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SENATE

S.B. No. 2177

RECEIVED

Introduced by SEN. WIN GATCHALIAN

AN ACT
INCREASING THE EXCISE TAX ON TOBACCO PRODUCTS AND
AMENDING FOR THE PURPOSE SECTION 145 OF REPUBLIC ACT NO.
8424, OTHERWISE KNOWN AS THE "TAX REFORM ACT OF 1997", AS
AMENDED BY REPUBLIC ACT NO. 9334 AND REPUBLIC ACT NO.
10351, AND FOR OTHER PURPOSES

EXPLANATORY NOTE

Republic Act No. 10351, otherwise known as "An Act Restructuring the Excise Tax on Alcohol and Tobacco Products", was enacted in 2012 and intended to curb cigarette consumption and raise funds for the Universal Health Care (UHC) programs of the government that meet its Developmental Goals and provide viable alternative livelihood for tobacco farmers.

Data from the Global Adult Tobacco Survey from 2009 to 2015 suggest that the proportion of Filipino smokers relative to the entire population decreased at approximately 5% from 2009 to 2015 – suggesting that the PhP35/pack tobacco excise tax has elicited the desired behavioral change among a significant number of Filipino smokers. However, the same data source shows that the average number of cigarettes consumed per day has increased marginally from the same period (2009 to 2015) where the effect on

the overall average number of cigarette sticks consumed per day actually increased from 10.6 to 11.

Such figures show that while the prevalence of smoking among Filipinos has decreased, the intensity – as shown by the average number of cigarettes consumed per smoker per day – did not. This situation prevailed even if the tax burden on consumers almost doubled during this six-year period.

The failure of the current excise tax to produce a significant drop in daily cigarette consumption shows the inelasticity of demand for cigarettes which can be attributed to two factors: cigarette/tobacco expenditures constitute a small portion of overall household expenditures; and, despite the emergence of E-cigarettes as a substitute, this product is not widely available and affordable, especially to those smokers belonging in the low-income group. It also indicates that the current excise tax of PhP35/pack is not prohibitive enough to reduce the average daily cigarette consumption. Notably, in Southeast Asia, the Philippines lags behind in terms of the average price of cigarettes, needing at least an additional PhP35/per pack to be at par with the average prices in the ASEAN region at PhP114/pack.

This bill seeks to increase the tobacco excise tax to PhP70/pack by 2020 and a 9% annual increase thereafter. Based on relevant economic concepts¹ in taxation, this is the optimal rate that would give the maximum revenue. This proposed rate will:

1. increase the average price of a cigarette pack from PhP79.03 to PhP114.03;
2. increase the tax burden from 44% to 70% of the retail price to conform with World Bank and World Health Organization recommendations;
3. generate an estimated additional revenue of PhP 35B to PhP 45B on the first year, with an additional revenue of PhP 5B to PhP 6B

¹ Pigovian Taxes and Laffer Curve.

annually due to the 9% annual increase in the excise tax on tobacco products;

4. decrease the current number of smokers by an estimate of 1 million;
5. reduce the number of premature deaths of current smokers by half a million;
6. avert approximately 600,000 future smokers from 10.7 million to 10.1 million; and
7. prevent premature deaths of future smokers by 200,000 from 5.3 million to 5.1 million.

Increasing the excise tax on tobacco products will also help finance the funding gap to implement the UHC bill. The Department of Health estimated that PhP 257B is needed to implement the UHC on the first year, with an average additional amount of PhP 90B to PhP 100B per year to sustain the UHC over a period of five years. This legislation will help raise the needed revenues to sustain and enhance the proposed primary care system for Filipinos, while promoting better health and healthier lifestyles.

The passage of this measure is earnestly sought.



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NO. 8424, OTHERWISE KNOWN AS THE "TAX REFORM ACT OF
1997", AS AMENDED BY REPUBLIC ACT NO. 9334 AND REPUBLIC
ACT NO. 10351, AND FOR OTHER PURPOSES

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

1 **SECTION 1.** Section 145 of Republic Act No. 8424, as amended, is
2 hereby further amended to read as follows:

3

4 "SEC. 145. Cigars and Cigarettes. –

5 x x x

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

9

1 EFFECTIVE ON JANUARY 1, 2020, THE TAX SHALL BE
2 SEVENTY PESOS (₱70.00) PER PACK.

3
4 PROVIDED, THAT, ON JANUARY 1, 2021 AND EVERY YEAR
5 THEREAFTER, THE EXCISE TAX RATE PRESCRIBED HEREIN
6 SHALL BE ADJUSTED ANNUALLY BY NINE PERCENT (9%). THIS
7 IS WITHOUT PREJUDICE TO THE PREROGATIVE OF
8 CONGRESS TO INCREASE THE INDEXED RATES IN ORDER TO
9 MEET THE SUMPTUARY GOALS OF THE TAX.

