<table>
<thead>
<tr>
<th>Resolution No.</th>
<th>Sponsor</th>
<th>Title</th>
<th>Date Intro</th>
<th>Date of Presentation</th>
<th>Date Referred</th>
<th>Committee / Ofc Referred</th>
<th>Date Adopted</th>
</tr>
</thead>
</table>
Resolution No. 21-32 (LS)

Introduced by:

V.C. Pangelinan
M.F.Q. San Nicolas
T.C. Ada
F.B. Aguon, Jr.
T.R.M. Barnes
B.J.F. Cruz
R.J. Respicio
D.G. Rodriguez, Jr.
J.T. Won Pat, Ed.D.

Relative to requesting Declaratory Judgment from the Supreme Court of Guam as to the withdrawal of funds from the Income Tax Refund Efficient Payment Trust Fund for purposes other than the payment of Income Tax Refunds, and more particularly the interpretation and application of the prohibitions on the use of the Income Tax Refund Efficient Payment Trust Fund as set forth in 11 G.C.A. 50101, et seq. and 11 G.C.A. 51101, et seq.

1 BE IT RESOLVED BY I LIHESLATURAN GUÅHAN:

WHEREAS, 7 GCA § 4104 authorizes I Liheslaturan Guåhan to request declaratory judgment from the Supreme Court of Guam as to the interpretation of any law, federal or local, lying within the jurisdiction of the courts of Guam to decide, and upon any question affecting the powers and duties of I Liheslaturan Guåhan, where it is a matter of great public interest and the normal process of law would cause undue delay; specifically, § 4104 provides “I Maga’låhi and I Liheslatura May Request Declaratory Judgment. I Maga’låhen Guåhan, in writing, or I Liheslaturan Guåhan, by resolution, may request declaratory judgments from the Supreme Court of Guam as to the interpretation of any law, federal or local, lying within the jurisdiction of the
courts of Guam to decide, and upon any question affecting the powers and duties of I Maga’låhi and the operation of the Executive Branch, or I Liheslaturan Guåhan, respectively. The declaratory judgments may be issued only where it is a matter of great public interest and the normal process of law would cause undue delay. Such declaratory judgments shall not be available to private parties. The Supreme Court of Guam shall, pursuant to its rules and procedures, permit interested parties to be heard on the questions presented and shall render its written judgment thereon.”; and

WHEREAS, 11 GCA §51102 requires the deposit of a definite percentage of income taxes into an Income Tax Refund Efficient Payment Trust Fund (Trust Fund) to be used strictly for income tax refunds and further requires that “[t]he funds deposited in the Trust Fund by the Director of Administration shall immediately be transferred to the Income Tax Reserve Fund upon the written request of the Tax Commissioner only for payments made pursuant to § 50105 of Chapter 50, Division 2 of Title 11 of the Guam Code Annotated”; and

WHEREAS, 11 GCA § 50105 provides that “[a]ny and all expenditures from the [Income Tax Reserve] Fund shall be for the payment of income tax refunds, earned income tax credits, child tax credits, tax rebate relief and for no other purpose”; and

WHEREAS, OPA Report No. 11-10 released December 2011 stated that in Fiscal Year 2011, approximately Twenty Five Million Six Hundred Eighty Seven Thousand Five Hundred Ninety Nine Dollars ($25,687,599) in transfers were made from the Income Tax Refund Efficient Payment Trust Fund to fund government of Guam operations and not for the payment of Income Tax Refunds; and

WHEREAS, this non-compliance was also the subject of a January 2013 letter from I Liheslaturan Guåhan’s Committee on Appropriations, Public Debt, Legal Affairs, Retirement, Public Parks, Recreation, Historic Preservation, and Land (Committee) to the Office of the Attorney General citing withdrawals in the amount of
Ten Million Nine Hundred Seventy Four Thousand Three Hundred Two Dollars and Ninety Six Cents ($10,974,302.96) from the Trust Fund that were transferred to other bank accounts not in compliance with 11 GCA §51102 for the period November 2011 to December 2012; and

WHEREAS, the District Court of Guam, in its January 30, 2013 proceedings of Civil Case No. CV11-0008, Paeste et al. v. GovGuam et al., discussed the aforementioned January 2013 letter from the Committee that was provided to Honorable Judge Consuelo B. Marshall, that Government of Guam officials had not complied with either of the Guam laws passed to compel timely payment of Guam Territorial Income Tax refunds; and

WHEREAS, the District Court of Guam in Paeste et al. v. GovGuam et al., citing 11 GCA Chapters 50 and 51, found on January 30, 2013, that government of Guam officials had not complied with either of the Guam laws passed to compel timely payment of Guam Territorial Income Tax refunds; and

