

MINA' TRENTA NA LIHESLATURAN GUÅHAN
2009 (FIRST) Regular Session

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Bill No. 47 (LS)

Introduced by:

B.J.F. Cruz



**AN ACT TO PROVIDE A LEGISLATIVE SUBMISSION
FOR CONSIDERATION BY GUAM VOTERS WITHIN
NINETY (90) DAYS FROM THE ENACTMENT OF THIS
ACT; AND TO PROVIDE GUAM VOTERS THE POWER
TO INCREASE THE BUSINESS PRIVILEGE TAX IN
ORDER TO PROVIDE FOR THE FINANCING OF A
NEW SANITARY LANDFILL AND TO FUND
NECESSARY CAPITAL IMPROVEMENT PROJECTS.**

BE IT ENACTED BY THE PEOPLE OF GUAM:

Section 1. Legislative Intent. *I Liheslaturan Guåhan* finds that the

people of Guam demand greater participation in matters that affect them.

One avenue through which voters may more fully participate in the

democratic process is a legislative submission. The issue of closing the

Ordot Dump amalgamated with environmental hazards within the facility

and recent court mandates ensures that Guam finds a cost effective and

expeditious path toward the opening of a new landfill. Therefore, financing

a new landfill through raising the Business Privilege Tax is the best method

for resolving the landfill issue. Raising the Business Privilege Tax is an

unpopular proposition; however, tough decisions necessitate unconventional

solutions where the overflowing Ordot Landfill is concerned. Furthermore,

1 a one-percentage point increase to the Business Privilege Tax until the
2 closing of fiscal year 2012 will finance a new landfill. *I Liheslaturan*
3 *Guåhan* finds that raising the Business Privilege Tax by one-percentage
4 point will fund Capital Improvement Projects like schools, hospitals,
5 museums, and cultural centers. *I Liheslaturan Guåhan* finds that it is
6 appropriate for the public to make its views known through a legislative
7 submission regarding whether to increase the Business Privilege Tax by one-
8 percentage point until the closing of fiscal year 2012 to provide for the
9 financing of a new landfill, and to increase the Business Privilege Tax by
10 one percentage point to fund Capital Improvement Projects.

11 **Section 2.** Notwithstanding §17311, Chapter 17, Title 3, Guam Code
12 Annotated, the Guam Election Commission, subject to the provisions
13 hereinafter set forth, shall conduct a special election as those terms are
14 defined by 3 GCA §§1107 and 1110 within ninety (90) days from the date of
15 the enactment of this Act. For the purposes of this Act, the term “date of
16 enactment” shall be as determined pursuant to 1 GCA §102.

17 **Section 3.** The election shall determine whether or not voters of Guam
18 support an increase in the Business Privilege Tax by one-percentage point
19 until the closing of fiscal year 2012 to provide for the financing of a new
20 landfill, and to increase the Business Privilege Tax by one percentage point
21 to fund Capital Improvement Projects.

22 **Section 4.** The question put to voters shall be:

23 **Vote for only ‘Yes’ or ‘No.’ If you do not vote for either ‘Yes’ or**
24 **‘No’ or if you vote for both ‘Yes’ and ‘No’, your vote will be invalid and**
25 **will not be included in determining the outcome of the election.**

1 **“Shall the Business Privilege tax be increased to provide for the**
2 **financing of a new landfill and to fund needed capital**
3 **improvement projects benefiting the people of Guam?”**

4 **() Yes**

5 **() No**

6 **Section 5.** Should a simple majority of voters who vote on the
7 question provided in Section 4 of this measure vote “Yes”, the following
8 *shall* be enacted into law:

9 **(a) Six Percent (6%) Business Privilege Tax.** Subject to
10 Subsections (b) and (e) of Section 5 of this Act, § 26202 of Chapter
11 26, Title 11 of the Guam Code Annotated is hereby *amended* to read:

12 **“§ 26202. Rates.** The following rates shall apply in
13 computing, assessing and collecting the business privilege tax:

14 (a) Tax on the business of selling tangible personal
15 property. Upon every person engaging or continuing
16 within Guam in the business of selling any tangible
17 property whatsoever (not including however, bonds or
18 other evidence of indebtedness or stocks), there shall be a
19 tax equivalent to ~~four percent (4%)~~ six percent (6%) of
20 gross proceeds of sales; except that on the gross proceeds
21 of the operation of poker machines, there shall be a tax
22 equivalent to eight percent (8%) on the gross proceeds of
23 each machine, as determined by subtracting the winnings,
24 pay-outs and malfunction refunds from total receipts of
25 each machine.