10
11 [“Effective on January 1, 2013, Twelve pesos (P12.00) per pack;
12 “Effective on January 1, 2014, Fifteen pesos (P15.00) per pack;
13 “Effective on January 1, 2015, Eighteen pesos (P18.00) per pack;
14 “Effective on January 1, 2016, Twenty-one pesos (P21.00) per
15 pack; and
16 “Effective on January 1, 2017, Thirty pesos (P30.000) per pack.]

17
18 [“The rates of tax imposed under this subsection shall be
19 increased by four percent (4%) every year effective on January 1,
20 2018, through revenue regulations issued by the Secretary of
21 Finance.]

22
23 (C) Cigarettes Packed by Machine. – There shall be levied,
24 assessed and collected on cigarettes packed by machine a tax at the
25 rates prescribed below:

26
27 EFFECTIVE ON JANUARY 1, 2020, THE TAX SHALL BE
28 SEVENTY PESOS (₱70.00) PER PACK, REGARDLESS OF BRAND
29 OR NET RETAIL PRICE.

1 PROVIDED, THAT, ON JANUARY 1, 2021 AND EVERY YEAR
2 THEREAFTER, THE EXCISE TAX RATE PRESCRIBED HEREIN
3 SHALL BE ADJUSTED ANNUALLY BY NINE PERCENT (9%). THIS
4 IS WITHOUT PREJUDICE TO THE PREROGATIVE OF
5 CONGRESS TO INCREASE THE INDEXED RATES IN ORDER TO
6 MEET THE SUMPTUARY GOALS OF THE TAX.

7
8 ["Effective on January 1, 2013

9 "(1) If the net retail price (excluding the excise tax and the value-
10 added tax) is Eleven pesos and fifty centavos (P11.50) and below
11 per pack, the tax shall be Twelve pesos (P12.00) per pack; and

12 "(2) If the net retail price (excluding the excise tax and the value-
13 added tax) is more than Eleven pesos and fifty centavos (P11.50)
14 per pack, the tax shall be Twenty-five pesos (P25.00) per pack.

15
16 "Effective on January 1, 2014

17 "(1) If the net retail price (excluding the excise tax and the value-
18 added tax) is Eleven pesos and fifty centavos (P11.50) and below
19 per pack, the tax shall be Seventeen pesos (P17.00) per pack; and

20 "(2) If the net retail price (excluding the excise tax and the value-
21 added tax) is more than Eleven pesos and fifty centavos (P11.50)
22 per pack, the tax shall be Twenty-seven pesos (P27.00) per pack.

23 "Effective on January 1, 2015

24 "(1) If the net retail price (excluding the excise tax and the value-
25 added tax) is Eleven pesos and fifty centavos (P11.50) and below
26 per pack, the tax shall be Twenty-one pesos (P21.00) per pack;
27 and

1 “(2) If the net retail price (excluding the excise tax and the value-
2 added tax) is more than Eleven pesos and fifty centavos (P11.50)
3 per pack, the tax shall be Twenty-eight pesos (P28.00) per pack.
4

5 “Effective on January 1, 2016

6 “(1) If the net retail price (excluding the excise tax and the value-
7 added tax) is Eleven pesos and fifty centavos (P11.50) and below
8 per pack, the tax shall be Twenty-five pesos (P25.00) per pack;
9 and

10 “(2) If the net retail price (excluding the excise tax and the value-
11 added tax) is more than Eleven pesos and fifty centavos (P11.50)
12 per pack, the tax shall be Twenty-nine pesos (P29.00) per pack.
13

14 “Effective on January 1, 2017, the tax on all cigarettes packed by
15 machine shall be Thirty pesos (P30.00) per pack.
16

17 “The rates of tax imposed under this subsection shall be
18 increased by four percent (4%) every year thereafter effective on
19 January 1, 2018, through revenue regulations issued by the
20 Secretary of Finance.
21

22 “Duly registered cigarettes packed by machine shall only be
23 packed in twenties and other packaging combinations of not more
24 than twenty.

