

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

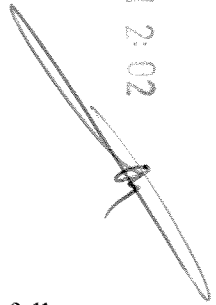
Bill No. 390-33 (COPY)

Introduced by:

Brant T. McCreadie 

**AN ACT TO (1) AMEND SUBSECTIONS (a) AND (j) OF §1512.3 OF ARTICLE 5, CHAPTER 1, TITLE 5, GUAM CODE ANNOTATED, RELATIVE TO AUTHORIZING ADDITIONAL SERIES OF BUSINESS PRIVILEGE TAX BONDS TO FINANCE PAYMENT OF INCOME TAX REFUNDS, AND (2) AMEND SUBSECTION (d)(2) OF §1512.3 OF ARTICLE 5, CHAPTER 1, TITLE 5, GUAM CODE ANNOTATED, RELATIVE TO IMPLEMENTATION OF A STATUTORY LIEN FOR CURRENT OUTSTANDING AND FUTURE BONDS ISSUED PURSUANT TO THE CURRENT BUSINESS PRIVILEGE TAX INDENTURE, AND RELATED MATTERS.**

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1 BE IT ENACTED BY THE PEOPLE OF GUAM:

2       **Section 1. Legislative Findings and Intent:** *I Liheslaturan Guåhan* finds as follows  
3 that: (a) Public Laws 31-76 and 31-196 previously amended § 1512.3(a) of Article 5, Chapter 1,  
4 Title 5, Guam Code Annotated to authorize the issuance of bonds to pay income tax refunds lawfully  
5 due and payable to the citizens and taxpayers of Guam, some of which refunds were five or more  
6 years past due; (b) bonds were issued as a result of Public Laws 31-76 and 31-196 to pay for, among  
7 other uses, income tax refunds; (c) as a result of a ruling on January 30, 2013 by the United States  
8 District Court for the District of Guam (“District Court”) in the case of *Paeste, et al. vs. Government*  
9 *of Guam*, the Government of Guam is required to pay Status A income tax claims within six months  
10 of the filing of the respective tax returns; (d) the Government of Guam has been complying with the  
11 District Court order, sometimes to the financial detriment of other Government of Guam operations;

1 (e) interest due on unpaid income tax returns further compounds the stress on the Government of  
2 Guam's finances; (f) income tax refunds are the property of income taxpayers of Guam and it is in  
3 the interest of Guam's taxpayers and their dependents, as well as to the Government of Guam itself,  
4 to pay income tax refunds timely; (g) previous attempts to pass a law compelling pre-funding of  
5 income tax refunds have failed, and the passage of such a law would aid in keeping the Government  
6 of Guam current on its income tax refunds; and (h) a borrowing of up to \$100 million of net  
7 proceeds to fund an Income Tax Payment Reserve Fund for income tax refunds would enable the  
8 Government of Guam to become and stay current on income tax refunds.

9 In addition, *I Liheslaturan Guåhan* finds that the action of the President on June 30, 2016, in  
10 which he signed into law the Puerto Rico Oversight, Management, and Economic Stability Act  
11 ("PROMESA"), has created concern as to Guam's financial position in the bond market. Despite its  
12 name, PROMESA mentions all United States territories, as well as Puerto Rico. PROMESA defines  
13 a "territory" as (A) Puerto Rico, (B) Guam, (C) American Samoa, (D) the Commonwealth of the  
14 Northern Mariana Islands, and (E) the United States Virgin Islands. Although the government of  
15 Guam believes that further act of Congress would be required beyond PROMESA for Guam to avail  
16 itself of the protection of bankruptcy, the existence has been a source of investor concern.

17 *I Liheslaturan Guåhan* finds that despite current statutes, no assurance can be given,  
18 however, particularly in light of the current status of United States territories under the United States  
19 Constitution, that these statutory provisions would not be found to be preempted by PROMESA, that  
20 the United States Congress would not in the future enact legislation that overrides these statutory  
21 provisions, or that a future Guam Legislature would not attempt (perhaps successfully) to repeal or  
22 modify these provisions.

