

I Mina'Trentai Kuáttro Na Liheslaturan
BILL STATUS


BILL NO.	SPONSOR	TITLE	DATE INTRODUCED	DATE REFERRED	CMTE REFERRED	PUBLIC HEARING DATE	DATE COMMITTEE REPORT FILED	FISCAL NOTES	NOTES
142-34 (COR)	Committee on Rules By request of I Maga'låhen Guåhan, the Governor of Guam, in accordance with the Organic Act of Guam	AN ACT TO AMEND § 26202 OF CHAPTER 26, DIVISION 2, TITLE 11, GUAM CODE ANNOTATED, AND RELATED MATTERS.	7/10/17 10:58 a.m.						

I MINA'TRENTAI KUATTRO NA LIHESLATURAN GUÅHAN

2017 (FIRST) Regular Session

Bill No. 42-34 (COR)

Introduced by:


Committee on Rules

By request of *I Maga'låhen Guåhan*, the Governor of Guam, in accordance with the Organic Act of Guam.

**AN ACT TO AMEND § 26202 OF CHAPTER 26,
DIVISION 2, TITLE 11, GUAM CODE
ANNOTATED, AND RELATED MATTERS.**

BE IT ENACTED BY THE PEOPLE OF GUAM:

Section 1. Amendment of § 26202 of Chapter 26, Division 2, Title 11, Guam Code Annotated and Related Matters.

(a) § 26202 of Chapter 26, Division 2, Title 11, Guam Code Annotated is hereby amended as follows:

“§ 26202. Rates.

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

(a) Tax on the business of selling tangible personal property.

Upon every person engaging or continuing within Guam in the business of selling any tangible property whatsoever (not including however, bonds or other evidence of indebtedness or stocks), there shall be a tax equivalent to ~~four percent (4%)~~ four and three quarters percent (4.75%) of gross proceeds of sales; except that on the gross proceeds of the

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1 operation of poker machines, there shall be a tax equivalent to eight
2 percent (8%) on the gross proceeds of each machine, as determined by
3 subtracting the winnings, pay-outs and malfunction refunds from total
4 receipts of each machine.

5 (1) Provided, that gross proceeds of export sales of
6 tangible property in foreign commerce shall not constitute a part
7 of the measure of the tax imposed. Although not constituting a
8 part of the measure of the tax imposed, all such sales shall be
9 reported in the manner provided for the reporting of the tax
10 imposed by § 26202(a).

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

16 (3) Provided, that a manufacturer or producer engaging
17 in the business of selling his manufactured products at retail in
18 Guam shall be required to make returns of the gross proceeds of
19 such retail sales and pay the tax imposed by this Chapter for the
20 privilege of engaging in the business of selling such products at
21 retail in the territory of Guam; and

22 (4) Provided, that a manufacturer or producer, other
23 than a manufacturer of alcoholic beverages, engaging in the
24 business of selling his products to manufacturers, wholesalers, or
25 licensed retailers, or persons actually selling the products to the
26 United States Government, shall not be required to pay the tax
27 imposed in this Act for the privilege of selling such products at

1 wholesale. Nor shall any such manufacturer or producer, other
2 than a manufacturer of alcoholic beverages, be required to pay
3 the tax imposed in this Act for the privilege of selling products
4 for delivery to the purchaser outside of Guam. The point of
5 delivery for a purchaser outside of Guam may be on Guam, if the
6 product's ultimate destination or consumption is outside of
7 Guam.

8 (b) (1) [Repealed.]

9 (2) [Repealed.]

10 (3) Tax upon boxing. The tax levied and assessed under
11 Subsections (b)(1) and (b)(2) (repealed) of this Section shall not
12 apply to boxing for which a tax equivalent to twelve percent
13 (12%) of the gross income of such boxing business is hereby
14 levied and assessed.

15 (c) Tax on service business. Upon every person engaging or
16 continuing within Guam, in any service business or calling not
17 otherwise specifically taxed under this Section, [there shall be] a tax
18 equivalent to ~~four percent (4%)~~ four and three quarters percent (4.75%)
19 of the gross income of such business.

20 (d) Professions. Upon every person engaging or continuing
21 within Guam in the practice of a profession, excluding those
22 expounding the religious doctrines of any church, [there shall be] a tax
23 equivalent to ~~four percent (4%)~~ four and three quarters percent (4.75%)
24 of the gross income of such practice. ["There shall be" added by editor,
25 1970 Ed. of the Government Code]

26 (e) Tax on Contractors. There shall be levied, assessed and
27 collected a tax rate of ~~four percent (4%)~~ four and three quarters percent

1 (4.75%) measured against the gross income of any contractor;
2 provided, that there shall be deducted from the gross income of the
3 taxpayer so much thereof as has been included in the gross income
4 earned from another taxpayer who is a contractor as defined in §
5 26101(b) and who has already paid the tax levied under this Subsection
6 for goods and services that include the deductible gross income of the
7 taxpayer who is a contractor; provided, that any person claiming a
8 deduction under this Subsection shall be required to show in the
9 person's return either the name and the contractor's license number
10 issued by the Guam Contractors License Board, or the Guam business
11 license number, or the registration number for a professional engineer,
12 architect or land surveyor, or the Certificate of Authorization (COA)
13 number for a business authorized to provide engineering, architecture
14 or land surveying services by the Guam Board of Registration for
15 Professional Engineers, Architects, and Land Surveyors of the person
16 paying the tax on the amount deducted by the person.

