EXPLANATORY NOTE

This measure seeks to rationalize and institute a single fiscal regime applicable to all mineral agreements. After a thorough discussions and consultations with all stakeholders in the industry and government agencies in the 17th Congress, the House has passed this bill into 3rd reading. It is the version where both the government can collect more revenues while the mining sector will grow and will be developed.

Executive Order No. 79, issued sometime in 2012, imposed a moratorium on the approval of the new mining permits. Hence, up to present, there are no newly-issued mining permits that have caused failure to attract quality direct investments in the mining industry.

There are about 15 projects in line worth billions of dollars that were on-hold because of the moratorium under E.O. No. 79. These projects are expected to generate more revenue and job opportunities. Some of these are the $US5.9 billion US Tampakan project in South Cotabato; the Mindoro Nickel's project worth $US2.5 billion; Philex Mining Silangan’s project in Surigao del Norte with estimate value of 752 billion for copper and 605 billion for gold; the Nadecor’s Kingking project in Davao del Norte; Davao Oriental’s Asiaticus project; Lepanto Mining’s FSE project in Benguet, and Masbate’s Philsaga Mining contract.

Due to the moratorium, mining merely contributes 1% of the national economy.

TRAIN law under R.A.No. 10963 doubled the excise tax on mining operations to 4% from 2%. Thereafter, industry stakeholders are now clamoring for the lifting of the moratorium but the government must impose a
higher tax rate on mining. It is then imperative to increase the excise tax on mining to finally lift the suspension.

Hence, this bill imposes a one to five percent margin based royalty tax on large-scale mines and a one to ten percent windfall profits tax on income from mining operations. The mining industry would now stand to pay the government 9% in taxes.

Ultimately, this bill aims to strengthen the mining sector so it can again generate multi-billion dollar's worth of investments in many communities that had remained poor and isolated for many years.

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

SHARON S. GARIN
Party-list, AAMBIS-OWA
AN ACT
ESTABLISHING THE FISCAL REGIME FOR THE MINING INDUSTRY

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

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

"CHAPTER VII — [ EXCISE TAX ON MINERAL PRODUCTS ] TAXATION OF MINERAL PRODUCTS."

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

"Sec. 151 TAX ON Mineral Products. —"

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

"SEC. 151-A. ROYALTY. -

A. FOR ALL LARGE-SCALE METALLIC AND NON-METALLIC MINING OPERATIONS OUTSIDE OF MINERAL RESERVATIONS. — MINING CONTRACTORS OF LARGE-SCALE METALLIC AND NON-METALLIC MINING OPERATIONS OUTSIDE OF MINERAL RESERVATIONS SHALL PAY TO THE GOVERNMENT A MARGIN-BASED ROYALTY ON INCOME FROM MINING OPERATIONS IN ACCORDANCE WITH THE FOLLOWING TABLE:
<table>
<thead>
<tr>
<th>MARGIN</th>
<th>ROYALTY</th>
</tr>
</thead>
<tbody>
<tr>
<td>1% UP TO 10%</td>
<td>1.00%</td>
</tr>
<tr>
<td>ABOVE 10% UP TO 20%</td>
<td>1.50%</td>
</tr>
<tr>
<td>ABOVE 20% UP TO 30%</td>
<td>2.00%</td>
</tr>
<tr>
<td>ABOVE 30% UP TO 40%</td>
<td>2.50%</td>
</tr>
<tr>
<td>ABOVE 40% UP TO 50%</td>
<td>3.00%</td>
</tr>
<tr>
<td>ABOVE 50% UP TO 60%</td>
<td>3.50%</td>
</tr>
<tr>
<td>ABOVE 60% UP TO 70%</td>
<td>4.00%</td>
</tr>
<tr>
<td>ABOVE 70%</td>
<td>5.00%</td>
</tr>
</tbody>
</table>

