

I Mina'trentai Sais Na Liheslaturan Guåhan
BILL STATUS

BILL NO.	SPONSOR	TITLE	DATE INTRODUCED	DATE REFERRED	CMTE REFERRED	PUBLIC HEARING DATE	DATE COMMITTEE REPORT FILED	FISCAL NOTES	NOTES
53-36 (COR)	Joe S. San Agustin Tina Rose Muña Barnes	AN ACT TO <i>ADD</i> A NEW ARTICLE 7 TO CHAPTER 26, TITLE 11, GUAM CODE ANNOTATED, RELATIVE TO IMPOSING A GENERAL SALES TAX IN GUAM; AND TO <i>AMEND</i> § 26202 OF ARTICLE 2, CHAPTER 26, TITLE 11, GUAM CODE ANNOTATED, RELATIVE TO DECREASING THE BUSINESS PRIVILEGE TAX FROM FIVE PERCENT (5%) TO THREE PERCENT (3%).	2/2/21 3:41 p.m.						

I MINA'TRENTAI SAIS NA LIHESLATURAN GUÅHAN
2021 (FIRST) Regular Session

Bill No. 53-36 (COR)

Introduced by:

Joe S. San Agustin 
Tina Rose Muña Barnes 

AN ACT TO ADD A NEW ARTICLE 7 TO CHAPTER 26, TITLE 11, GUAM CODE ANNOTATED, RELATIVE TO IMPOSING A GENERAL SALES TAX IN GUAM; AND TO AMEND § 26202 OF ARTICLE 2, CHAPTER 26, TITLE 11, GUAM CODE ANNOTATED, RELATIVE TO DECREASING THE BUSINESS PRIVILEGE TAX FROM FIVE PERCENT (5%) TO THREE PERCENT (3%).

BE IT ENACTED BY THE PEOPLE OF GUAM:

Section 1. A new Article 7 is *added* to Chapter 26 of Title 11, Guam Code Annotated, to read:

“ARTICLE 7

GENERAL SALES TAX

§ 26701. Levy.

§ 26702. Definitions.

§ 26703. Administration.

§ 26704. Electronic Filing.

§ 26701. Levy.

There is hereby levied and *shall* be assessed and collected a general sales tax on tangible personal property and any service business, excluding banking and lending services, foreign currency services, and insurance services, at the rate of

1 two percent (2%). Provided however, that this Section *shall not* apply to the
2 purchase of liquid or diesel fuel sold at sales outlets located in Guam.

3 **§ 26702. Definitions.**

4 (a) *Department* means the Department of Revenue and Taxation.

5 (b) *Tangible personal property* means any corporeal personal
6 property of any nature.

7 (c) *General sales tax* means a tax assessed on the purchaser of goods
8 and services, purchased on Guam or purchased outside of Guam for delivery
9 to Guam, which are subject to the levy in § 26701 of this Article, and the
10 purchaser is not specifically exempted.

11 **§ 26703. Administration.**

12 The Department of Revenue and Taxation *shall* be responsible for the
13 administration of this Article.

14 **§ 26704. Electronic Filing.**

15 The Department of Revenue and Taxation *shall* provide for the
16 electronic filing of monthly returns by taxpayers against whom a tax is levied
17 under the provisions of this Article, commencing with returns submitted after
18 the month of September 2021; provided, however, that such provision *shall*
19 *not* prohibit taxpayers under this Article from opting to file non-electronic
20 returns.”

21 **Section 2.** § 26110(a) of Article 1, Chapter 26, Title 11, Guam Code
22 Annotated, is *amended* to read as follows:

23 “Monthly Returns for Alcoholic Beverage Tax, Liquid Fuel Tax,
24 Automotive Surcharges, Tobacco Tax, and General Sales Tax. Each taxpayer
25 against whom a tax is levied by the provisions of Articles 3, 4, 5, 6, and 7 of
26 this Chapter *shall* make and file monthly returns of taxes with the Tax
27 Commissioner on or before the twentieth (20th) day following the close of the

1 calendar month in which the taxes shall accrue, and in the form and in
2 accordance with the rules and regulations by the Tax Commissioner. Except
3 as may be specifically hereinafter provided, payment covering the full amount
4 of tax liability as evidenced by the monthly return *shall* accompany such
5 monthly return.”

