

I Mina Trentai Kuattro Na Liheslaturan
BILL STATUS

BILL NO.	SPONSOR	TITLE	DATE INTRODUCED	DATE REFERRED	CMTE REFERRED	PUBLIC HEARING DATE	DATE COMMITTEE REPORT FILED	FISCAL NOTES	NOTES
77-34 (COR)	Michael F.Q. San Nicolas	AN ACT TO ADD NEW ARTICLES 7 AND 8 TO CHAPTER 6, TITLE 11, GUAM CODE ANNOTATED, RELATIVE TO DEFINING THE STAMP TAX ON CIGARETTES AND REQUIRING FOR THE PROPER AFFIXING OF STAMPS; AND TO AUTHORIZE THE DEPARTMENT OF REVENUE AND TAXATION TO PROMULGATE IMPLEMENTING REGULATIONS.	4/12/17 3:58 p.m.	4/18/17	Committee on Appropriations and Adjudication	5/11/17 2:00 p.m.	9/21/17 11:15 a.m. As amended by the Committee on Appropriations and Adjudication.	Fiscal Note Request 4/18/17 Fiscal Note 5/2/17	
	SESSION DATE	TITLE	DATE PASSED	DATE AND TIME TRANSMITTED	DUE DATE	LAPSED INTO LAW		NOTES	
	9/25/2017	AN ACT TO ADD NEW ARTICLES 7 AND 8 TO CHAPTER 6, TITLE 11, GUAM CODE ANNOTATED, RELATIVE TO DEFINING THE STAMP TAX ON CIGARETTES AND REQUIRING FOR THE PROPER AFFIXING OF STAMPS; AND AUTHORIZING THE DEPARTMENT OF REVENUE AND TAXATION TO PROMULGATE IMPLEMENTING REGULATIONS.	09/30/17	10/02/17 4:40 p.m.	10/13/17	10/14/17 Public Law No. 34-55		Received: 10/18/17 Mess and Comm. Doc. No. 34GL-17-1108	



EDDIE BAZA CALVO
Governor

RAY TENORIO
Lieutenant Governor

Office of the Governor Of Guam.

OCT 18 2017

Honorable Benjamin J.F. Cruz
Speaker
I Mina'trentai Kuåttro Na Liheslaturan Guåhan
Guam Congress Building
163 Chalan Santo Papa
Hagåtña, Guam 96910

GA 34-17-1108
Speaker Benjamin J.F. Cruz

OCT 18 2017
Time: 3:51 [] AM [] PM File No. 34-1052
Received By: [Signature]

Dear Mr. Speaker:

Transmitted herewith is Bill No. 77-34 (COR), "AN ACT TO ADD NEW ARTICLES 7 AND 8 TO CHAPTER 6, TITLE 11, GUAM CODE ANNOTATED, RELATIVE TO DEFINING THE STAMP TAX ON CIGARETTES AND REQUIRING FOR THE PROPER AFFIXING OF STAMPS; AND AUTHORIZING THE DEPARTMENT OF REVENUE AND TAXATION TO PROMULGATE IMPLEMENTING REGULATIONS," which lapsed into law on October 14, 2017, as Public Law 34-55.

Senseramente,


EDDIE BAZA CALVO

2017 OCT 18 PM 4:28 Q S



1 **CIGARETTE STAMP TAX LAW**

- 2 § 6700. Legislative Findings and Intent.
3 § 6701. Supplemental Definitions.
4 § 6702. Proof of Taxation.
5 § 6703. Records to be Kept.
6 § 6704. Wholesaler and Retailer Requirements.
7 § 6705. Inspection.
8 § 6706. Appeals.
9 § 6707. Reports.
10 § 6708. Investigation.
11 § 6709. Rules and Regulations.
12 **§ 6700. Legislative Findings and Intent.**

13 *I Liheslaturan Guåhan* finds that Public Law 2-43, signed into law by
14 Governor Ford Q. Elvidge on July 22, 1953, established the tobacco tax, which
15 includes the tax on cigarettes.

16 *I Liheslatura* finds that the current system of administering the tax on
17 cigarettes relies upon voluntary compliance by the companies which sell cigarettes.
18 While most companies will comply with the law in the course of their business,
19 companies which do not, if not caught, would unfairly benefit.

