

**MINA' TRENTAI TRES NA LIHESLATURAN GUAHAN**  
**2016 (SECOND) Regular Session**

Bill No. 282-33 (COR)

Introduced by:

D.G. RODRIGUEZ, JR. 

**AN ACT TO ADD A NEW § 71114 TO CHAPTER 71 OF  
DIVISION 3, TITLE 11, GUAM CODE ANNOTATED, TO  
ESTABLISH A WITHHOLDING ASSESSMENT FEE FOR A  
NON-RESIDENT PERSON TO CAPTURE THE FOUR  
PERCENT (4%) EQUIVALENT OF THE BUSINESS  
PRIVILEGE TAX, ON CONTRACTS AWARDED BY THE  
GOVERNMENT OF GUAM FOR PROFESSIONAL  
SERVICES.**

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1        **Section 1. Legislative Finding and Intent.** Tens of millions of dollars in  
2 government of Guam contracts are annually awarded to persons without a valid  
3 Guam Business License, for professional services to be provided by a non-resident  
4 person residing outside of Guam. *I Liheslaturan Guåhan* finds that these off-island  
5 offerors competing for the contract award have a four percent (4%) competitive  
6 advantage over Guam businesses in that they are not subject to the four percent  
7 (4%) Business Privilege Tax, as are Guam-based domestic businesses.

8        *I Liheslaturan Guåhan* finds it to be in the public interest to *level-the-*  
9 *playing-field* for the highly capable domestic Guam businesses desiring to have a  
10 fair feasible opportunity to compete for these professional services contracts.

11        It is the intent of *I Liheslaturan Guåhan* to assess the equivalent of the  
12 Guam Business Privilege Tax by providing for a withholding assessment fee for a  
13 non-resident person without a valid Guam Business License residing outside of  
14 Guam, which shall be equal to four percent (4%) of the total dollar value of a

1 contract awarded, for all government of Guam contracts for professional services,  
2 as a cost of doing business with the government of Guam.

3 **Section 2.** A new § 71114 is *added* to Chapter 71 of Division 3, Title 11,  
4 Guam Code Annotated, to read:

5 **“§ 71114. Withholding assessment fee requirement for government**  
6 **contracts; off-island businesses without Guam Business License.**

7 (a) For the purposes of this Section, the following shall mean:

8 (1) *‘Non-resident person’* means a person or body who is not  
9 permanently resident in Guam, or a business that does not possess a valid  
10 Guam business license under Title 11, Guam Code Annotated, and does not  
11 pay Business Privilege Taxes under Chapter 26 of Title 11, Guam Code  
12 Annotated, and includes any individual, firm, co-partnership, joint venture,  
13 association, corporation, estate, trust, limited liability company, limited  
14 partnership, limited liability partnership, or any other group or combination,  
15 as a foreign entity outside the Territory of Guam, acting as a unit.

16 (2) *‘Professional Services’* or *‘services’* means any kind of services  
17 rendered by a non-resident person and includes, but is not limited to, legal,  
18 promotional, advertising, public awareness, architectural and engineering, or  
19 other services deemed applicable in the opinion of the Director of the  
20 Department of Revenue and Taxation.

21 (b) There is established a withholding assessment fee for a non-resident  
22 person without a valid Guam Business License, which *shall* be equal to four  
23 percent (4%) of the total dollar value of a contract awarded for all government of  
24 Guam contracts for professional services provided by a non-resident person  
25 residing outside of Guam, as a cost of doing business with the government of  
26 Guam.

1           This Section *shall* apply as a mandatory requirement of a government of  
2 Guam contract being awarded to provide professional services required by any  
3 government of Guam agency, to include all autonomous agencies.

4           All agencies, to include autonomous agencies, of the government of Guam  
5 shall ensure that all Requests for Proposals (RFP), Invitation for Bid (IFB), or any  
6 other form of solicitation for professionals services, *shall* include the notification  
7 to potential offerors that the award and issuance of a contract to provide the  
8 professional services is subject to the withholding assessment fee for contracts  
9 awarded to persons without a valid Guam Business License.

10           The agency awarding the contract or the agency's representative awarding  
11 the contract *shall*, at the time of a contract award, in the instance of a contract for  
12 professional services to a person who does not possess a valid Guam business  
13 license under Title 11, Guam Code Annotated, and who is not a resident of Guam,  
14 deduct from funds allocated for the contract an amount equal to four percent (4%)  
15 of the total dollar value of a contract awarded and shall transmit the funds to the  
16 Treasurer of Guam for deposit in the General Fund. The amount of the  
17 withholding assessment fee withheld pursuant to this section shall be duly noted in  
18 the payment statements to the contractor. The agency shall report to the  
19 Department of Revenue and Taxation (DRT), on forms prescribed by the  
20 department, the amount of the withholding assessment fee withheld or any other  
21 information requested by DRT on the prescribed form, from the awarded  
22 professional services contract within thirty days of the contract being awarded."

23           (c) Prospective Applicability. The withholding assessment fee pursuant to  
24 this Section for a non-resident person without a valid Guam Business License shall  
25 not be applicable to any contract for professional services entered into with the  
26 government of Guam prior to the effective date of this Act, provided however, it

1 shall be applicable for the award of a new contract or contract renewal for the  
2 contractual provision of the same or similar services.

3 (d) Withholding assessment fee collected declared government of Guam  
4 Funds. The withholding assessment fee levied, assessed and collected under this  
5 Chapter shall become funds of the government of Guam from the moment of  
6 collection and shall be subject to all laws, rules and regulations pertaining thereto,  
7 and unless specifically provided by law, all such withholding assessment fees  
8 collected shall be deposited into the Treasury of Guam as part of the General Fund.

9 **Section 3. Severability.** If any provision of this Act or its application to  
10 any person or circumstance is found to be invalid or contrary to law, such  
11 invalidity shall not affect other provisions or applications of this Act which can be  
12 given effect without the invalid provisions or application, and to this end the  
13 provisions of this Act are severable.

14 **Section 4. Effective Date.** This Act shall be effective immediately upon  
15 enactment.