25 “Understatement of the suggested net retail price by as much as
26 fifteen percent (15%) of the actual net retail price shall render the
27 manufacturer or importer liable for additional excise tax
28 equivalent to the tax due and difference between the understated
29 suggested net retail price and the actual net retail price.

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“Cigarettes introduced in the domestic market after the effectivity of this Act shall be initially tax classified according to their suggested net retail prices.

“Suggested net retail price’ shall mean the net retail price at which locally manufactured or imported cigarettes are intended by the manufacturer or importer to be sold on retail in major supermarkets or retail outlets in Metro Manila for those marketed nationwide, and in other regions, for those with regional markets. At the end of three (3) months from the product launch, the Bureau of Internal Revenue shall validate the suggested net retail as defined herein and initially determine the correct tax bracket under which a newly introduced cigarette shall be classified. After the end of nine (9) months from such validation, the Bureau of Internal Revenue shall revalidate the initially validated net retail price against the net retail price as of the time of revalidation in order to finally determine the correct tax bracket under which a newly introduced cigarette shall be classified.

“Net retail price’ shall mean the price at which the cigarette is sold on retail in at least five (5) major supermarkets in Metro Manila (for brands of cigarettes marketed nationally), excluding the amount intended to cover the applicable excise tax and the value-added tax. For cigarettes which are marketed only outside Metro Manila, the ‘net retail price’ shall mean the price at which the cigarette is sold in at least five (5) major supermarkets in the region excluding the amount intended to cover the applicable excise tax and the value-added tax.

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“Major supermarkets, as contemplated under this Act, shall be those with the highest annual gross sales in Metro Manila or the region, as the case may be, as determined by the National Statistics Office, and shall exclude retail outlets or kiosks, convenience or sari-sari stores, and others of a similar nature: *Provided*, That no two (2) supermarkets in the list to be surveyed are affiliated and/or branches of each other: *Provided, finally*, That in case a particular cigarette is not sold in major supermarkets, the price survey can be conducted in retail outlets where said cigarette is sold in Metro Manila or the region, as the case may be, upon the determination of the Commissioner of Internal Revenue.

“The net retail price shall be determined by the Bureau of Internal Revenue through a price survey under oath.

“The methodology and all pertinent documents used in the conduct of the latest price survey shall be submitted to the Congressional Oversight Committee on the Comprehensive Tax Reform Program created under Republic Act No. 8240.

“The proper tax classification of cigarettes, whether registered before or after the effectivity of this Act, shall be determined every two (2) years from the date of effectivity of this Act.

“All cigarettes existing in the market at the time of the effectivity of this Act shall be classified according to the net retail prices and

1 the tax rates provided above based on the latest price survey of
2 cigarettes conducted by the Bureau of Internal Revenue.

3
4 “The methodology and all pertinent documents used in the
5 conduct of the latest price survey shall be submitted to the
6 Congressional Oversight Committee on the Comprehensive Tax
7 Reform Program created under Republic Act No. 8240.

8
9 “No tobacco products manufactured in the Philippines and
10 produced for export shall be removed from their place of
11 manufacture or exported without posting of an export bond
12 equivalent to the amount of the excise tax due thereon if sold
13 domestically: Provided, however, That tobacco products for
14 export may be transferred from the place of manufacture to a
15 bonded facility, upon posting of a transfer bond, prior to export.

16
17 “Tobacco products imported into the Philippines and destined for
18 foreign countries shall not be allowed entry without posting a
19 bond equivalent to the amount of customs duty, excise and value-
20 added taxes due thereon if sold domestically.

21
22 “Of the total volume of cigarettes sold in the country, any
23 manufacturer and/or seller of tobacco products must procure at
24 least fifteen percent (15%) of its tobacco leaf raw material
25 requirements from locally grown sources, subject to adjustments
26 based on international treaty commitments.

27
28 “Manufacturers and importers of cigars and cigarettes shall,
29 within thirty (30) days from the effectivity of this Act and within

1 the first five (5) days of every month thereafter, submit to the
2 Commissioner a sworn statement of the volume of sales for cigars
3 and/or cigarettes sold for the three-month period immediately
4 preceding.

5
6 “Any manufacturer or importer who, in violation of this Section,
7 misdeclares or misrepresents in his or its sworn statement herein
8 required any pertinent data or information shall, upon final
9 findings by the Commissioner that the violation was committed,
10 be penalized by a summary cancellation or withdrawal of his or
11 its permit to engage in business as manufacturer or importer of
12 cigars or cigarettes.