20 *I Liheslatura*, therefore, finds that a system which has good mechanisms of
21 accountability will level the playing field, putting those companies which comply
22 with the law in a more fair competitive position.

23 *I Liheslatura* further finds that utilizing cigarette tax stamps will ensure that
24 companies which comply with Guam's tobacco tax will not be unfairly
25 disadvantaged competitively by the very act of compliance.

26 *I Liheslatura* finds that Guam is one (1) of only four (4) states and territories
27 which have not authorized the use of tobacco tax stamps.

1 *I Liheslatura* finds that the Healthy Futures Fund is a major source of funding
2 for government investments in public health, including support for the Guam
3 Memorial Hospital Authority and the Department of Public Health and Social
4 Services.

5 *I Liheslatura* further finds that the tobacco tax is the largest source of funding
6 for the Healthy Futures Fund. In Fiscal Year 2016, approximately eighty-one percent
7 (81%) of Healthy Futures Fund revenue came from the tobacco tax.

8 It is, therefore, the intent of *I Liheslaturan Guahan* to establish a cigarette tax
9 stamp system to improve collections of the tobacco tax and promote fairness for
10 businesses which comply with Guam's laws, by the establishment of new Articles 7
11 and 8 of this Chapter.

12 **§ 6701. Supplemental Definitions.**

13 Unless the context otherwise requires, the definitions set forth herein and in
14 11 GCA § 6101 *shall* govern the construction and interpretation of this Article.

15 (a) *Attorney General* means the Guam Attorney General or Assistant
16 Attorneys General.

17 (b) *Business location or place of business* means the entire premises
18 occupied by a retail tobacco permit applicant or an entity required to hold a
19 retail tobacco permit under this Chapter; and *shall* include, but is not limited
20 to, any store, stand, outlet, vehicle, cart, location, vending machine, or
21 structure from which cigarettes or tobacco products are sold or distributed to
22 a consumer.

23 (c) *Cigarette* means any rolled product for smoking made wholly or
24 in part of tobacco, irrespective of size and shape and whether or not the
25 tobacco is flavored, adulterated, or mixed with any other ingredient, the
26 wrapper or cover of which is made of paper or any other substance or material
27 except tobacco.

1 (d) *Cigarette package* means a sealed package of cigarettes
2 originating from the manufacturer and bearing the health warning required by
3 law.

4 (e) *Consumer* means a person who acquires or possesses a cigarette
5 or a tobacco product for personal consumption and not for resale or
6 distribution.

7 (f) *Department* means the Department of Revenue and Taxation.

8 (g) *Distribute, distributes, or distribution* means to sell, transfer,
9 give, or to leave, deliver to another, or exchange with another, or to offer or
10 agree to do the same.

11 (h) *Entity* means one (1) or more individuals, a company, a
12 corporation, a partnership, an association, or any other type of legal entity.

13 (i) *Falsely alter* means to change a stamp in any manner so that the
14 altered stamp falsely appears or purports to have a value or validity that is not
15 authorized or consented to by the Department.

16 (j) *Falsely make* means to print, manufacture, or make what
17 purports to be a stamp without the authority or consent of the Department.

18 (k) *Falsely reuse* means to affix a stamp that was previously affixed
19 to a package of cigarettes, to another package of cigarettes.

20 (l) *License* means a license granted by Guam law that authorizes the
21 holder to engage in the business of a wholesaler or retailer of cigarettes or
22 tobacco products in Guam.

23 (m) *Licensee* means the holder of a license as a wholesaler or retailer
24 granted under this Chapter.

25 (n) *Persons* means one (1) or more people, a company, a
26 corporation, a partnership, or an association.

1 (o) *Possession* means knowingly having direct physical control at a
2 given time, or knowingly having the power and the intention at a given time,
3 to exercise dominion or control, either directly or through another entity.

4 (p) *Retailer* means an entity that engages in the practice of selling
5 cigarettes or tobacco products to consumers, and includes the owner of a
6 cigarette or tobacco product vending machine.

7 (q) *Retail price* means the ordinary, customary, or usual price paid
8 by the consumer for the articles taxed.

9 (r) *Retail sale or tobacco retailing* means the practice of selling
10 cigarettes or tobacco products to consumers, and includes the sale of cigarettes
11 or tobacco through a vending machine.