6 **Section 3. Approval of Voters Not Required.** Notwithstanding 3 GCA §§
7 16311 and 16312, the imposition of the general sales tax authorized by this Act *shall*
8 *not* be subject to the approval of, or placed before, the voters of Guam.

9 **Section 4.** § 26202 of Article 2, Chapter 26, Title 11, Guam Code
10 Annotated, is hereby *amended* to read as follows:

11 **“§ 26202. Rates.**

12 The following rates *shall* apply in computing, assessing and collecting
13 the business privilege tax:

14 (a) Tax on the business of selling tangible personal property. Upon
15 every person engaging or continuing within Guam in the business of selling
16 any tangible property whatsoever (not including however, bonds or other
17 evidence of indebtedness or stocks), there *shall* be a tax equivalent to ~~five~~three
18 percent (~~5~~3%) of gross proceeds of sales; except that on the gross proceeds of
19 the operation of poker machines, there shall be a tax equivalent to eight
20 percent (8%) on the gross proceeds of each machine, as determined by
21 subtracting the winnings, pay-outs and malfunction refunds from total receipts
22 of each machine.

23 (1) Provided, that gross proceeds of export sales of tangible
24 property in foreign commerce *shall not* constitute a part of the measure
25 of the tax imposed. Although not constituting a part of the measure of
26 the tax imposed, all such sales *shall* be reported in the manner provided
27 for the reporting of the tax imposed by § 26202(a).

1 (2) Provided, that any person engaging or continuing in
2 business as a retailer and a wholesaler *shall* pay the tax required solely
3 on the gross proceeds of sales of the retail business, and his books must
4 be kept so as to show separately the gross proceeds of sale of each
5 business.

6 (3) Provided, that a manufacturer or producer engaging in the
7 business of selling his manufactured products at retail in Guam *shall* be
8 required to make returns of the gross proceeds of such retail sales and
9 pay the tax imposed by this Chapter for the privilege of engaging in the
10 business of selling such products at retail in Guam; and

11 (4) Provided, that a manufacturer or producer, other than a
12 manufacturer of alcoholic beverages, engaging in the business of
13 selling his products to manufacturers, wholesalers, or licensed retailers,
14 or persons actually selling the products to the United States
15 Government, *shall not* be required to pay the tax imposed in this Act
16 for the privilege of selling such products at wholesale. Nor shall any
17 such manufacturer or producer, other than a manufacturer of alcoholic
18 beverages, be required to pay the tax imposed in this Act for the
19 privilege of selling products for delivery to the purchaser outside of
20 Guam. The point of delivery for a purchaser outside of Guam may be
21 on Guam, if the product's ultimate destination or consumption is
22 outside of Guam.

23 (b) (1) [Repealed.]

24 (2) [Repealed.]

25 (3) Tax upon boxing. The tax levied and assessed under
26 Subsections (b)(1) and (b)(2) (repealed) of this Section *shall not* apply

1 to boxing for which a tax equivalent to twelve percent (12%) of the
2 gross income of such boxing business is hereby levied and assessed.

3 (c) Tax on service business. Upon every person engaging or
4 continuing within Guam, in any service business or calling not otherwise
5 specifically taxed under this Section, [there shall be] a tax equivalent to
6 ~~five~~three percent (~~5~~3%) of the gross income of such business.