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

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

D. WHEN USED IN THIS SECTION AND IN SECTION 151-B OF THIS CHAPTER –

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

(2) THE TERM 'GROSS OUTPUT' SHALL MEAN THE ACTUAL MARKET VALUE OF MINERALS OR MINERAL PRODUCTS FROM EACH MINE OR MINERAL LAND OPERATED AS A SEPARATE ENTITY, WITHOUT ANY DEDUCTION FOR MINING, PROCESSING, REFINING, TRANSPORTING, HANDLING, MARKETING OR ANY OTHER EXPENSES: PROVIDED, THAT OF THE MINERALS OR MINERAL PRODUCTS SOLD OR CONSIGNED ABROAD BY THE MINING CONTRACTOR UNDER COST, INSURANCE AND FREIGHT (CIF). TERMS, THE ACTUAL COST OF OCEAN FREIGHT AND
INSURANCE SHALL BE DEDUCTED, PROVIDED, FURTHER, THAT
IN THE CASE OF MINERAL CONCENTRATES WHICH ARE NOT
TRADED IN COMMODITY EXCHANGES IN THE PHILIPPINES OR
ABROAD, SUCH AS COPPER CONCENTRATES, THE ACTUAL
MARKET VALUE SHALL BE WORLD PRICE QUOTATIONS OF THE
REFINED MINERAL PRODUCTS CONTENT THEREOF PREVAILING
IN THE SAID COMMODITY EXCHANGES, AFTER DEDUCTING THE
SMELTING, REFINING, TREATMENT, INSURANCE,
TRANSPORTATION AND OTHER CHARGES INCURRED IN THE
PROCESS OF CONVERTING MINERAL CONCENTRATES INTO
REFINED METAL TRADED IN THOSE COMMODITY EXCHANGES.

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

(a) MINING, MILLING, TRANSPORT AND HANDLING EXPENSES
TOGETHER WITH SMELTING AND REFINING COSTS OTHER
THAN SMELTING AND REFINING COSTS PAID TO THIRD
PARTIES;

(b) GENERAL AND ADMINISTRATIVE EXPENSES ACTUALLY
INCURRED BY THE MINING CONTRACTOR IN THE
PHILIPPINES;

(c) ENVIRONMENTAL EXPENSES OF THE MINING CONTRACTOR,
INCLUDING SUCH EXPENSES NECESSARY TO FULLY COMPLY
WITH ITS ENVIRONMENTAL OBLIGATIONS AS STIPULATED IN
THE ENVIRONMENTAL PROTECTION PROVISION OF THE
MINERAL AGREEMENT OR FINANCIAL OR TECHNICAL
ASSISTANCE AGREEMENT AND IN THE APPLICABLE
IMPLEMENTING RULES AND REGULATIONS;

(d) EXPENSES FOR THE DEVELOPMENT OF HOST AND
NEIGHBORING COMMUNITIES AND FOR THE DEVELOPMENT
OF GEOSCIENCES AND MINING TECHNOLOGY, INCLUDING
TRAINING COSTS AND EXPENSES AS STIPULATED IN THE
MINERAL AGREEMENT OR FINANCIAL OR TECHNICAL
ASSISTANCE AGREEMENT AND IN THE APPLICABLE
IMPLEMENTING RULES AND REGULATIONS;

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

(f) CONTINUING EXPLORATION AND DEVELOPMENT EXPENSES
WITHIN THE CONTRACT AREA AFTER THE PRE-OPERATING
PERIOD;
(g) INTEREST EXPENSES CHARGED ON LOANS OR SUCH OTHER FINANCING RELATED EXPENSES INCURRED BY THE MINING CONTRACTOR SUBJECT TO THE FINANCING REQUIREMENT IN THE MINERAL AGREEMENT OR FTAA, WHICH SHALL NOT BE MORE THAN THE PREVAILING INTERNATIONAL RATES CHARGED FOR SIMILAR TYPES OF TRANSACTIONS AT THE TIME THE FINANCING WAS ARRANGED, AND WHERE SUCH LOANS ARE NECESSARY FOR THE OPERATION;

(h) DEPRECIATION, DEPLETION, AND AMORTIZATION;

(i) TAXES, DUTIES, FEES, AND CHARGES.

(j) ALL OTHER COSTS AND EXPENSES RELATED TO MINING OPERATIONS AND SALE OF MINERALS AND MINERAL PRODUCTS.