12 (s) *Sale* includes every act of selling, and includes any sale or act of
13 selling that originates from any order that is placed or submitted by means of
14 a telephonic or other method of voice transmission, the mail, or any other
15 delivery service, or the internet or other online service.

16 (t) *Ship or causes to be shipped* means to send by any means of
17 transportation.

18 (u) *Stamp* means a stamp printed, manufactured, or made by
19 authority of the Department, as provided in this Chapter, that is issued, sold,
20 or circulated by the Department, and by the use of which the tax levied under
21 this Chapter is paid.

22 (v) *Wholesaler* means any duly Guam licensed person who imports
23 or causes to be imported into Guam any FDA approved or compliant cigarette
24 products which are or will be offered for sale or used for any commercial
25 purpose; any purchaser of warehouse receipts for such cigarettes stored in a
26 warehouse in Guam who causes such cigarettes to be removed from such

1 warehouse; and also any person who produces, manufactures, compounds,
2 mixes or rolls any such cigarette products within Guam for sale.

3 **§ 6702. Proof of Taxation.**

4 (a) The payment of taxes levied by § 26602 and § 26603(a) of Chapter 26,
5 Title 11, Guam Code Annotated, *shall* be demonstrated by the purchase of tax
6 stamps in Guam, which *shall* be affixed to each cigarette package. Nothing herein
7 shall be construed as to levy any additional taxes on the sale of cigarettes, unless
8 expressly stated by law.

9 (b) Payment for the purchasing of stamps to be affixed to a cigarette
10 package *shall* be reported each month and payable *no later than* the twentieth (20th)
11 day of the month following the month in which the stamps were purchased from the
12 Department.

13 (c) The Department is responsible for and *shall* effectuate the printing,
14 distribution, and sale of tax stamps.

15 (d) Any taxpayer under this Section may delay the payment of taxes in
16 accordance with the provisions under 11 GCA § 26601(c) relative to cigarettes held
17 and sold out of a bonded warehouse.

18 **§ 6703. Records to Be Kept.**

19 (a) Each wholesaler *shall* keep a record of:

20 (1) every sale or use of cigarettes and tobacco products by the
21 wholesaler;

22 (2) the number and wholesale price of cigarettes;

23 (3) the taxes payable on tobacco products sold, possessed, or used,
24 if any; and

25 (4) the amounts of stamps purchased and used, in a form as the
26 Department may prescribe. The records *shall* be offered for inspection and
27 examination at any time upon demand by the Department or the Attorney

1 General, and *shall* be preserved for a period of five (5) years; except, that the
2 Department and the Attorney General, in writing, *shall* both consent to their
3 destruction within the five (5)-year period, or either the Department or the
4 Attorney General may require that they be kept longer. The Department, by
5 rule, may require the wholesaler to keep such other records as it may deem
6 necessary for the proper enforcement of this Chapter.

7 (b) If any wholesaler fails to keep records from which a proper
8 determination of the taxes due under this Chapter may be made, the Department may
9 fix the amount of the taxes for any period from the best information obtainable by it
10 and assess the taxes as provided in this Chapter.

11 **§ 6704. Wholesaler and Retailer Requirements.**

12 (a) All wholesalers or distributors are required to pay the appropriate tax
13 for each cigarette in its inventory, except as provided under 11 GCA § 26601(c) for
14 inventory held in a warehouse under bond. Even though wholesalers are required to
15 affix the stamps to cigarette packages prior to shipping to retail outlets, every
16 cigarette retailer is responsible for inspecting their shipments upon receipt to ensure
17 cigarette stamps have been properly affixed. Unstamped cigarette packages should
18 be removed from inventory and set aside for return to the cigarette supplier.

19 (b) Any cigarette retailer that fails to properly inspect and timely return any
20 unstamped cigarette packages to the cigarette supplier within seven (7) days *shall*
21 assume liability for any unstamped cigarette packages and be subject to penalties
22 under 11 GCA § 6810.

23 **§ 6705. Inspection.**

24 (a) The Department and/or the Attorney General may examine all records,
25 including tax returns and reports required to be kept or filed under this Chapter, and
26 books, papers, and records of any person engaged in the business of wholesaling or
27 dealing cigarettes and tobacco products, to verify the accuracy of the payment of the

1 taxes imposed by this Chapter. Every person in possession of any books, papers, and
2 records, and the person's agents and employees, are directed and required to give to
3 the Department and the Attorney General the means, facilities, and opportunities for
4 the examinations.