7 (d) Professions. Upon every person engaging or continuing within
8 Guam in the practice of a profession, excluding those expounding the religious
9 doctrines of any church, [there shall be] a tax equivalent to ~~five~~three percent
10 (~~5~~3%) of the gross income of such practice

11 (e) Tax on Contractors. There *shall* be levied, assessed and collected
12 a tax rate of ~~five~~three percent (~~5~~3%) measured against the gross income of any
13 contractor; provided, that there *shall* be deducted from the gross income of the
14 taxpayer so much thereof as has been included in the gross income earned
15 from another taxpayer who is a contractor as defined in § 26101(b) and who
16 has already paid the tax levied under this Subsection for goods and services
17 that include the deductible gross income of the taxpayer who is a contractor;
18 provided, that any person claiming a deduction under this Subsection *shall* be
19 required to show in the person's return either the name and the contractor's
20 license number issued by the Guam Contractors License Board, or the Guam
21 business license number, or the registration number for a professional
22 engineer, architect or land surveyor, or the Certificate of Authorization (COA)
23 number for a business authorized to provide engineering, architecture or land
24 surveying services by the Guam Board of Registration for Professional
25 Engineers, Architects, and Land Surveyors of the person paying the tax on the
26 amount deducted by the person.

1 (f) Tax on banks, banking institutions, small lenders and building
2 and loan associations. Upon every person engaging or continuing within
3 Guam in the business of operating any bank, banking institutions, building and
4 loan association, small lending business, or lending institutions, there *shall* be
5 a tax equivalent to ~~five~~three percent (3%) of the net income received from
6 business.

7 (1) Net Income. For the purpose of this Section, net income
8 *shall* mean the gross income of such taxpayer received from all sources
9 less the following deductions therefrom:

10 (A) Salaries or bonuses paid and other compensation
11 from personal services.

12 (B) Interest or discount paid.

13 (C) Rents paid.

14 (D) Ordinary operating expenses such as supplies,
15 utility services, insurance premiums other than for life insurance,
16 provided that any deductible insurance expense *shall* be
17 allowable only to the extent that such a premium is applicable to
18 the tax period against which it is claimed.

19 (E) Loans or obligations charged off the books of the
20 bank as losses unless charged against reserves then in existence.

21 (F) Losses other than loan losses, such as those
22 occasioned by fire or other casualty, theft, embezzlement, and the
23 like, but only to the extent not covered by insurance proceeds
24 collected.

25 (G) Transfers from earnings to reserve for bad debts or
26 other contingencies provided for.

1 (H) Miscellaneous direct expenses such as legal,
2 advertising, auditing, and the like.

3 (I) Loss on property sold and depreciation on property
4 owned.

5 (2) A person liable for the payment of taxes levied under this
6 Section *shall* be required to file an annual return and *shall not* be
7 required to file monthly returns. The tax year *shall* be calendar year
8 except that the taxpayer may use his annual accounting period when
9 prior permission is obtained from the Tax Commissioner. The annual
10 return under this Subsection *shall* be filed not later than ninety (90)
11 days following the close of the taxpayer's tax year.

12 (g) Dealing in foreign currency. Upon every person engaging or
13 continuing within Guam in the business of purchasing and selling foreign
14 money, there *shall* be a tax equivalent to ~~five~~three percent (3%) of the gross
15 profit of such business represented by the difference between the cost and
16 selling price of the foreign currency measured in United States dollars.

17 (h) Tax on other business. Upon every person engaging or
18 continuing within Guam in any business, trade, activity, occupation or calling
19 not specifically included in any other provision of this Article, there *shall*
20 likewise be a tax equivalent to ~~five~~three percent (3%) of the gross income
21 of such business. This Section *shall* apply to the gross income of persons
22 taxable under other provisions of this Chapter but which gross income is not
23 derived from the exercise or privilege taxable thereunder.

24 (i) Insurers. Upon every person engaged or continuing within
25 Guam in the business of an insurer, there *shall* be a tax at the rate of ~~five~~three
26 percent (3%) of gross income received as premium for the writing of
27 insurance, less returned premiums and less all commissions attributable to

1 the sale and purchase of an insurance policy or policies of the insurer paid by
2 said insurer to agents of the same, and ~~five~~three percent (53%) of any other
3 gross income earned or derived on Guam.

4 (j) Tour Agencies.

