


I MINA'TRENTA NA LIHESLATURAN GUÅHAN
2010 (SECOND) Regular Session

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Bill No. 429-30(COR)

Introduced by:

T.C. Ada 

**AN ACT TO AMMEND §26404 OF CHAPTER 26, TITLE 11
GUAM CODE ANNOTATED TO ELIMINATE THE TAX
EXEMPTION ON LIQUID FUELS TRANSHIPPED
THROUGH GUAM, AND TO CREATE AN
ENVIRONMENTAL RISK MITIGATION FUND.**

1 BE IT ENACTED BY THE PEOPLE OF GUAM:

2 **Section 1. Legislative Findings and Intent.** *I Liheslaturan Guåhan* finds that
3 approximately twenty-eight (28) million gallons of liquid fuel are transferred annually for
4 export from petroleum storage facilities in Guam to distribution points outside of Guam.
5 Fuel to be transhipped is off-loaded at the Port of Guam, stored in the Distributor's
6 storage tanks for a period of time, and later back-loaded onto smaller fuel tankers for
7 distribution throughout the region. It is estimated that elimination of the tax exemption on
8 liquid fuels exported from Guam may generate as much as \$2.6 million annually.

9 *I Liheslatura* further finds that the handling and storage of such large amounts of
10 hazardous material, i.e. liquid fuel, expose Guam's environment to pollution risks.
11 Recent spills in the Gulf of Mexico and along the Great Barrier Reef highlight the
12 significance of such threats. A similar accidental fuel leak, even on a far smaller scale,
13 would pose a substantial and costly impact to our island environment. Spill mitigation
14 costs in our region would be greater, due to the diversity and abundance of our marine
15 ecosystems directly necessitating higher cleanup standards. There is also precedent for

1 such environmental concerns due to spill incidents in Guam, such as the GORCO oil spill
2 of 1980 that severely impacted the Laguas Mangroves, and the more recent violations of
3 the Clean Air Act involving a \$2.4M civil suit filed by the US Environmental Protection
4 Agency against a local liquid fuel distributor for noncompliance of performance and
5 emission standards for hazardous air pollutants at their bulk gasoline terminals. Although
6 Guam's environment bears this risk exposure during the period of transshipment, i.e. off-
7 loading, storage, and back-loading, no fees or taxes are assessed on these exported liquid
8 fuel volumes as just compensation for the exposure to risks associated with these export
9 transfers.

10 *I Liheslatura* recognizes that the island of Guam takes on a significant risk in the
11 transshipment of fuel, and as such, finds it prudent and necessary to remove the fuel tax
12 exemption granted by current law in order to generate revenue to fund environmental
13 protection efforts. It is therefore the intent of *I Liheslatura* to assess a risk mitigation fee
14 on all liquid fuel transferred for export from Guam. The revenue generated from the
15 assessment will be deposited into the Environmental Risk Mitigation Fund, a newly
16 created revolving account separate from the General Fund, to be used by the Guam
17 Environmental Protection Agency (GEPA).

18 **Section 2.** §26404 of Chapter 26 of Title 11 Guam Code Annotated is *amended*
19 to read:

20 **§26404. Exemption from Levy Under §26402 and Special Rule Regarding**
21 **Drawbacks.** The following transfer of liquid fuel in Guam made by a distributor shall be
22 exempt from liquid fuel tax levied under §26402:

1 (a) Liquid fuel transferred to vessels engaged in commercial fishing and to legally
2 recognized nonprofit cooperative associations for their operational use.

3 (b) Liquid fuel transferred to the United States Department of Defense, or any
4 agency or instrumentality thereof for its use or consumption.

5 (c) Liquid fuel transferred for aviation purposes and used solely in aircraft under
6 charter to the United States Department of Defense.

7 (d) Transfer of liquid fuel by a Guam based distributor to another Guam-based
8 distributor.

9 (e) Transfer of liquid fuel to the Government of Guam or any of its
10 instrumentalities.

11 ~~(f) Transfer of liquid fuel to a point outside of Guam.~~

12 ~~(g)~~ (f) Stock losses of less than one half of one percent (.5%) (.005) during the
13 fiscal year of the taxpayer. In computing taxable or non-taxable stock losses, any gross
14 stock gains shall be off-set against any gross stock losses in determining net stock losses
15 for the purposes of assessing the tax.