5 (b) The Department and/or the Attorney General may inspect the
6 operations, premises, and storage areas of any entity engaged in the sale of cigarettes,
7 or the contents of a specific vending machine, during regular business hours. This
8 inspection *shall* include inspection of all statements, books, papers, and records in
9 whatever format, including electronic format, pertaining to the acquisition,
10 possession, transportation, sale, or use of packages of cigarettes and tobacco
11 products other than cigarettes, to verify the accuracy of the payment of taxes
12 imposed by this Chapter, and of the contents of cartons and shipping or storage
13 containers to ascertain that all individual packages of cigarettes have an affixed
14 stamp of proper denomination as required by this Chapter. This inspection may also
15 verify that all stamps were produced under the authority of the Department. Every
16 entity in possession of any books, papers, and records, and the entity's agents and
17 employees, are directed and required to give the Department and/or the Attorney
18 General the means, facilities, and opportunities for the examinations. For the
19 purposes of this Chapter, "entity" means one (1) or more individuals, a company, a
20 corporation, a partnership, an association, or any other type of legal entity.

21 (c) If the Department or the Attorney General has reasonable cause to
22 believe and does believe that cigarettes, stamps, or counterfeit stamps are being
23 acquired, possessed, transported, kept, sold, or offered for sale in violation of this
24 Chapter, the Department or the Attorney General may investigate or search the
25 vehicle or premises in which the cigarettes, stamps, or counterfeit stamps are
26 believed to be located. If cigarettes, stamps, or counterfeit stamps are found in a
27 vehicle, premises, or vending machine in violation of this Chapter, the cigarettes,

1 vending machine, vehicle, stamps, counterfeit stamps, or other tangible personal
2 property containing those cigarettes, stamps, or counterfeit stamps and any books
3 and records in possession of the entity in control or possession of the cigarettes,
4 stamps, or counterfeit stamps may be seized by the Department or the Attorney
5 General and are subject to forfeiture.

6 **§ 6706. Appeals.**

7 Any person aggrieved by any assessment of the taxes imposed by this Chapter
8 may appeal from the assessment in the manner and within the time, and in all other
9 respects as provided for by current tax protest procedures.

10 **§ 6707. Reports.**

11 On or before the twentieth (20th) day of each month, every wholesaler *shall*
12 file with the Department a report showing the cigarettes and tobacco products sold,
13 possessed, or used by the wholesaler during the preceding calendar month, and of
14 the taxes chargeable against the taxpayer in accordance with this Chapter. Such
15 reports are public records as defined by 5 GCA § 10102(d). The form of the report
16 *shall* be prescribed by the Department and *shall* include:

17 (a) a separate statement of the cigarettes imported into and sold
18 within Guam;

19 (b) the amount of stamps purchased and used; and

20 (c) any other information that the Department may deem necessary
21 for the proper administration of this Chapter.

22 **§ 6708. Investigation.**

23 (a) Any agent duly authorized by the Department to conduct any inquiry,
24 investigation, or hearing hereunder, *shall* have power to administer oaths and take
25 testimony under oath relative to the matter of inquiry or investigation. At any hearing
26 ordered by the Director, the Director or the Director's agent authorized to conduct
27 the hearing, may subpoena witnesses and require the production of books, papers,

1 and documents pertinent to the inquiry. No witness under the subpoena authorized
2 to be issued by this Section shall be excused from testifying or from producing books
3 or papers on the ground that such testimony or the production of such books or other
4 documentary evidence would tend to incriminate the witness, or subject the witness
5 to penalty or forfeiture; but no person shall be prosecuted, punished, or subjected to
6 any penalty or forfeiture for or on account of any act, transaction, matter, or thing
7 concerning which the person *shall*, under oath, have testified or produced
8 documentary evidence.

9 (b) If any person disobeys such process or, having appeared in obedience
10 thereto, refuses to answer any pertinent question put to the person by any duly
11 authorized agent of the Department, or to produce any books and papers pursuant
12 thereto, the duly authorized agent may apply to the Guam Superior Court setting
13 forth such disobedience to process or refusal to answer, and the court or the judge
14 *shall* cite such person to appear before the court or the judge to answer such question
15 or to produce such books and papers and, upon the person's refusal to do so, *shall*
16 commit such person to jail until the person *shall* testify, but not for a longer period
17 than sixty (60) days. Notwithstanding the serving of the term of such commitment
18 by any person, the Director may proceed in all respects with such inquiry and
19 examination as if the witness had not previously been called upon to testify.

