

2010 NOV -8 PM 3: 55

I MINA' TRENTA NA LIHESLATURAN GUÅHAN
2010 (SECOND) REGULAR SESSION

Bill No. 491-30 (CAR)

Introduced by:

v.c. pangelinan

AN ACT TO AMEND §26201 AND §26202(e) OF CHAPTER 26 TITLE
11 OF THE GUAM CODE ANNOTATED, RELATIVE TO THE
BUSINESS PRIVILEGE TAX ON CONTRACTORS

BE IT ENACTED BY THE PEOPLE OF GUAM:

1 **SECTION 1. Legislative Statement and Intent.** *I Liheslaturan Guahan*
2 finds that sound fiscal policy rest upon the creation, review, and modification of revenue
3 statutes. As prevailing economic conditions vary over time, a periodic review of existing
4 revenue statutes must be performed to ensure they continue to be relevant, effective, and
5 efficient in meeting the original intended policy goals. In examining the prevailing
6 economic conditions and foreseeing trigger events, *I Liheslaturan Guahan* has
7 determined a review of these statutes is deemed necessary.

8 *I Liheslaturan Guahan* sees the impending expansion of the military footprint
9 qualifies as a trigger event necessitating the review. *I Liheslaturan Guahan* intends that it
10 shall play a constructive role forging partnerships in the military expansion, wherever
11 possible. However, *I Liheslaturan Guahan* also is charged to exercise its authority when
12 necessary to ensure that the interest of the people and the resources of the island are
13 protected.

14 At present, *I Liheslaturan Guahan* has clarified its position in Resolutions 420-30
15 and 444-30 in response to the military expansion and its economic impact to Guam. The
16 tax collection estimates provided in the assessments by the Department of Defense

1 (DoD) resulting from the military expansion do not account for the Department of
2 Revenue and Taxation’s (DRT) difficulty in tracking and collecting Business Privilege
3 Taxes (BPT) from sub contractors of construction projects.

4 *I Liheslaturan Guahan* finds that a significant portion of the increased economic
5 activity of the expansion of the military footprint will occur in the construction industry.
6 Along with the increased activity in the construction industry, there will be a concurrent
7 increase in the complexity of financial transactions and arrangements whereby the
8 following activities will be consummated, due to the scope of the task involved.

9 *I Liheslaturan Guahan* recognizes that contractors outside of Guam will play a
10 role in fulfilling the needs of the DoD in executing this expansion. However, *I*
11 *Liheslaturan Guahan* also recognizes that activities and revenues generated by the
12 military expansion should yield economic benefits to Guam as these incomes are derived
13 from development on the island. The following concept rests upon sound financial
14 principles of maximizing tax revenue collections and match them to the required
15 increased expenditures related to military expansion on Guam.

16 *I Liheslaturan Guahan* has sought to provide a solution whereby collection and
17 enforcement of the BPT on contractors shall be simplified, which would be to take four
18 percent (4%) on the gross value of the contracts awarded by the DoD and place in escrow
19 to be drawn down by the DRT as progress payments occur from the DoD to contractors.
20 Through its Committee on Appropriation, *I Liheslaturan Guahan* has communicated this
21 proposal through documented correspondences and meetings with various Federal
22 officials. In a report to Congress in March 2010, the DoD responded they “are not
23 equipped or legally responsible for tracking, monitoring, or enforcing Federal, state, and
24 local tax or licensing laws.” Until such time the DoD agrees to administratively reserve
25 4% of contracts issued on Guam for local taxes or Congress adds such requirements in
26 funding authorizations, *I Liheslaturan Guahan* recognizes that the following issue has
27 reached ripeness for consideration. Whereas, the ability to levy and more importantly
28 enforce the BPT on contractors will become an administrative burden on the DRT as a
29 result of the military expansion, *I Liheslaturan Guahan* shall modify territorial policy to
30 ease the administration of the collection of the BPT on contractors.

1 The present structure of the BPT statute levies the tax on subcontractors and
2 allows primary contractors to deduct payments to said subcontractors from its gross
3 income. The levy of BPT on the subcontractors presents logistical issues as military
4 contracts continue to be subcontracted to companies domiciled outside Guam who in
5 some cases do not file and remit BPT taxes to the DRT.

6 By effectuating the changes enumerated in this act, the outcome shall reverse the
7 deduction of gross income by contractors for services performed by another contractor,
8 which results in no new tax remitted by contractors, but only simplifies its administration.
9 Secondly, it will simplify and limit the enforcement of BPT on primary contractors,
10 which reduces the number of taxpayers easing enforcement and compliance activities
11 and reducing the related cost.

12 **SECTION 2.** § 26201 of Chapter 26 of Title 11 of the Guam Code Annotated is
13 amended to read as follows:

14 **“§ 26201. Levy.**

15 There is hereby levied and shall be assessed and collected monthly privilege
16 taxes against the persons on account of their businesses ~~and other activities in~~
17 operating within and without Guam measured by the application of rates against
18 values, gross proceeds of sales or gross income, as the case may be.”

19 **SECTION 3.** § 26202(e) of Chapter 26 of Title 11 of the Guam Code Annotated
20 is amended to read as follows:

21 **“§ 26202. Rates.**

22 (e) Tax on Contractors. There shall be levied, assessed and collected a tax
23 rate of four percent (4%) measured against the gross income of any contractor;
24 provided, that there shall be deducted from the gross income of the taxpayer so
25 much thereof as has been included ~~in the measure of tax levied under this~~
26 Subsection on the gross income earned from another taxpayer who is a contractor
27 as defined in § 26101(b) and who has already paid the tax levied under this
28 Subsection for goods and services that include the deductible gross income of the
29 taxpayer who is a contractor; provided, that any person claiming a deduction
30 under this Subsection shall be required to show in the person's return either the

1 name and contractor's license number or the registration number for a professional
2 engineer, architect or land surveyor or the Certificate of Authorization (COA)
3 number for a business authorized to provide engineering, architecture or land
4 surveying services by the Guam Board of Registration for Professional Engineers,
5 Architects, Land Surveyors of the person paying the tax on the amount deducted
6 by the person.

7 **SECTION 4.** Notification. (a) The Guam Contractors Licensing Board shall
8 notify all licensed contractors of the change in administration of the Business Privilege
9 Tax for contractors within thirty days (30) from the date of enactment of this Act.

10 (b) The Department of Revenue and Taxation in conjunction with the Contractors
11 Licensing Board shall create and present a workshop which includes training for all
12 licensed contractors about the change in administration of the Business Privilege Tax for
13 contractors within sixty days (60) from the date of enactment of this Act.

14 **SECTION 5.** Effective Date. This Act shall be effective sixty days (60) after
15 enactment.

16 **SECTION 6.** Severability. If any provision of this Law or its application to any
17 person or circumstances is found to be invalid or contrary to law, such invalidity shall not
18 affect other provisions or applications of this Law which can be given effect without the
19 invalid provisions or application, and to this end the provisions of this Law are severable.