1           It is therefore necessary to clearly disclose to our investors the commitment to pay all  
2 outstanding debt by adding a statutory lien on the current outstanding Business Privilege Tax (BPT)  
3 Bonds. A statutory lien, according to the federal bankruptcy code, can only be created under  
4 specific statutes that specifies the circumstances and conditions of the lien. Such liens are important  
5 to investors because they allow lien revenues, in this case the BPT revenues, to continue to be  
6 collected even after the filing of a bankruptcy petition or reorganization, such as what is authorized  
7 by PROMESA.

8           **Section 2. Authorization of Additional Business Privilege Tax Bonds to Pay Tax**  
9 **Refunds.**

10           § 1512.3(a) of Article 5, Chapter 1, Title 5, Guam Code Annotated is hereby *amended* to read  
11 as follows:

12           “(a) **Authorization of Issuance of Bonds.** *I Maga'lahañ Guåhan* is authorized to  
13 issue ~~four (4)~~ five (5) series of bonds of the government of Guam, as provided in this  
14 Section, in an aggregate principal amount *not to exceed* ~~Three Hundred Forty Three Million~~  
15 ~~Seven Hundred Thousand Dollars (\$343,700,000)~~ Four Hundred Forty-Three Million Seven  
16 Hundred Thousand Dollars (\$443,700,000) plus such principal amount as may be necessary  
17 for the purposes of the refunding of Government of Guam General Obligation Bonds, 1993  
18 Series A, as provided in and subject to the conditions of paragraph (3) of this subsection (a),  
19 and plus such principal amount as may be necessary for the purposes of the refunding of  
20 Government of Guam General Obligation Bonds, 2007 Series A and Government of Guam  
21 General Obligation Bonds, 2009 Series A, as provided in and subject to the conditions of  
22 paragraph (4) of this subsection (a), to provide the following:

23           (1) For the first bond series, in the following order of priority:

1 (A) up to One Hundred Ninety-Eight Million Dollars (\$198,000,000) for  
2 payment of unpaid income tax refunds plus interest to include for 2010 and prior;

3 (i) Set-aside for Tax Refunds for Humanitarian Purposes. Of the total  
4 amount of proceeds available to issue tax refund payments, the sum of Twenty  
5 Million Dollars (\$20,000,000) *shall* be set aside and appropriated to the  
6 Department of Revenue and Taxation for the purpose of paying tax refunds  
7 for humanitarian purposes. The provisions of this Section *shall* supplement  
8 other guiding provisions of law regarding the processing of emergency tax  
9 refund payments. Requests submitted for the following humanitarian  
10 purposes *shall* qualify to be processed from this Twenty Million Dollars  
11 (\$20,000,000) set-aside:

12 (aa) off-island medical treatment, inclusive of the need to purchase  
13 medication; or death of a family member, within two (2) degrees of  
14 consanguinity;

15 (bb) delinquent billing payments owed to the Guam Power  
16 Authority, the Guam Waterworks Authority, the Guam Housing and Urban  
17 Renewal Authority, and the Judiciary of Guam, which have become  
18 delinquent due to financial hardships;

19 (cc) delinquent loan payments owed to the Guam Housing and  
20 Urban Renewal Authority, which have become delinquent due to financial  
21 hardships; and

22 (dd) delinquent loan payments owed to legally qualified and  
23 licensed lenders, which have become delinquent due to financial hardships.

1 For the purposes of this Section, a request for tax refunds *shall* be submitted  
2 by the taxpayer to the Director of Revenue and Taxation. All such requests  
3 are subject to the review and approval of the Director.

4 (ii) Twenty Million Dollars (\$20,000,000) for the payment of cost of  
5 living allowance to certain retired government of Guam employees pursuant  
6 to the case known as *Rios v. Camacho*;

7 (iii) Twenty-Six Million Four Hundred Thousand Dollars (\$26,400,000)  
8 for payments owed to the Government of Guam Retirement Fund for the  
9 Guam Department of Education and the Guam Memorial Hospital Authority  
10 principal and interest pursuant to Public Law 28-38, as amended by Public  
11 Law 31-74; and

12 (iv) if no alternate source of funding is available, for the payment of health  
13 insurance premiums for Fiscal Year 2012.