20 **§ 6709. Rules and Regulations.**

21 The administration of this Chapter is vested in the Department, and it may
22 prescribe and enforce rules and regulations for the enforcement and administration
23 of this Chapter.”

24 **Section 2.** A new Article 8 is hereby *added* to Chapter 6 of Title 11, Guam
25 Code Annotated, to read:

26 **“ARTICLE 8**
27 **STAMPING OF CIGARETTES**

- 1 § 6800. Payment of Tax Through the Use of Stamps.
- 2 § 6801. Affixation; Required Prior to Distribution; Method and Manner.
- 3 § 6802. Department to Furnish: Stamps, Their Designs, Specifications,
4 and Denominations.
- 5 § 6803. Purchase of Stamps.
- 6 § 6804. Price.
- 7 § 6805. Unused Stamps; Cancellation of Stamps.
- 8 § 6806. Transfer of Stamps.
- 9 § 6807. Unlicensed Possession or Use of Stamps.
- 10 § 6808. Counterfeiting Stamps.
- 11 § 6809. Sale or Purchase of Cigarette Packages Without Stamps; Fines
12 and Penalties.
- 13 § 6810. Vending of Unstamped Cigarettes.
- 14 § 6811. Exemptions.
- 15 § 6812. Forfeiture.
- 16 § 6813. Deceptive Trade Practices.
- 17 § 6814. Public Enforcement.
- 18 § 6815. Private Enforcement.
- 19 § **6800.** **Payment of Tax Through the Use of Stamps.**

20 The tax imposed under this Chapter upon the sale or use of cigarettes *shall* be
21 paid by licensees through the use of stamps.

22 § **6801.** **Affixation; Required Prior to Distribution; Method and**
23 **Manner.**

24 (a) A licensee or the authorized agent or designee of a licensee *shall* affix
25 a stamp to the bottom of each individual package of cigarettes prior to distribution.

26 (b) No individual package of cigarettes may be sold or offered for sale to
27 the general public unless affixed with the stamp required under this Section.

1 (c) No cigarette package may be placed or stored in a vending machine
2 unless affixed with the stamp required under Subsection (a) of this Section.

3 (d) The Department may adopt rules regarding the method and manner of
4 affixing stamps to a cigarette package.

5 (e) For the purpose of allowing compensation for the costs necessarily
6 incurred in affixing the proper tax stamps to each package of cigarettes prior to
7 distribution, each licensee or authorized agent or a designee of a licensee purchasing
8 stamps from the Department may purchase the stamps at a reduction of fourtenths
9 of one percent (0.4%) of the denominated value of each stamp purchased. The
10 reduction *shall* be the only discount allowed to purchasers from the Department. If
11 a purchaser does not comply with all of the provisions of Guam law, the licensee
12 *shall* pay the full denominated value of the stamps purchased until the licensee has
13 complied.

14 **§ 6802. Department to Furnish: Stamps, Their Designs,**
15 **Specifications, and Denominations.**

16 The Department *shall* furnish stamps for sale to licensees. Stamps *shall* be of
17 such designs and specifications, and the Department may prescribe denominations
18 as it sees fit.

19 **§ 6803. Purchase of Stamps.**

20 A licensee may enter or apply to the Department to purchase stamps beginning
21 one hundred eighty (180) days from the date of enactment of this Act. A licensee
22 may authorize a designee to purchase stamps. Such authorization *shall* be in writing
23 and *shall* continue until written notice revoking the designation is provided to the
24 Department.

25 **§ 6804. Price.**

26 (a) Stamps *shall* be sold at their denominated values as provided for herein.

1 (b) Payment for the stamps *shall* be made *no later than* the twentieth (20th)
2 day of the month following the month in which the stamps were purchased from the
3 Department.