(4) THE TERM 'MINING CONTRACTOR' SHALL MEAN A QUALIFIED PERSON ACTING ALONE OR IN CONSORTIUM WHO IS A PARTY TO A MINERAL AGREEMENT OR FINANCIAL OR TECHNICAL ASSISTANCE AGREEMENT.

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

"SEC. 151-B. WINDFALL PROFITS TAX -

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

<table>
<thead>
<tr>
<th>MARGIN</th>
<th>RATE</th>
</tr>
</thead>
<tbody>
<tr>
<td>MORE THAN 35% UP TO 40%</td>
<td>1%</td>
</tr>
<tr>
<td>MORE THAN 40% TO 45%</td>
<td>2%</td>
</tr>
<tr>
<td>MORE THAN 45% TO 50%</td>
<td>3%</td>
</tr>
<tr>
<td>MORE THAN 50% TO 55%</td>
<td>4%</td>
</tr>
<tr>
<td>MORE THAN 55% TO 60%</td>
<td>5%</td>
</tr>
<tr>
<td>MORE THAN 60% TO 65%</td>
<td>6%</td>
</tr>
</tbody>
</table>
SEC. 5. Section 34 (B) of Chapter VII, Title II of the National Internal Revenue Code of 1997, as amended, is hereby further amended to read as follows:

"SEC. 34. Deductions from Gross Income. – xxx

(A) Expenses. – xxx

(B) Interest. –

(1) xxx
(2) xxx
(3) xxx
(4) LIMITATION OF INTEREST EXPENSE DEDUCTIONS FOR MINING CONTRACTORS

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

(ii) IF THE DEBT-TO-EQUITY RATIO OF A MINING CONTRACTOR EXCEEDS 3 TO 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.

(iii) WHEN USED IN 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 ‘DEBT’, SHALL MEAN THE GREATEST AMOUNT, AT ANY TIME DURING AN INCOME YEAR, OF THE DEBT OBLIGATIONS OF THE MINING CONTRACTOR ON WHICH INTEREST IS PAYABLE AS DETERMINED ACCORDING TO INTERNATIONAL FINANCIAL REPORTING STANDARDS;

THE TERM ‘DEBT OBLIGATION’ SHALL MEAN AN OBLIGATION TO MAKE A REPAYMENT OF MONEY TO ANOTHER PERSON, INCLUDING AN OBLIGATION ARISING UNDER A PROMISSORY NOTE, BILL OF EXCHANGE, OR BOND, BUT NOT INCLUDING ACCOUNTS PAYABLE OR AN OBLIGATION TO MAKE REPAYMENT OF MONEY IN RESPECT OF WHICH NO INTEREST IS PAYABLE;

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

(C) Taxes. – xxx
(D) Losses. – xxx
(E) Bad Debts. – xxx
(F) Depreciation. – xxx
(G) Depletion of Oil and Gas Wells and Mines. – xxx
(H) Charitable and Other Contributions. – xxx
(I) Research and Development. – xxx
(J) Pension Trusts. – xxx
(K) Additional Requirements for Deductibility of Certain Payments. – xxx
(L) Optional Standard Deduction. – xxx
(M) Premium Payments on Health and/or Hospitalization Insurance of an Individual Taxpayer. – xxx

SEC. 6. Each Mining Operation Treated as a Separate Taxable Entity. – Each 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 a 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 Clauses. - 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) of government, 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 and Financial or Technical Assistance Agreements entered into by the government.

SEC. 9. Vested Rights. - Valid mineral agreements and 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 or 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 Geoscience Bureau (MGB) and may organize themselves into cooperatives in order to qualify for the awarding of a people's small-scale mining contract.

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

For this purpose, a tax identification number shall be secured from the Bureau of Internal Revenue as a requirement for registration.
SEC. 11. Implementing Rules and Regulations. — The Department of Finance, after consultation with other concerned government agencies, shall, within ninety (90) days from the effectivity of this Act, promulgate rules and regulations to implement the intent and provisions of this Act.

SEC. 12. 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.

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

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

Approved,