14 (2) For the second bond series:

15 (A) no less than Twenty-Five Million One Hundred Thousand  
16 Dollars (\$25,100,000) for payments owed to the Government of Guam  
17 Retirement Fund for the Guam Department of Education, the Guam Memorial  
18 Hospital Authority, and the *Health Insurance Bailout Agreement of FY2011*  
19 principal and interest pursuant to Public Law 28-38, as amended by Public  
20 Law 31-74, such that the sums owed to the GGRF by the government of  
21 Guam pursuant to Public Law 2838, as amended, *shall* be extinguished in its  
22 entirety;

1 (B) the remaining balance of bond proceeds such that the debt to  
2 the GGRF identified in §1512.3(a)(2)(A) of Article 5, Chapter 1, Title 5,  
3 Guam Code Annotated is paid, *shall* be used, in any amount, for any of the  
4 following:

5 (i) the design, construction, re-construction, rehabilitation, maintenance,  
6 renovation of government of Guam or Guam Department of Education-owned  
7 school facilities, and/or procurement and preventive maintenance of school  
8 buses. A “School Facility” *shall* mean school campus facilities including any  
9 structure or structures, together with all ancillary facilities, including parking  
10 facilities, utilities, infrastructure and equipment associated with providing the  
11 educational or related services required by the Guam Department of Education  
12 and may include an existing school facility being rehabilitated; and/or

13 (ii) the payment of unpaid income tax refunds for tax year 2011; and/or

14 (iii) if no alternate source of funding is available, the payment of health  
15 insurance premiums for Fiscal Year 2012;

16 (3) For the third bond series, to fund an escrow to pay principal, interest and  
17 redemption price of Government of Guam General Obligation Bonds, 1993 Series A  
18 and to pay expenses relating to the authorization, sale and issuance of the bonds,  
19 including, without limitation, printing costs, costs of reproducing documents, credit  
20 enhancement fees, underwriting, legal, feasibility, financial advisory and accounting  
21 fees and charges, fees paid to banks *or* other financial institutions providing credit  
22 enhancement, costs of credit ratings and other costs, charges and fees in connection  
23 with the issuance, sale and delivery of the bonds; *provided, however*, that bonds may

1 not be issued for this purpose unless (a) all obligation of the government to pay debt  
2 service on, and the redemption price of, the bonds being refunded shall be discharged  
3 concurrently with the issuance of the refunding bonds, (b) thereafter, the refunded  
4 bonds shall be payable solely from and secured solely by the escrow established for  
5 such purpose, (c) the present value of debt service on the refunding bonds shall be at  
6 least two percent (2%) less than the present value of debt service on the bonds being  
7 refunded, inclusive of all fees, for bond counsel and bond underwriters and other  
8 costs of issuance, and (d) the issuance of the refunding bonds shall not result in any  
9 increase in the aggregate amount of the governments outstanding “public  
10 indebtedness” as that term is used in 48 USC 1423a (§11 of the Organic Act of  
11 Guam).

12 (4) For the fourth bond series, to fund an escrow or otherwise to pay  
13 principal, interest and redemption price of all or a portion of the Government of  
14 Guam General Obligation Bonds, 2007 Series A and the Government of Guam  
15 General Obligation Bonds, 2009 Series A, to capitalize interest on the refunding  
16 Business Privilege Tax Bonds in an amount to ensure the General Fund is made  
17 whole in the current or following fiscal year due to timing of debt service  
18 requirements but in an amount not to exceed 1% of refunding proceeds, and to pay  
19 expenses relating to the authorization, sale and issuance of the bonds, including  
20 without limitation, printing costs, costs of reproducing documents, credit  
21 enhancement fees, underwriting, legal, feasibility, financial advisory and accounting  
22 fees and charges, fees paid to banks *or* other financial institutions providing credit  
23 enhancement, costs of credit ratings and other costs, charges and fees in connection

1 with the issuance, sale and delivery of the bonds; *provided, however*, that bonds may  
2 not be issued for this purpose unless (a) all obligation of the government to pay debt  
3 service on, and the redemption price of, the bonds being refunded shall be discharged  
4 concurrently with the issuance of the refunding bonds, (b) thereafter, the refunded  
5 bonds shall be payable solely from and secured solely by the escrow established for  
6 such purpose, and (c) the present value of debt service on the refunding bonds shall  
7 be at least two percent (2%) less than the present value of debt service on the bonds  
8 being refunded, inclusive of all fees, for bond counsel and bond underwriters and  
9 other costs of issuance.