4 (c) Any taxpayer under this Section may delay the payment of taxes in
5 accordance with the provisions under 11 GCA § 26601(c) relative to cigarettes held
6 and sold out of a bonded warehouse. Payment for the stamps for cigarettes held and
7 sold out of a bonded warehouse *shall* be made *no later than* the twentieth (20th) day
8 of the month following the month in which the stamps and associated cigarettes were
9 issued and sold out of the bonded warehouse.

10 **§ 6805. Unused Stamps; Cancellation of Stamps.**

11 The Department *shall* adopt rules for a refund or credit to a licensee in the
12 amount of the denominated values of any unused stamps. The Department may
13 provide by rule for the cancellation of stamps.

14 **§ 6806. Transfer of Stamps.**

15 Unused stamps *shall not* be sold, exchanged, or in any manner negotiated or
16 transferred by a licensee to another person. Any person who violates this Section
17 *shall* be subject to a fine of not less than Five Hundred Dollars (\$500) and not more
18 than One Thousand Dollars (\$1,000) for each violation.

19 **§ 6807. Unlicensed Possession or Use of Stamps.**

20 A person who is not licensed under this Chapter and who knowingly
21 possesses or uses a stamp *shall* be guilty of a third (3rd) degree felony.

22 **§ 6808. Counterfeiting Stamps.**

23 A person *shall* be guilty of a third (3rd) degree felony if the person:

- 24 (a) intentionally or knowingly makes, alters, or reuses a stamp; or
25 (b) knowingly possesses or distributes a stamp that has been falsely
26 made, unauthorized, altered, or reused.

1 **§ 6809. Sale or Purchase of Cigarette Packages Without Stamps;**
2 **Fines and Penalties.**

3 (a) A person *shall* be guilty of a third (3rd) degree felony if the person:

4 (1) is not a licensee, and knowingly possesses, keeps, stores,
5 acquires, or transports three thousand (3,000) or more cigarettes that do not
6 have stamps affixed to the cigarette packages as required by this Article; or

7 (2) knowingly sells one thousand (1,000) or more cigarettes that do
8 not have stamps affixed to the cigarette packages as required by this Article.

9 (b) A person *shall* be guilty of a misdemeanor if the person:

10 (1) is not a licensee, and knowingly possesses, keeps, stores,
11 acquires, or transports one thousand (1,000) or more cigarettes that do not
12 have stamps affixed to the cigarette packages as required by this Article; or

13 (2) knowingly sells less than one thousand (1,000) cigarettes that do
14 not have stamps affixed to the cigarette packages as required by this Article.

15 (c) In addition to any other authorized disposition, a person found in
16 violation of:

17 (1) Subsection (a) is subject to a fine in an amount not to exceed
18 Fifty Thousand Dollars (\$50,000); and

19 (2) Subsection (b) is subject to a fine in an amount not to exceed
20 Twenty-five Thousand Dollars (\$25,000).

21 **§ 6810. Vending of Unstamped Cigarettes.**

22 (a) Any person who knowingly places for sale in a cigarette vending
23 machine any cigarettes not contained in cigarette packages to which are affixed
24 stamps as required by this Article *shall* be guilty of a third (3rd) degree felony.

25 (b) In addition to any other authorized disposition, a person found in
26 violation of Subsection (a) may be fined in an amount not to exceed Fifty Thousand
27 Dollars (\$50,000).

1 **§ 6811. Exemptions.**

2 (a) No cigarette tax stamp *shall* be required to be paid upon cigarettes that
3 are sold for personal use at sales outlets operated under the regulations of the armed
4 services of the United States; provided, that it *shall* be unlawful for any person,
5 including members of the armed services of the United States, to purchase such tax-
6 exempt cigarettes for purposes of resale. Any person who intentionally, knowingly,
7 or recklessly resells, or offers for resale, tax-exempt cigarettes purchased at sales
8 outlets operated under the regulations of the armed services of the United States *shall*
9 be guilty of a violation of this Article, and punishable as provided in § 6809 or §
10 6810 of this Article. For the purposes of this Section, “person” means one (1) or
11 more people, a company, a corporation, a partnership, or any combination of
12 individuals.

13 (b) No cigarette tax stamp *shall* be required to be paid upon cigarettes that
14 are sold outside of Guam, including cigarettes sold for export outside of Guam and
15 cigarettes sold through duty free outlets located at the A.B. Won Pat International
16 Airport Guam which are intended to be transported outside of Guam by outgoing
17 travelers; provided, that it *shall* be unlawful for any person to purchase such tax-
18 exempt cigarettes for purposes of resale on Guam.