13
14 “Any corporation, association or partnership liable for any of the
15 acts or omissions in violation of this Section shall be fined treble
16 the aggregate amount of deficiency taxes, surcharges and interest
17 which may be assessed pursuant to this Section.

18
19 “Any person liable for any of the acts or omissions prohibited
20 under this Section shall be criminally liable and penalized under
21 Section 254 of this Code. Any person who willfully aids or abets
22 in the commission of any such act or omission shall be criminally
23 liable in the same manner as the principal.

24 “If the offender is not a citizen of the Philippines, he shall be
25 deported immediately after serving the sentence, without further
26 proceedings for deportation.]

27
28 DULY REGISTERED OR EXISTING BRANDS OF CIGARETTES
29 OR NEW BRANDS THEREOF SHALL ONLY BE PACKED IN

1 TWENTIES AND OTHER PACKAGING COMBINATIONS OF NOT
2 MORE THAN TWENTY.

3
4 VARIANTS OF EXISTING BRANDS AND VARIANTS OF NEW
5 BRANDS OF CIGARETTES WHICH ARE INTRODUCED IN THE
6 DOMESTIC MARKET AFTER THE EFFECTIVITY OF THIS ACT
7 SHALL BE TAXED AT THE SAME RATE AS SUCH EXISTING AND
8 NEW BRANDS.

9
10 A 'VARIANT OF A BRAND' SHALL REFER TO A BRAND ON
11 WHICH A MODIFIER IS PREFIXED AND/OR SUFFIXED TO THE
12 ROOT NAME OF THE BRAND.

13
14 'NEW BRAND' SHALL MEAN A BRAND REGISTERED AFTER
15 THE DATE OF THE EFFECTIVITY OF THIS ACT.

16
17 ANY DOWNWARD RECLASSIFICATION OF PRESENT
18 CATEGORIES, FOR TAX PURPOSES, OF EXISTING BRANDS OF
19 CIGARS AND CIGARETTES DULY REGISTERED AT THE TIME
20 OF THE EFFECTIVITY OF THIS ACT WHICH WILL REDUCE THE
21 TAX IMPOSED HEREIN, OR THE PAYMENT THEREOF, SHALL
22 BE PROHIBITED.

23
24 'NET RETAIL PRICE' SHALL MEAN THE PRICE AT WHICH THE
25 CIGARETTE IS SOLD ON RETAIL IN AT LEAST FIVE (5) MAJOR
26 SUPERMARKETS IN METRO MANILA (FOR BRANDS OF
27 CIGARETTES MARKETED NATIONALLY), EXCLUDING THE
28 AMOUNT INTENDED TO COVER THE APPLICABLE EXCISE TAX
29 AND THE VALUE-ADDED TAX. FOR CIGARETTES WHICH ARE

1 MARKETED ONLY OUTSIDE METRO MANILA, THE 'NET RETAIL
2 PRICE' SHALL MEAN THE PRICE AT WHICH THE CIGARETTE IS
3 SOLD IN AT LEAST FIVE (5) MAJOR SUPERMARKETS IN THE
4 REGION EXCLUDING THE AMOUNT INTENDED TO COVER THE
5 APPLICABLE EXCISE TAX AND THE VALUE-ADDED TAX.

6
7 NO TOBACCO PRODUCTS MANUFACTURED IN THE
8 PHILIPPINES AND PRODUCED FOR EXPORT SHALL BE
9 REMOVED FROM THEIR PLACE OF MANUFACTURE OR
10 EXPORTED WITHOUT POSTING OF AN EXPORT BOND
11 EQUIVALENT TO THE AMOUNT OF THE EXCISE TAX DUE
12 THEREON IF SOLD DOMESTICALLY: PROVIDED, HOWEVER,
13 THAT TOBACCO PRODUCTS FOR EXPORT MAY BE
14 TRANSFERRED FROM THE PLACE OF MANUFACTURE TO A
15 BONDED FACILITY, UPON POSTING OF A TRANSFER BOND,
16 PRIOR TO EXPORT.

17
18 TOBACCO PRODUCTS IMPORTED INTO THE PHILIPPINES AND
19 DESTINED FOR FOREIGN COUNTRIES SHALL NOT BE
20 ALLOWED ENTRY WITHOUT POSTING A BOND EQUIVALENT
21 TO THE AMOUNT OF CUSTOMS DUTY, EXCISE AND VALUE-
22 ADDED TAXES DUE THEREON IF SOLD DOMESTICALLY.