10 (5) For the fifth bond series, the amount of bonds necessary (i) to fund up  
11 to one hundred million dollars (\$100,000,000) for the payment of income tax refunds  
12 plus interest thereon, as well as to fund an Income Tax Payment Reserve Fund, and  
13 (ii) to pay expenses relating to the authorization, sale and issuance of the bonds,  
14 including without limitation, printing costs, costs of reproducing documents, credit  
15 enhancement fees, underwriting, legal, feasibility, financial advisory and accounting  
16 fees and charges, fees paid to banks or other financial institutions providing credit  
17 enhancement, costs of credit ratings and other costs, charges and fees in connection  
18 with the issuance, sale and delivery of the bonds.

19 ~~(5)~~ (6) For the first and second bond series, such amount as may be needed to  
20 capitalize and pay from bond proceeds interest on the bonds due, accruing or required  
21 to be set aside in Fiscal Years 2012 and 2013; and

22 ~~(6)~~ (7) expenses incurred in connection with the issuance of such bonds not  
23 already included in an existing appropriation for or the regular budget of any



1 government agency or instrumentality or public corporation providing any service in  
2 connection with the issuance of such bonds; *provided, however*, that bonds may not  
3 be issued in an amount that would cause a violation of the debt limitation provisions  
4 of 48 USC 1423a (§11 of the Organic Act of Guam).

5 ~~(7) I Maga'lahren Guåhan shall utilize the 2011 Real Property Tax~~  
6 ~~Assessment Roll as certified by the Board of Equalization in accordance~~  
7 ~~with § 24518 of Chapter 24, Title 11, Guam Code Annotated, in calculating~~  
8 ~~the amount available for future debt obligation under the Debt Limit~~  
9 ~~(Ceiling) for the bond issuance authorized in this Subsection."~~

10 **Section 3. Terms and Conditions of Bonds.**

11 § 1512.3(b) of Article 5, Chapter 1, Title 5, Guam Code Annotated is hereby amended to  
12 read as follows:

13 “(b) **Terms and Conditions Determined by Certificate or Indenture.** The terms and  
14 conditions of the bonds shall be as approved by *I Liheslaturan Guåhan*, and as determined by *I*  
15 *Maga'lahren Guåhan* by the execution of a certificate or indenture authorizing the issuance of the  
16 bonds, prior to the issuance of the bonds; *provided, however*, that such terms and conditions shall be  
17 consistent with this Section, that the first and second series of the bonds shall mature *not* later than  
18 thirty-five (35) years after their date of issuance, shall bear interest at such rates and be sold for such  
19 price or prices as shall result in a yield to the bondholders that does not exceed six and one half  
20 percent (6.5%) per annum, shall require interest only payments for Fiscal Years 2012, 2013 and  
21 2014 and shall not require bond principal payments until after such Fiscal Years, that the third series  
22 of the bonds shall mature not later than December 31, 2018, and shall bear interest at such rates and  
23 be sold for such price or prices as shall result in the present value of debt service on the third series

1 of the bonds being at least two percent (2%) less than the present value of debt service on the bonds  
2 being refunded, using the yield on the third series of the bonds as the discount rate, ~~and~~ that the  
3 fourth series of the bonds shall mature not later than November 15, 2039, shall not be used to fund  
4 any new money projects and shall bear interest at such rates and be sold for such price or prices as  
5 shall result in the present value of debt service on the fourth series of the bonds being at least two  
6 percent (2%) less than the present value of debt service on the bonds being refunded, using the yield  
7 on the fourth series of the bonds as the discount rate, and that the fifth series of the bonds shall  
8 mature not later than thirty-one (31) years after their date of issuance and shall bear interest at such  
9 rates and be sold for such price or prices as shall result in a yield to the bondholders that does not  
10 exceed [five percent (5.0%)] per annum. In addition, the fifth series of the bonds may be comprised  
11 of one or more series or sub-series of tax-exempt or taxable bonds.

12 **Section 4. Authorization of Use of Proceeds.**

13 A new subparagraph (5) is hereby added to § 1512.3(j) of Article 5, Chapter 1, Title 5, Guam  
14 Code Annotated, as follows:

15 “(5) The proceeds from the sale of the fifth bond series *shall* be used and are hereby  
16 appropriated to (i) pay income tax refunds plus interest thereon and to fund an Income Tax Payment  
17 Reserve Fund, and (ii) pay expenses relating to the authorization, sale and issuance of the bonds  
18 including, without limitation, printing costs, costs of reproducing documents, credit enhancement  
19 fees, underwriting, legal, feasibility, financial advisory and accounting fees and charges, fees paid to  
20 banks *or* other financial institutions providing credit enhancement, costs of credit ratings and other  
21 costs, charges and fees in connection with the issuance, sale and delivery of the bonds.”