19 (c) Unless otherwise exempt from taxes by this Chapter, it *shall* be
20 presumed that all cigarettes are subject to the tax imposed by this Chapter, unless
21 the contrary is established, and the burden of proof that they are not taxable *shall* be
22 upon the person having possession of them.

23 **§ 6812. Forfeiture.**

24 Any cigarette, package of cigarettes, carton of cigarettes, or container of
25 cigarettes unlawfully possessed, kept, stored, acquired, transported, sold, imported,
26 offered, received, or distributed in violation of this Chapter may be seized and
27 confiscated by any order of the Attorney General, and ordered forfeited.

1 **§ 6813. Deceptive Trade Practices.**

2 Any violation of this Chapter *shall* constitute an unfair method of competition,
3 and unfair and deceptive acts or practices in the conduct of any trade or commerce
4 under 5 GCA § 32101 *et seq.*, and *shall* be subject to a civil penalty as provided in
5 Guam law. Each package of cigarettes sold in violation of this Chapter *shall*
6 constitute a separate violation.

7 **§ 6814. Public Enforcement.**

8 (a) Public enforcement of this Article is under the jurisdiction of the
9 Attorney General. The Attorney General may seek assistance in the enforcement of
10 this Article from other law enforcement agencies. This includes:

11 (1) any peace officer as defined by 8 GCA § 5.55; and

12 (2) a Citizen Assisted Police Enforcement (CAPE) volunteer as
13 provided pursuant to 10 GCA § 77302.

14 (b) The Attorney General and the Guam Police Department may seize and
15 confiscate any cigarette, package of cigarettes, or carton of cigarettes that is
16 possessed, kept, stored, retained, held, owned, received, transported, imported, or
17 caused to be imported, acquired, distributed, sold, or offered for sale in violation of
18 this Article.

19 (c) Any cigarette, package of cigarettes, or carton of cigarettes unlawfully
20 possessed, kept, stored, received, held, owned, acquired, retained, transported,
21 imported, or caused to be imported, distributed, sold, or offered for sale, in violation
22 of this Article, *shall* be forfeited as contraband and may be seized through any legal
23 process available to the Attorney General. Any cigarette, package of cigarettes, or
24 carton of cigarettes forfeited as provided in this Section *shall* be ordered destroyed.

25 (d) Notwithstanding the existence of other remedies at law, the Attorney
26 General may apply for a temporary or permanent injunction restraining any person

1 from violating or continuing to violate this Article. The injunction *shall* be issued
2 without bond.

3 **§ 6815. Private Enforcement.**

4 (a) A person may bring a civil action for violation of this Article on behalf
5 of the person and the government of Guam to enforce the fines contained herein.
6 The action *shall only* be dismissed if the court and the Attorney General give written
7 consent to dismissal and the reasons for the dismissal.

8 (1) A copy of the complaint and written disclosure of substantially
9 all material evidence and information *shall* be served on the government of
10 Guam pursuant to the Guam Rules of Civil Procedure. The complaint *shall* be
11 filed in camera, *shall* remain under seal for sixty (60) days, and *shall not* be
12 served on the named defendant until ordered by the Superior Court. The
13 government may elect to intervene and prosecute the action within sixty (60)
14 days after service of the complaint.

15 (2) The government is entitled to a one (1)-time extension of thirty
16 (30) days to evaluate the complaint filed.

17 (b) If the government elects to intervene and proceed with the action, it
18 *shall* have primary responsibility for prosecuting the action and *shall not* be bound
19 by an act of the person bringing the action unless there is an exception enumerated
20 in this law.