16 **Section 3.** §26403 of Article 4 of Chapter 26, Title 11 Guam Code Annotated is
17 *amended* to read:

18 **§26403. Rates.** The following rates shall apply in computing, assessing and
19 collecting the liquid fuel tax:

20 (a) A tax at the rate of Ten Cents (\$0.10) per gallon on diesel fuel; and

21 (b) A tax at the rate of Eleven Cents (\$0.11) per gallon on all other liquid fuel as
22 defined herein except liquid fuel used for commercial aviation purposes which is taxed at
23 a rate of Four Cents (\$0.04) per gallon; and

1 (c) A tax on liquid fuel transferred for export at the rate of Seventy-Five percent
2 (75%) of the Guam liquid fuel tax charged in accordance with §26403 (a) and (b).

3 **Section 4.** A new §26409. Creation of the Environmental Risk Mitigation Fund
4 and authorized uses of the Fund is *added* to Chapter 26, Title 11, GCA as follows:

5 (a) Creation of Environmental Risk Mitigation Fund.

6 There is hereby established the Environmental Risk Mitigation Fund, which *shall*
7 be accounted for separately from the General Fund and shall *not* lapse at the end of the
8 fiscal year but *shall* roll-over until used by Guam Environmental Protection Agency
9 (GEPA). Upon an appropriation by *I Liheslaturan Guåhan* and subject to any limitations
10 which may be contained therein, the Administrator *may* make expenditures from this
11 fund for any purpose which is approved by the Board as reasonable and necessary for the
12 proper performance of its duties under this Chapter. Notwithstanding the Central
13 Accounting Act, all fees, reimbursements, assessments, fines, forfeitures, and other funds
14 collected or received pursuant to §26403(c) of Chapter 26, Title 11 Guam Code
15 Annotated, shall be deposited in the Environmental Risk Mitigation Fund. The
16 Environmental Risk Mitigation Fund is not transferable to other programs, departments
17 or agencies outside of GEPA without the prior approval from *I Liheslaturan Guåhan*.
18 This Fund shall be kept in a bank licensed to do business in Guam, and funds shall be
19 paid out only upon a request for payment or requisition submitted by the Administrator.

20 (b) Allowed Uses of Environmental Risk Mitigation Fund.

21 Funds may be expended by GEPA for regulatory and enforcement activities,
22 remedial actions, training, and for public awareness programs related to the protection of
23 Guam's environment, to include but not limited to:

- 1 (1) Oil spill planning, prevention, preparedness, education, research,
2 training, and removal or remediation of hazardous waste; and
- 3 (2) Support for on-island used oil recycling programs;
- 4 (3) Support of environmental protection and natural resource protection
5 programs, including energy conservation and alternative energy incentive programs;
- 6 (4) Hire one (1) Environmental Health Specialist, in support of P.L. 24-
7 304, Solid Waste Management Program, under the Air and Land Division of the
8 Guam Environmental Protection Agency;
- 9 (5) Hire one (1) Revenue Agent, in support of §26407 of Chapter 26, Title
10 11 Guam Code Annotated, Liquid Fuel Monitoring Unit of the Department of
11 Revenue and Taxation; and
- 12 (6) Purchase equipment and supplies for the GEPA Hazardous Waste
13 Management Program under the Air and Land Division.

14 **Section 5.** §26203(k)(21), Article 2, Chapter 26, Title 11 Guam Code Annotated
15 is *amended* as follows:

16 §26203(k)(21). Amounts received from the sale of liquid fuel to vessels
17 engaged in commercial fishing and to legally recognized nonprofit
18 cooperative associations for their operational use.

19 **Section 6.** §26504, Article 4, Chapter 26, Title 11 Guam Code Annotated is
20 *amended* as follows:

21 §26504. Automotive Surcharges. The Automotive Surcharges levied pursuant to
22 §§26502 and 26503 of this Title shall not apply to liquid fuel which is exempt from the
23 liquid fuel tax and to liquid fuels transferred for export from Guam under this Article 4. If

1 any Automotive Surcharges is levied pursuant to §§26501 and 26503 of this Title
2 regarding liquid fuel taxed pursuant to this Article 4, and a drawback of the liquid tax is
3 allowed, there shall be allowed a drawback of such Automotive Surcharges along with
4 the drawback of the liquid fuel tax.

5 **Section 7. Effective Date.** This Act shall become effective thirty (30) days after
6 enactment.

7 **Section 8. Severability.** If any of the provisions of this law or its application to
8 any person or circumstance is found to be invalid or contrary to law, such invalidity shall
9 not affect other provisions or applications of this law which can be given effect without
10 the invalid provisions or application, and to this end the provisions of this law are
11 severable.