22 **Section 5. Authorization of Statutory Lien with Respect to Current and Future**  
23 **Business Privilege Tax Bonds Issued under the Current Indenture.**

1           § 1512.3(d)(2) of Article 5, Chapter 1, Title 5, Guam Code Annotated is hereby *amended in*  
2 *its entirety* to read as follows:

3           (2) Pledge of Business Privilege Tax Revenues. All bonds authorized by Subsection  
4 1512.3 (a) of Article 5, Chapter 1, Title 5, Guam Code Annotated, as may be amended from  
5 to time (“BPT Bonds”), shall be secured by a statutory lien on all tax revenues derived from  
6 the levy of the first three (3) percentage points, out of the total number of percentage points  
7 levied from time to time, of the business privilege tax levied pursuant to Article 2 of Chapter  
8 26 of Title 11, Guam Code Annotated, or any successor thereto (“Pledged business privilege  
9 tax revenues”). This lien shall arise automatically without the need for any action or  
10 authorization by *I Maga’lahen Guåhan*, the government of Guam, or any other person or  
11 entity. Such lien shall be valid and binding from the time such BPT Bonds are issued. The  
12 Pledged business privilege tax revenues shall immediately be subject to such lien, and the  
13 lien shall automatically attach to the Pledged business privilege tax revenues and be  
14 effective, binding, and enforceable against *I Maga’lahen Guåhan*, the government of Guam,  
15 their successors, assignees, and creditors, and all others asserting rights therein, irrespective  
16 of whether those parties have notice of the lien and without the need for any physical  
17 delivery, recordation, filing, or further act. All Pledged business privilege tax revenues  
18 received by the government of Guam or by any trustee, depository or custodian shall be  
19 deposited in a separate account entitled the “RAF Revenue Fund.” Pledged business  
20 privilege tax revenues that are not required to make payments on the BPT Bonds shall  
21 automatically, and without the need for any further action, be released from such lien and  
22 shall be available for appropriation for any other lawful purpose of the government. The

1 statutory lien described in this paragraph shall not be subject to Division 9 of Title 13 of the  
2 Guam Code Annotated or any successor statute.

3 In addition to the statutory lien provided for above, all or any part of the Pledged  
4 business privilege tax revenues may be pledged, if and to the extent determined by *I*  
5 *Maga'lahaen Guåhan*, to secure the payment of any BPT Bonds issued pursuant to that certain  
6 Indenture, dated as of December 1, 2011, by and among the government of Guam, Bank of  
7 Guam, as trustee, and U.S. Bank National Association, as co-trustee, as amended or  
8 supplemented from time to time in accordance with its terms (the "BPT Indenture"). Any  
9 such pledge shall be valid and binding against all parties in accordance with its terms and  
10 have priority against all parties in accordance with its terms from the time the pledge is  
11 made, and property so pledged shall immediately be subject to the lien of the pledge without  
12 the need for physical delivery, recordation, filing, or other further act. The pledge shall not be  
13 subject to Division 9 of Title 13 of the Guam Code Annotated or any successor statute. The  
14 BPT Indenture by which such pledge is created need not be recorded, and shall direct the  
15 distribution and disbursement of revenues from the RAF Revenue Fund following their  
16 deposit therein. All such taxes to the extent so pledged are hereby continuously appropriated  
17 for such purpose. So long as any bonds issued pursuant to the BPT Indenture, including but  
18 not limited to those authorized under § 1512.3(a), Title 5, Guam Code Annotated, as may be  
19 amended from time to time, remain outstanding, the government of Guam may not reduce the  
20 rate of levy and collection of the pledged business privilege tax below three percent (3%),  
21 nor may the government of Guam reduce the services, products or activities to which the  
22 pledged business privilege tax applies, nor may the government of Guam upwardly adjust  
23 any exception or exclusion to, or otherwise impair, the pledged business privilege tax.

1           **Severability.** If a provision of this act or its application to any person or  
2           circumstance is held invalid, the invalidity does not affect other provisions or applications of  
3           the act that can be given effect without the invalid provision or application, and to this end  
4           the provisions of this act are severable.