26 (1) *Provided*, that gross proceeds of export
27 sales of tangible property in foreign commerce

1 shall not constitute a part of the measure of the tax
2 imposed. Although not constituting a part of the
3 measure of the tax imposed, all such sales shall be
4 reported in the manner provided for the reporting
5 of the tax imposed by § 26202(a).

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

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

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

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

9 (b) (1) [Repealed.]

10 (2) [Repealed.]

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

17 (c) Tax on service business. Upon every person
18 engaging or continuing within Guam, in any service
19 business or calling not otherwise specifically taxed under
20 this Section, [there shall be] a tax equivalent to ~~four~~
21 ~~percent (4%)~~ six percent (6%) of the gross income of
22 such business.

23 (d) Professions. Upon every person engaging or
24 continuing within Guam in the practice of a profession,
25 excluding those expounding the religious doctrines of
26 any church, [there shall be] a tax equivalent to ~~four~~

1 ~~percent (4%)~~ six percent (6%) of the gross income of
2 such practice.

3 (e) Tax on Contractors. There shall be levied,
4 assessed and collected a tax rate of ~~four percent (4%)~~ six
5 percent (6%) measured against the gross income of any
6 contractor; *provided*, that there shall be deducted from
7 the gross income of the taxpayer so much thereof as has
8 been included in the measure of tax levied under this
9 Subsection on another taxpayer who is a contractor, as
10 defined in § 26101(b); *provided*, that any person claiming
11 a deduction under this Subsection shall be required to
12 show in the person's return either the name and
13 contractor's license number or the registration number
14 for a professional engineer, architect or land surveyor or
15 the Certificate of Authorization (COA) number for a
16 business authorized to provide engineering, architecture
17 or land surveying services by the Guam Board of
18 Registration for Professional Engineers, Architects, Land
19 Surveyors of the person paying the tax on the amount
20 deducted by the person.

21 (f) Tax on banks, banking institutions, small
22 lenders and building and loan associations. Upon every
23 person engaging or continuing within Guam in the
24 business of operating any bank, banking institutions,
25 building and loan association, small lending business, or
26 lending institutions, there shall be a tax equivalent to ~~four~~

1 ~~percent (4%)~~ six percent (6%) of the net income received
2 from business.

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

7 (A) Salaries or bonuses paid and other
8 compensation from personal services.

9 (B) Interest or discount paid.

10 (C) Rents paid.

11 (D) Ordinary operating expenses such
12 as supplies, utility services, insurance
13 premiums other than for life insurance,
14 provided that any deductible insurance
15 expense shall be allowable only to the extent
16 that such a premium is applicable to the tax
17 period against which it is claimed.

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

21 (F) Losses other than loan losses, such
22 as those occasioned by fire or other casualty,
23 theft, embezzlement, and the like, but only
24 to the extent not covered by insurance
25 proceeds collected.

1 (G) Transfers from earnings to reserve
2 for bad debts or other contingencies
3 provided for.

4 (H) Miscellaneous direct expenses
5 such as legal, advertising, auditing, and the
6 like.

7 (I) Loss on property sold and
8 depreciation on property owned.

9 (2) A person liable for the payment of taxes
10 levied under this Section shall be required to file
11 an annual return, and shall not be required to file
12 monthly returns. The tax year shall be calendar
13 year except that the taxpayer may use his annual
14 accounting period when prior permission is
15 obtained from the Tax Commissioner. The annual
16 return under this Subsection shall be filed not later
17 than ninety (90) days following the close of the
18 taxpayer's tax year.

19 (g) Dealing in foreign currency. Upon every
20 person engaging or continuing within Guam in the
21 business of purchasing and selling foreign money, there
22 shall be a tax equivalent to ~~four percent (4%)~~ six percent
23 (6%) of the gross profit of such business represented by
24 the difference between the cost and selling price of the
25 foreign currency measured in United States dollars.

