

[BIR REVENUE REGULATIONS NO. 7-2008, March 25, 2008]

TAXATION ON THE SALE TO THE BANGKO SENTRAL NG PILIPINAS OF GOLD AND OTHER METALLIC MINERAL PRODUCTS EXTRACTED OR PRODUCED BY SMALL-SCALE MINERS, AND FURTHER AMENDING SECTION 2.57.2 (T) OF REVENUE REGULATIONS NO. 2-98, AS AMENDED

SECTION 1. Scope. - Pursuant to Sees. 244 and 245 of the National Internal Rev-Code, as amended, in relation to Sees. 57 to 59 and 151(A)(3)(b) thereof, these regulations are hereby promulgated to implement Section 13(d) of Republic Act (RA) No. 7076 otherwise known as the People's Small-Scale Mining Act of 1991 and shall cover I transactions between small-scale miners and Bangko Sentral ng Pilipinas (BSP). These regulations further amend Section 2.57.2(T) of Revenue Regulations (Rev. Regs.) No 2-98, as amended by Rev. Regs. No. 17-2003.

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SECTION 2. Background. - In 1980's, the advent of inflation, volatile commodity prices, increases of oil and fuel prices, stringent environmental control measures and high cost of capital caused economic pain for even the large operators in the mineral industry. During that time, small-scale mining has significantly contributed to the mineral industry and national economy with the gold rush in Davao and the sporadic panning activities that followed in thirty seven (37) other provinces. Production from small-scale and panning activities was higher than that of primary and secondary producers while 500 miners and their households were directly benefited.

This ensued the promulgation of Presidential Decree (PD) No. 1899 on January 23, 1984, purposely, to promote small-scale mining in view of its capacity to generate income for the rural poor.

On June 17, 1991, to further develop, protect and rationalize small-scale mining activities, RA No. 7076 (also known as the People's Small-Scale Mining Act of 1991) was passed into law. The law was principally intended to generate more employment opportunities in small- scale mining, and to bring about equitable sharing of wealth and natural resources of the country through the implementation of People's Small-Scale Mining Program.

Small-scale mining, like large mining operations, is part of the mineral industry which is expected to extract resources in an environmentally acceptable manner as it continuously contributes to the national economy in spite of the difficulties it faces in addressing environmental issues. Community and government pressures and environmental issues such as rehabilitation tend to be viewed as costs which impact unfairly on the economics of the operation. Many small to medium mines are having difficulty surviving in this economic climate.

RA No. 7076 has relatively addressed this issue through the establishment of People's Small-Scale Mining Program.^[1] The Program is designed to achieve an orderly, systematic and rational scheme for the small-scale development and utilization of mineral resources in certain mineral areas in order to address the social, economic, technical and environmental problems connected with small-scale mining activities.

The implementation of these small-scale mining laws have provided a means of livelihood to subsistence miners. They eased the unemployment situation in the country alleviating the living conditions in the rural areas where the active mining area is continuously or geologically located. However, small to medium mining operations have and are continuously facing a number of challenges in addition to those faced by large operations in achieving acceptable environmental performance.

RA No. 7076 also identifies suitable land for prospecting and mining activities.^[2] however, proscribes declaration of ancestral land as a people's small scale mining area without the prior consent of the cultural communities concerned.^[3]

SECTION 3. Small-scale Mining. -

a) Definition.

Section 1 of PD1899, as amended by RA No. 7076 defines "Small-scale mining" as any single unit mining operation having an annual production of not more than 50,000 metric tons of ore and satisfying the following requisites:

1. The working is artisanal, either open cast or shallow underground mining, without use of sophisticated mining equipment;
2. Minimal investment on infrastructures and processing plant;
3. Heavy reliance on manual labor; and
4. Owned,, managed or controlled by an individual or entity qualified under existing mining laws, rules and regulations. Notwithstanding the foregoing, mining activities which rely heavily on manual labor using simple implements and do not use explosives or heavy mining equipment are considered small scale mining.

b) Qualification under the Program -

RA No. 7076 requires person/s undertaking small scale mining activities to register with the Board and may organize themselves into a cooperative in order to qualify for the awarding of people's small scale mining contract^[4]

The law defines small miners as Filipino citizens who, individually or in tandem with others, voluntarily form a cooperative, duly licensed by the Department of