5 (1) Upon every person engaging or continuing within Guam in
6 the business of a tour agency or travel agency, where tourism-related
7 services are furnished to consumers by independent vendors through
8 arrangements made by a travel agency, or tour packager, and the gross
9 income is divided between the provider of the services on the one hand
10 and the travel agency or tour packager on the other hand, a tax
11 equivalent to ~~five~~three percent (53%) *shall* be imposed on each person
12 with respect to such person's respective portion of the proceeds, and
13 no more.

14 (2) Where transient accommodations are furnished through
15 arrangements made by a travel agency or tour packager, the gross
16 income is divided between the provider of the transient
17 accommodations on the one hand and the travel agency, or tour
18 packager, on the other hand, a tax equivalent to ~~five~~three percent (53%)
19 *shall* be imposed on each person with respect to such person's
20 respective portion of the proceeds, and no more.

21 (A) As used in this Subsection, tourism-related services *shall*
22 mean dinner cruises, transportation included in a tour package, sight
23 seeing tours, dinner shows, extravaganzas, cultural and educational
24 facilities, and other services rendered directly to the customer or
25 tourist.

1 (B) As used in this Subsection ‘transient accommodations’
2 *shall* mean hotel, lodging facility, or similar facility located on Guam
3 and subject to the provisions of 11 GCA § 30101.”

4 **Section 5. Exemption to the General Sales Tax.**

5 (a) The implementation of the general sales tax, effective upon
6 enactment of this Act, *shall not* apply to income generated from the following
7 contracts:

8 (1) contracts entered into or awarded prior to enactment of this
9 Act, which were based upon bid awards made prior to passage of this
10 Act and that cannot be amended or renegotiated to accommodate the
11 business privilege tax increase and the general sales tax; and

12 (2) contracts entered into or awarded after enactment of this
13 Act, which were based upon bids or proposals submitted prior to
14 enactment of this Act and that cannot be amended or renegotiated to
15 accommodate the business privilege tax increase and the general sales
16 tax.

17 (b) For purposes of this Section, each taxpayer claiming an
18 exemption under this Section *shall* provide to the Department of Revenue and
19 Taxation a copy of its bid contract or award under which any claimed exempt
20 income was generated and *shall* segregate in their tax filings, relative to the
21 business privilege tax increase and the general sales tax, said exempt income
22 from any other income generated by the taxpayer.

23 (c) The Director of the Department of Revenue and Taxation *shall*
24 create an affidavit form to be completed and submitted concurrently with
25 monthly tax filings by businesses or individuals claiming an exemption from
26 the business privilege tax increase and the general sales tax that took effect
27 upon enactment as provided for in this Act. Said affidavit *shall* request from

1 the filing entity, properly licensed to conduct business in Guam, all relevant
2 information necessary to properly execute the law as provided in this Act.

3 **Section 6. Other Exemptions from General Sales Tax.** Exemptions to
4 this provision *shall* include:

5 (1) Purchases of eligible foods via the Supplemental Nutrition
6 Assistance Program (SNAP), formerly known as the “Food Stamp
7 Program” and *shall* be defined as “eligible foods” in 7 CFR § 271.2;
8 and

9 (2) Purchases of all food commodities, to include ready-to-eat
10 and made-to-order food products.

11 **Section 7. General Sales Tax Visible as a Receipt Line Item.** For a
12 business responsible for collecting the general sales tax established in § 26701 of
13 Article 7, Chapter 26, Title 11, Guam Code Annotated, at the point of sale the general
14 sales tax *shall* be illustrated as a receipt line item.

15 **Section 8. Effective Date of General Sales Tax.** The general sales tax
16 provisions of this Act *shall* be effective on October 1, 2021.

17 **Section 9. Effective Date.** This Act shall be effective upon enactment
18 unless otherwise prescribed.

19 **Section 10. Severability.** If any provision of this Act or its application to
20 any person or circumstance is found to be invalid, or contrary to law, such invalidity
21 *shall not* affect other provisions or applications of this Act that can be given effect
22 without the invalid provision or application, and to this end the provisions of this
23 Act are severable.