WHEREAS, for nine months subsequent to the Paeste Court’s Findings of Fact and Conclusions of Law, including January 2013 to October 2013, the government of Guam did not withdraw and/or transfer funds from the Trust Fund to fund government of Guam operations;

WHEREAS, the Committee, however, in its review of November and December 2013 Trust Fund bank statements, found withdrawals and/or transfers from the Trust Fund to fund government of Guam operational funds; and

WHEREAS, such withdrawals and/or transfers in November and December 2013 were the subject of two January 2014 letters from the Committee citing bank statements showing withdrawals in the amount of Twelve Million Eighty Five Thousand Dollars ($12,085,000) from the Trust Fund that were transferred to other bank accounts not in compliance with 11 GCA §51102; and

WHEREAS, the General Appropriations Act of Fiscal Year 2014, enacted as
P.L. 32-068 and effective October 1, 2014, the government of Guam prioritized and made a provision of One Hundred Twenty Million Dollars ($120,000,000) for the purpose of paying income tax refunds, based on historical income tax refund payments from official reports of the Department of Revenue and Taxation; and

WHEREAS, approximately Twenty One Million Four Hundred Forty Six Thousand Fifty Three Dollars ($21,446,053) of the required Twenty Five Million Seven Hundred Thousand Dollars ($25,700,000) through December 31, 2013, has been deposited into the Trust Fund and of that amount, Twelve Million Eighty Five Thousand Dollars ($12,085,000) was withdrawn and/or transferred to government of Guam operational accounts not pursuant to 11 GCA §51102; and

WHEREAS, I Liheslaturan Guåhan finds that timely payment of income tax refunds is a matter of great public interest, and the establishment of both the Trust Fund and the Income Tax Reserve Fund, and the mandated processes in place toward the payment of income tax refunds and the prohibitions on expenditures from such funds were intended to ensure taxpayers of adequate funds for the timely payment of income tax refunds; and as was found in Paeste, “the public has an interest in the lawful administration of the GTIT as indicated by the Guam Legislature’s two attempts to compel the Government to pay refunds on time through the passage of legislation. Those laws have been largely ignored and the requested injunctive relief is needed to bring the administration of the GTIT into compliance with the Organic Act and the Equal Protection Clause”; and

WHEREAS, the government of Guam’s ability to borrow for future income tax refunds was severely limited when the government of Guam reached its debt ceiling with the Fiscal Year 2012 borrowing for Tax Years 2011 and prior income tax refunds (Business Privilege Tax Bonds Series 2011A and 2012B), among other things, and the recent and ongoing siphoning of funds away from the Trust Fund directly impacts the ability of the government to pay income tax refunds when income tax returns are filed.
during Fiscal Year 2014 for Tax Year 2013; and

WHEREAS, the normal process of law would cause undue delay in preventing
the further siphoning of funds and the further delay in paying income tax refunds and I
Lihe slaturan Guåhan seeks this special judicial determination to prevent the
continued withdrawal and ir ret rovable expenditure of funds that are by law set aside
for the payment of income tax refunds; now therefore be it

RESOLVED, that I Mina’trentai Dos Na Lihe slaturan Guåhan does hereby
request for Declaratory Judgment from the Supreme Court of Guam relative to the
withdrawal and/or transfer of funds from the Trust Fund to accounts and/or funds
other than to the Income Tax Reserve Fund, for purposes other than for the payment
of income tax refunds; and more particularly the interpretation and application of 11
G.C.A. Chapters 50 and 51 in this regard; and be it further

RESOLVED, that I Mina’trentai Dos Na Lihe slaturan Guåhan authorizes and
directs the Chairperson of the Committee on Appropriations, Public Debt, Legal
Affairs, Retirement, Public Parks, Recreation, Historic Preservation, and Land and the
Office of Finance and Budget to pursue a Declaratory Judgment on behalf
of I Lihe slaturu and authorizes said Chairperson to do all things necessary in
furtherance of this Request for Declaratory Judgment, including the assistance of a
legal counsel as required; and be it further

RESOLVED, that the Speaker of I Lihe slaturan Guåhan certify, and the
Legislative Secretary attests to, the adoption hereof and that copies of the same be
thereafter transmitted to the Committee on Rules; to the Clerk of the Supreme Court
of Guam; and to the Honorable Edward J.B. Calvo, I Maga’lâhen Guåhan.
DULY AND REGULARLY ADOPTED ON THE ___ DAY OF JANUARY, 2014.

JUDITH T. WON PAT  
Speaker

TINA ROSE MUNA-BARNES  
Senator and Legislative Secretary