17 (f) Tax on banks, banking institutions, small lenders and
18 building and loan associations. Upon every person engaging or
19 continuing within Guam in the business of operating any bank, banking
20 institutions, building and loan association, small lending business, or
21 lending institutions, there shall be a tax equivalent to ~~four percent (4%)~~
22 four and three quarters percent (4.75%) of the net income received from
23 business.

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

1 (A) Salaries or bonuses paid and other compensation
2 from personal services.

3 (B) Interest or discount paid.

4 (C) Rents paid.

5 (D) Ordinary operating expenses such as supplies,
6 utility services, insurance premiums other than for life insurance,
7 provided that any deductible insurance expense shall be
8 allowable only to the extent that such a premium is applicable to
9 the tax period against which it is claimed.

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

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

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

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

20 (I) Loss on property sold and depreciation on property
21 owned.

22 (2) A person liable for the payment of taxes levied under this
23 Section shall be required to file an annual return, and shall not be
24 required to file monthly returns. The tax year shall be calendar year
25 except that the taxpayer may use his annual accounting period when
26 prior permission is obtained from the Tax Commissioner. The annual

1 return under this Subsection shall be filed not later than ninety (90)
2 days following the close of the taxpayer's tax year.

3 (g) Dealing in foreign currency. Upon every person engaging or
4 continuing within Guam in the business of purchasing and selling
5 foreign money, there shall be a tax equivalent to ~~four percent (4%)~~ four
6 and three quarters percent (4.75%) of the gross profit of such business
7 represented by the difference between the cost and selling price of the
8 foreign currency measured in United States dollars.

9 (h) Tax on other business. Upon every person engaging or
10 continuing within Guam in any business, trade, activity, occupation or
11 calling not specifically included in any other provision of this Article,
12 there shall likewise be a tax equivalent to ~~four percent (4%)~~ four and
13 three quarters percent (4.75%) of the gross income of such business.
14 This Section shall apply to the gross income of persons taxable under
15 other provisions of this Chapter but which gross income is not derived
16 from the exercise or privilege taxable thereunder.

17 (i) Insurers. Upon every person engaged or continuing within
18 Guam in the business of an insurer, there shall be a tax at the rate of ~~four~~
19 ~~percent (4%)~~ four and three quarters percent (4.75%) of gross income
20 received as premium for the writing of insurance, less returned
21 premiums and less all commissions attributable to the sale and purchase
22 of an insurance policy or policies of the insurer paid by said insurer to
23 agents of the same, and ~~four percent (4%)~~ four and three quarters
24 percent (4.75%) of any other gross income earned or derived on Guam.

25 (j) Tour Agencies. Upon every person engaging or
26 continuing within Guam in the business of a tour agency or travel
27 agency, where tourism-related services are furnished to consumers by

1 independent vendors through arrangements made by a travel agency, or
2 tour packager, and the gross income is divided between the provider of
3 the services on the one hand and the travel agency or tour packager on
4 the other hand, a tax equivalent of ~~four percent (4%)~~ four and three
5 quarters percent (4.75%) shall be imposed on each person with respect
6 to such person's respective portion of the proceeds, and no more.

7 Where transient accommodations are furnished through
8 arrangements made by a travel agency or tour packager, the gross
9 income is divided between the provider of the transient
10 accommodations on the one hand and the travel agency, or tour
11 packager, on the other hand, a tax equivalent of ~~four percent (4%)~~ four
12 and three quarters percent (4.75%) shall be imposed on each person
13 with respect to such person's respective portion of the proceeds, and no
14 more.

15 (1) As used in this Subsection tourism-related services
16 shall mean dinner cruises, transportation included in a tour
17 package, sight seeing tours, dinner shows, extravaganzas,
18 cultural and educational facilities, and other services rendered
19 directly to the customer or tourist.

20 (2) As used in this Subsection 'transient
21 accommodations' shall mean hotel, lodging facility, or similar
22 facility located on Guam and subject to the provisions of 11
23 GCA § 30101."

24 (b) The tax increase imposed by subsection 2(a) of this act shall take effect
25 no later than thirty (30) days after enactment.

26 (c) Revenues derived from the increase in the Business Privilege Tax
27 ("BPT") rate set forth in Section 2(a) above shall constitute "Business Privilege Tax

1 Revenues” under that certain Indenture, dated as of December 1, 2011, by and
2 among the government of Guam, Bank of Guam, as trustee, and U.S. Bank National
3 Association, as co-trustee, as amended or supplemented from time to time in
4 accordance with its terms (the “BPT Indenture”). Any revenues derived from the
5 increase of the BPT rate in Subsection 2(a) released to the government of Guam in
6 accordance with Section 5.02(E) of the BPT Indenture, less amounts necessary to
7 pay debt service on bonds authorized in Bill ____-34 (the “2017 Bonds”) in the
8 applicable fiscal year, shall be used first for Guam Memorial Hospital Authority,
9 including, but not limited to, capital investment, operational requirements or
10 reserves. *I Liheslaturan Guåhan* may review the application of revenues from the
11 increase of the BPT rate in Subsection 2(a) towards Guam Memorial Hospital
12 Authority commencing on the date which is ten (10) years following the effective
13 date of such increase referenced in Section 2(b).

14 (d) Neither the 1% of the BPT that is not pledged to the BPT Bonds nor the
15 increase in the BPT set forth in Subsection 2(a) shall apply to income generated from
16 medical and dental clinics.

17 **Section 2.** The requirements imposed by § 16311, Chapter 16 of Title 3,
18 Guam Code Annotated, shall be waived for the purpose of this act.

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