23
24 OF THE TOTAL VOLUME OF CIGARETTES SOLD IN THE
25 COUNTRY, ANY MANUFACTURER AND/OR SELLER OF
26 TOBACCO PRODUCTS MUST PROCURE AT LEAST FIFTEEN
27 PERCENT (15%) OF ITS TOBACCO LEAF RAW MATERIAL
28 REQUIREMENTS FROM LOCALLY GROWN SOURCES,

1 SUBJECT TO ADJUSTMENTS BASED ON INTERNATIONAL
2 TREATY COMMITMENTS.

3
4 MANUFACTURERS AND IMPORTERS OF CIGARS AND
5 CIGARETTES SHALL, WITHIN THIRTY (30) DAYS FROM THE
6 EFFECTIVITY OF THIS ACT AND WITHIN THE FIRST FIVE (5)
7 DAYS OF EVERY MONTH THEREAFTER, SUBMIT TO THE
8 COMMISSIONER A SWORN STATEMENT OF THE VOLUME OF
9 SALES FOR CIGARS AND/OR CIGARETTES SOLD FOR THE
10 THREE-MONTH PERIOD IMMEDIATELY PRECEDING.

11
12 ANY MANUFACTURER OR IMPORTER WHO, IN VIOLATION OF
13 THIS SECTION, MISDECLARES OR MISREPRESENTS IN HIS OR
14 ITS SWORN STATEMENT HEREIN REQUIRED ANY PERTINENT
15 DATA OR INFORMATION SHALL, UPON FINAL FINDINGS BY
16 THE COMMISSIONER THAT THE VIOLATION WAS COMMITTED,
17 BE PENALIZED BY A SUMMARY CANCELLATION OR
18 WITHDRAWAL OF HIS OR ITS PERMIT TO ENGAGE IN
19 BUSINESS AS MANUFACTURER OR IMPORTER OF CIGARS OR
20 CIGARETTES.

21
22 ANY CORPORATION, ASSOCIATION OR PARTNERSHIP LIABLE
23 FOR ANY OF THE ACTS OR OMISSIONS IN VIOLATION OF THIS
24 SECTION SHALL BE FINED TREBLE THE AGGREGATE
25 AMOUNT OF DEFICIENCY TAXES, SURCHARGES AND
26 INTEREST WHICH MAY BE ASSESSED PURSUANT TO THIS
27 SECTION.

1 ANY PERSON LIABLE FOR ANY OF THE ACTS OR OMISSIONS
2 PROHIBITED UNDER THIS SECTION SHALL BE CRIMINALLY
3 LIABLE AND PENALIZED UNDER SECTION 254 OF THIS CODE.
4 ANY PERSON WHO WILLFULLY AIDS OR ABETS IN THE
5 COMMISSION OF ANY SUCH ACT OR OMISSION SHALL BE
6 CRIMINALLY LIABLE IN THE SAME MANNER AS THE
7 PRINCIPAL.

8
9 IF THE OFFENDER IS NOT A CITIZEN OF THE PHILIPPINES, HE
10 SHALL BE DEPORTED IMMEDIATELY AFTER SERVING THE
11 SENTENCE, WITHOUT FURTHER PROCEEDINGS FOR
12 DEPORTATION.

13
14 **SEC. 2. Implementing Rules and Regulations.** – Within sixty
15 (60) days from the effectivity of this Act, the Secretary of Finance shall,
16 upon recommendation of the Commissioner of Internal Revenue,
17 promulgate the rules and regulations, as well as issuances, necessary
18 to ensure the proper implementation of the provisions of this Act. These
19 implementing rules and regulations shall take effect fifteen (15) days
20 after its publication in any newspaper of general circulation.

21
22 **SEC. 3. Separability Clause.** – Should any provision herein be
23 subsequently declared invalid or unconstitutional, the same shall not
24 affect the validity or the legality of the other provisions not so declared.

25
26 **SEC. 4. Repealing Clause.** – All laws, presidential decrees,
27 executive orders, rules and regulations, and other issuances, or parts
28 thereof, which are inconsistent with the provisions of this Act, are
29 hereby repealed and modified accordingly.

1 **SEC. 5. Effectivity.** – This Act shall take effect fifteen (15) days
2 after its publication in the Official Gazette or in a newspaper of general
3 circulation.

4

5 Approved,