26 (h) Tax on other business. Upon every person
27 engaging or continuing within Guam in any business,

1 trade, activity, occupation or calling not specifically
2 included in any other provision of this Article, there shall
3 likewise be a tax equivalent to ~~four percent (4%)~~ six
4 percent (6%) of the gross income of such business. This
5 Section shall apply to the gross income of persons
6 taxable under other provisions of this Chapter but which
7 gross income is not derived from the exercise or privilege
8 taxable thereunder.

9 (i) Insurers. Upon every person engaged or
10 continuing within Guam in the business of an insurer,
11 there shall be a tax at the rate of ~~four percent (4%)~~ six
12 percent (6%) of gross income received as premium for
13 the writing of insurance, less returned premiums and less
14 all commissions attributable to the sale and purchase of
15 an insurance policy or policies of the insurer paid by said
16 insurer to agents of the same, and ~~four percent (4%)~~ six
17 percent (6%) of any other gross income earned or derived
18 on Guam.

19 (j) Tour Agencies. Upon every person engaging or
20 continuing within Guam in the business of a tour agency
21 or travel agency, where tourism-related services are
22 furnished to consumers by independent vendors through
23 arrangements made by a travel agency, or tour packager,
24 and the gross income is divided between the provider of
25 the services on the one hand and the travel agency or tour
26 packager on the other hand, a tax equivalent of ~~four~~
27 ~~percent (4%)~~ six percent (6%) shall be imposed on each

1 person with respect to such person's respective portion of
2 the proceeds, and no more. Where transient
3 accommodations are furnished through arrangements
4 made by a travel agency or tour packager, the gross
5 income is divided between the provider of the transient
6 accommodations on the one hand and the travel agency,
7 or tour packager, on the other hand, a tax equivalent of
8 ~~four percent (4%)~~ six percent (6%) shall be imposed on
9 each person with respect to such person's respective
10 portion of the proceeds, and no more.

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

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

21 (b) Allocation of the Six Percent (6%) Business Privilege Tax
22 Proceeds. Notwithstanding § 26102(c) of Chapter 26, Title 11, of the
23 Guam Code Annotated or any other provision of law, one-sixth (1/6)
24 of all proceeds collected pursuant to § 26202 of Chapter 26, Title 11,
25 of the Guam Code Annotated shall be deposited into the Solid Waste
26 Operations Fund; one-eighteenth (1/18) of all said proceeds shall be
27 deposited into the Territorial Education Facilities Fund for the

1 purpose of constructing new schools or renovating existing schools;
2 and one-eighteenth (1/18) of all said proceeds shall be deposited in the
3 Tourist Attraction Fund for the purpose of appropriating sums for the
4 construction of public facilities including and limited to zoos and
5 aquariums, museums, athletic facilities, cultural centers, performing
6 arts complexes and a convention center and one-fifteenth (1/15) of all
7 said proceeds shall be deposited into the Healthy Futures Fund for the
8 purpose of funding capital improvement projects of the Guam
9 Memorial Hospital Authority.

10 (c) **Five Percent (5%) Business Privilege Tax.** Subject to
11 Subsections (d) and (e) of Section 5 of this Act, § 26202 of Chapter
12 26, Title 11 of the Guam Code Annotated is *amended* to read:

13 “§ 26202. **Rates.** The following rates shall apply in
14 computing, assessing and collecting the business privilege tax:

15 (a) Tax on the business of selling tangible personal
16 property. Upon every person engaging or continuing
17 within Guam in the business of selling any tangible
18 property whatsoever (not including however, bonds or
19 other evidence of indebtedness or stocks), there shall be a
20 tax equivalent to ~~four percent (4%)~~ five percent (5%) of
21 gross proceeds of sales; except that on the gross proceeds
22 of the operation of poker machines, there shall be a tax
23 equivalent to eight percent (8%) on the gross proceeds of
24 each machine, as determined by subtracting the winnings,
25 pay-outs and malfunction refunds from total receipts of
26 each machine.

