45% UP TO 50%	3%
MORE THAN 50% UP TO 55%	4%
MORE THAN 55% UP TO 60%	5%
MORE THAN 60% UP TO 65%	6%
MORE THAN 65% UP TO 70%	7%
MORE THAN 70% UP TO 75%	8%
MORE THAN 75% UP TO 80%	9%
MORE THAN 80%	10%

14      SEC. 5. Section 34 (B) of Chapter VII, Title II of the National Internal Revenue Code  
15      of 1997, as amended, is hereby further amended to read as follows:

16      “SEC. 34. DEDUCTIONS FROM GROSS INCOME. – xxx

17      (A) Expenses. – xxx

18      (B) Interest. –

(1) xxx

(2) xxx

(3) xxx

(4) LIMITATION OF DEDUCTIONS FOR MINING CONTRACTORS:

(A) IF A MINING CONTRACTOR HAS A DEBT-TO-EQUITY RATIO IN EXCESS OF THREE (3) TO ONE (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 THREE (3) TO ONE (1) RATIO FOR THE PERIOD THE RATIO WAS EXCEEDED;

(B) IF THE DEBT-TO-EQUITY RATIO OF A MINING CONTRACTOR EXCEEDS THREE (3) TO ONE (1) FOR AN INCOME YEAR, SUBSECTION (1) 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 '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;

THE TERM '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;

THE TERM 'DEBT', SHALL MEAN THE GREATEST AMOUNT, AT ANY TIME DURING AN INCOME YEAR, OF THE DEBT OBLIGATIONS OF THE MINING CONTRACTOR ON WHICH

1 INTEREST IS PAYABLE AS DETERMINED ACCORDING TO  
2 INTERNATIONAL FINANCIAL REPORTING STANDARDS;

3 THE TERM 'DEBT OBLIGATION' SHALL MEAN AN OBLIGATION  
4 TO MAKE A REPAYMENT OF MONEY TO ANOTHER PERSON,  
5 INCLUDING AN OBLIGATION ARISING UNDER A PROMISORY  
6 NOTE, BILL OF EXCHANGE, OR BOND, BUT NOT INCLUDING  
7 ACCOUNTS PAYABLE OR AN OBLIGATION TO MAKE  
8 REPAYMENT OF MONEY IN RESPECT OF WHICH NO INTEREST IS  
9 PAYABLE;

10 THE TERM 'EQUITY', SHALL MEAN THE GREATEST AMOUNT, AT  
11 ANY TIME DURING AN INCOME YEAR, OF THE EQUITY OF THE  
12 MINING CONTRACTOR AS DETERMINED ACCORDING TO  
13 INTERNATIONAL FINANCIAL REPORTING STANDARDS AND  
14 INCLUDES AN OBLIGATION TO MAKE A REPAYMENT OF MONEY  
15 IN RESPECT OF WHICH NO INTEREST IS PAYABLE.

- 16 (C) Taxes. - xxx
- 17 (D) Losses. - xxx
- 18 (E) Bad Debts. - xxx
- 19 (F) Depreciation. - xxx
- 20 (G) Depletion of Oil and Gas Wells and Mines. -  
21 x x x
- 22 (H) Charitable and Other Contributions. -  
23 x x x
- 24 (I) Research and Development. -  
25 x x x
- 26 (J) Pension Trusts. - x x x
- 27 (K) Additional Requirements for Deductibility of Certain Payments. - x x x
- 28 (L) Optional Standard Deduction. - x x x
- 29 Premium Payments on Health and/or Hospitalization Insurance of an Individual  
30 Taxpayer. - x x x"

31 SEC. 6. *Each Mining Operation Treated as a Separate Taxable Entity.* - Each  
32 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 if a separate taxpayer with respect to each and every Mineral Agreement or Financial or Technical Assistance Agreement it holds or is a party to.

If Mineral Agreement or Financial or Technical Assistance Agreement is renewed, the renewal shall be treated as part of the original agreement.

**SEC. 7. *Exemption from Confidentiality Clause.*** – Mining contractors for all metallic and non-metallic mining operations, whether large-scale or small-scale, shall observe fiscal transparency and comply with the requirements of the Extractive Industries Transparency Initiative (EITI), 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 EITI.

**SEC. 8. *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 or Financial or Technical Assistance Agreements entered into by the government.

**SEC. 9. *Vested Rights.*** – Valid Mineral Agreements or Financial or Technical Assistance Agreements existing prior to the effectivity of this Act that do not provide that any terms and conditions resulting from the repeal or amendment of any existing laws and regulations or from the enactment of a new law or regulation shall be considered a part of said Mineral Agreement and Financial or Technical Assistance Agreements, shall continue to be governed by their existing terms and conditions.

**SEC. 10. *Registration of Small-Scale Miners.*** – All persons undertaking small-scale mining activities shall register as miners with the Mining Board of the concerned local government unit in accordance with Republic Act No. 7076, “An Act Creating a People’s Small-Scale Mining Program and For Other Purposes” and with the Mines and Geosciences Bureau (MGB) and may organize themselves into cooperatives in order to qualify for the awarding of a people’s small-scale mining contract.



1       The Mining Board shall submit an annual report to the MGB of all the small-scale  
2 mining contracts entered into for the small-scale utilization of a plot of mineral land  
3 including the respective production output, taxes and fees paid.

4       For this purpose, a tax identification number shall be secured from the Bureau of  
5 Internal Revenue as a requirement for registration.

6       **SEC. 11. *Implementing Rules and Regulations.*** – The Department of Finance, after  
7 consultation with other concerned government agencies, shall, within ninety (90) days  
8 from the effectivity of this Act, promulgate rules and regulations to implement the  
9 intent and provisions of this Act.

10       **SEC. 12. *Repealing Clause.*** – All laws, decrees, executive orders, rules and  
11 regulations, or parts thereof, which are contrary to or inconsistent with this Act are  
12 hereby repealed, amended or modified accordingly.

13       **SEC. 13. *Separability Clause.*** – If any provision of this Act so declared  
14 unconstitutional or invalid, other parts or provisions hereof not affected thereby shall  
15 continue to be in full force and effect.

16       **SEC. 14. *Effectivity.*** – This Act shall take effect fifteen (15) days after its  
17 publication in the *Official Gazette* or in a newspaper of general circulation in the  
18 Philippines.

*Approved,*