21 (1) Upon the government's assumption of the complaint, the person
22 who filed the complaint has no further participation, except as described
23 herein, and the government may:

24 (A) dismiss the action notwithstanding the objection of the
25 person bringing the complaint as long as the person bringing the
26 complaint has an opportunity to respond in writing;

1 (B) settle the action notwithstanding the objection of the
2 person bringing the complaint as long as the Guam Superior Court finds
3 the settlement to be fair, adequate and reasonable;

4 (C) pursue its claim through an alternate remedy available to
5 the government in including any administrative proceeding to
6 determine a civil money penalty. If any such alternate remedy is
7 pursued in another proceeding, the person initiating the action *shall*
8 have the same rights in such proceeding as such person would have had
9 if the action had continued under this Section;

10 (D) if the government proceeds with an action brought by a
11 person under this law, such person *shall* receive at least fifteen percent
12 (15%) but no more than twenty-five percent (25%) of the proceeds of
13 the action or settlement of the claim plus their reasonable costs and
14 attorney fees incurred in filing the complaint;

15 (E) if the government does not proceed with an action, the
16 person bringing the action or settling the claim *shall* receive an amount
17 which the Guam Superior Court decides is reasonable for collecting the
18 civil penalty and damages. The amount *shall not* be less than twenty-
19 five percent (25%) and not more than thirty percent (30%) of the
20 proceeds of the action or settlement. Such person *shall* also in addition
21 receive an award for their reasonable costs, fees, and attorney fees; or

22 (F) if the government does not proceed with the action and the
23 person bringing the action does not prevail on the claim, the defendant
24 is entitled to its reasonable attorney fees if the court finds in its
25 discretion that the action was clearly frivolous, vexatious, or brought
26 for purposes of harassment.

1 (c) All civil penalties and fines awarded by the court in excess of the
2 reasonable amount awarded by the court to any private individual(s) who bring a
3 private enforcement action of this law *shall* be deposited in the Healthy Futures
4 Fund.”

5 **Section 3. Funding.** The sum of Two Hundred Thousand Dollars
6 (\$200,000) is appropriated from the unappropriated Healthy Futures Fund revenues
7 in Fiscal Year 2017 to the Office of the Attorney General for the initial funding for
8 the sole purpose of enforcement of this Act. This appropriation *shall not* lapse and
9 *shall* continue until fully expended.

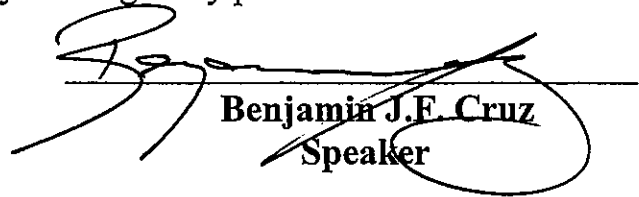
10 **Section 4. Implementation and Effective Date.** *No later than* ninety (90)
11 days following the enactment of this Act, the Director of Revenue and Taxation *shall*
12 submit an implementation plan for Sections 1 and 2 of this Act to *I Maga'lâhen*
13 *Guâhan* and the Speaker of *I Liheslaturan Guâhan*, with an effective date for the
14 provisions of this Act of not more than one (1) year from the enactment of this Act,
15 except as otherwise provided herein.

16 **Section 5. Severability.** If any provision of this Act or its application to
17 any person or circumstance is found to be invalid, or contrary to law, such invalidity
18 *shall not* affect other provisions or applications of this Act that can be given effect
19 without the invalid provision or application, and to this end the provisions of this
20 Act are severable.


I MINA'TRENTAI KUATTRO NA LIHESLATURAN GUÅHAN
2017 (FIRST) Regular Session

CERTIFICATION OF PASSAGE OF AN ACT TO I MAGA'LÅHEN GUÅHAN

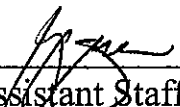
This is to certify that **Bill No. 77-34 (COR)**, "AN ACT TO *ADD NEW ARTICLES 7 AND 8 TO CHAPTER 6, TITLE 11, GUAM CODE ANNOTATED, RELATIVE TO DEFINING THE STAMP TAX ON CIGARETTES AND REQUIRING FOR THE PROPER AFFIXING OF STAMPS; AND AUTHORIZING THE DEPARTMENT OF REVENUE AND TAXATION TO PROMULGATE IMPLEMENTING REGULATIONS,*" was on the 29th day of September 2017, duly and regularly passed.


Benjamin J.F. Cruz
Speaker

Attested:


Dennis G. Rodriguez, Jr.
Acting Legislative Secretary

This Act was received by *I Maga'låhen Guåhan* this 2nd day of Oct,
2017, at 4:40 o'clock P.M.


Assistant Staff Officer
Maga'låhi's Office

APPROVED:

EDWARD J.B. CALVO
I Maga'låhen Guåhan

Date: OCT 14 2017

Public Law No. 34-55