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

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

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

22 (4) *Provided*, that a manufacturer or
23 producer, other than a manufacturer of alcoholic
24 beverages, engaging in the business of selling his
25 products to manufacturers, wholesalers, or licensed
26 retailers, or persons actually selling the products to
27 the United States Government, shall not be

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

11 (b) (1) [Repealed.]

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

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20 engaging or continuing within Guam, in any service
21 business or calling not otherwise specifically taxed under
22 this Section, [there shall be] a tax equivalent to ~~four~~
23 ~~percent (4%)~~ five percent (5%) of the gross income of
24 such business.

25 (d) Professions. Upon every person engaging or
26 continuing within Guam in the practice of a profession,
27 excluding those expounding the religious doctrines of

1 any church, [there shall be] a tax equivalent to ~~four~~
2 ~~percent (4%)~~ five percent (5%) of the gross income of
3 such practice.

4 (e) Tax on Contractors. There shall be levied,
5 assessed and collected a tax rate of ~~four percent (4%)~~ five
6 percent (5%) measured against the gross income of any
7 contractor; *provided*, that there shall be deducted from
8 the gross income of the taxpayer so much thereof as has
9 been included in the measure of tax levied under this
10 Subsection on another taxpayer who is a contractor, as
11 defined in § 26101(b); *provided*, that any person claiming
12 a deduction under this Subsection shall be required to
13 show in the person's return either the name and
14 contractor's license number or the registration number
15 for a professional engineer, architect or land surveyor or
16 the Certificate of Authorization (COA) number for a
17 business authorized to provide engineering, architecture
18 or land surveying services by the Guam Board of
19 Registration for Professional Engineers, Architects, Land
20 Surveyors of the person paying the tax on the amount
21 deducted by the person.

22 (f) Tax on banks, banking institutions, small
23 lenders and building and loan associations. Upon every
24 person engaging or continuing within Guam in the
25 business of operating any bank, banking institutions,
26 building and loan association, small lending business, or
27 lending institutions, there shall be a tax equivalent to ~~four~~

1 ~~percent (4%)~~ five percent (5%) of the net income
2 received from business.

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

7 (A) Salaries or bonuses paid and other
8 compensation from personal services.

9 (B) Interest or discount paid.

10 (C) Rents paid.

11 (D) Ordinary operating expenses such
12 as supplies, utility services, insurance
13 premiums other than for life insurance,
14 provided that any deductible insurance
15 expense shall be allowable only to the extent
16 that such a premium is applicable to the tax
17 period against which it is claimed.

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

21 (F) Losses other than loan losses, such
22 as those occasioned by fire or other casualty,
23 theft, embezzlement, and the like, but only
24 to the extent not covered by insurance
25 proceeds collected.

1 (G) Transfers from earnings to reserve
2 for bad debts or other contingencies
3 provided for.

4 (H) Miscellaneous direct expenses
5 such as legal, advertising, auditing, and the
6 like.

7 (I) Loss on property sold and
8 depreciation on property owned.

9 (2) A person liable for the payment of taxes
10 levied under this Section shall be required to file
11 an annual return, and shall not be required to file
12 monthly returns. The tax year shall be calendar
13 year except that the taxpayer may use his annual
14 accounting period when prior permission is
15 obtained from the Tax Commissioner. The annual
16 return under this Subsection shall be filed not later
17 than ninety (90) days following the close of the
18 taxpayer's tax year.

19 (g) Dealing in foreign currency. Upon every
20 person engaging or continuing within Guam in the
21 business of purchasing and selling foreign money, there
22 shall be a tax equivalent to ~~four percent (4%)~~ five percent
23 (5%) of the gross profit of such business represented by
24 the difference between the cost and selling price of the
25 foreign currency measured in United States dollars.

26 (h) Tax on other business. Upon every person
27 engaging or continuing within Guam in any business,

1 trade, activity, occupation or calling not specifically
2 included in any other provision of this Article, there shall
3 likewise be a tax equivalent to ~~four percent (4%)~~ five
4 percent (5%) of the gross income of such business. This
5 Section shall apply to the gross income of persons
6 taxable under other provisions of this Chapter but which
7 gross income is not derived from the exercise or privilege
8 taxable thereunder.

9 (i) Insurers. Upon every person engaged or
10 continuing within Guam in the business of an insurer,
11 there shall be a tax at the rate of ~~four percent (4%)~~ five
12 percent (5%) of gross income received as premium for
13 the writing of insurance, less returned premiums and less
14 all commissions attributable to the sale and purchase of
15 an insurance policy or policies of the insurer paid by said
16 insurer to agents of the same, and ~~four percent (4%)~~ five
17 percent (5%) of any other gross income earned or derived
18 on Guam.

19 (j) Tour Agencies. Upon every person engaging or
20 continuing within Guam in the business of a tour agency
21 or travel agency, where tourism-related services are
22 furnished to consumers by independent vendors through
23 arrangements made by a travel agency, or tour packager,
24 and the gross income is divided between the provider of
25 the services on the one hand and the travel agency or tour
26 packager on the other hand, a tax equivalent of ~~four~~
27 ~~percent (4%)~~ five percent (5%) shall be imposed on each

1 person with respect to such person's respective portion of
2 the proceeds, and no more. Where transient
3 accommodations are furnished through arrangements
4 made by a travel agency or tour packager, the gross
5 income is divided between the provider of the transient
6 accommodations on the one hand and the travel agency,
7 or tour packager, on the other hand, a tax equivalent of
8 ~~four percent (4%)~~ five percent (5%) shall be imposed on
9 each person with respect to such person's respective
10 portion of the proceeds, and no more.

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

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

21 (d) Allocation of Five Percent (5%) Business Privilege Tax
22 Proceeds. Notwithstanding § 26102(c) of Chapter 26, Title 11, of the
23 Guam Code Annotated or any other provision of law, one-tenth (1/15)
24 of all proceeds collected pursuant to § 26202 of Chapter 26, Title 11,
25 of the Guam Code Annotated shall be deposited into the Territorial
26 Education Facilities Fund; and one-tenth (1/15) of all said proceeds
27 shall be deposited in the Tourist Attraction Fund for the purpose

1 appropriating sums for the construction of public facilities including
2 and limited to a convention center, zoos and aquariums, museums,
3 athletic facilities, cultural centers, and performing arts complexes; and
4 one-fifteenth (1/15) of all said proceeds shall be deposited into the
5 Healthy Futures Fund for the purpose of funding capital improvement
6 projects of the Guam Memorial Hospital Authority.

7 **(e) Effective Dates.** Subsections (a) and (b) of this Act shall be
8 effective upon approval of Guam's voters and shall expire on
9 September 30, 2012. Sections (c) and (d) shall be effective October 1,
10 2012 and thereafter.

11 **Section 6.** Upon proof made to the satisfaction of *I Liheslatura* by the
12 Election Commission, the *I Liheslatura* shall appropriate such funds as may
13 be required to conduct the election. Any expenditures shall be documented
14 and forwarded to the office of the Public Auditor for review. Any unused
15 funds appropriated to the Guam Election Commission for the purposes of the
16 special election shall be returned to the General Fund.

17 **Section 7.** This Act shall be a legislative submission pursuant to
18 §17102 (c) and also pursuant to §17401 and §17402 Chapter 17, Title 3,
19 Guam Code Annotated.

20 **Section 8.** For the purposes of this legislative submission, a special
21 election shall be held pursuant to §17212 Chapter 17, Title 3, Guam Code
22 Annotated.

23 **Section 9. Exemption to Increase in Business Privilege Tax**
24 **pursuant to this Act.**

25 (a) Any voter-approved increase in the Business Privilege Tax
26 set forth in this Act shall not apply to income generated from contracts
27 entered into or awarded, which:

1 (1) were based upon bid awards made prior to the tax
2 increase, that *cannot* be amended or renegotiated to
3 accommodate the tax increase; and

4 (2) which were entered into or awarded after the increase,
5 which were based upon bids or proposals submitted prior to the
6 tax increase, that cannot be amended or renegotiated to
7 accommodate the tax increase.

8 (b) For purposes of this Section, each taxpayer claiming an
9 exemption under this Section *shall* provide to the Department of
10 Revenue & Taxation a copy of its bid contract or award under which
11 any claimed exempt income was generated and shall segregate in their
12 tax filings, relative to the Business Privilege Tax, said exempt income
13 from any other income generated by the taxpayer.