



CARL T.C. GUTIERREZ
GOVERNOR OF GUAM

Refer to
Legislative Secretary

OFFICE OF THE LEGISLATIVE SECRETARY	
ACKNOWLEDGMENT RECEIPT	
Received By	<u>[Signature]</u>
Time	<u>11:55am</u>
Date	<u>5.11.98</u>

MAY 08 1998

The Honorable Antonio R. Unpingco
Speaker
Mina'Bente Kuattro na Liheslaturan Guahan
Twenty-Fourth Guam Legislature
Guam Legislature Temporary Building
155 Hesler Street
Hagatña, Guam 96910

Office of the Speaker
ANTONIO R. UNPINGCO
Date: 5/8/98
Time: 4:55 pm
Rec'd by: [Signature]
Print Name: Janice Mesa

Dear Speaker Unpingco:

Enclosed please find Substitute Bill No. 566 (LS), "AN ACT TO AMEND §§26401, 26402 AND 26101(v), TO REPEAL §§26404, 26405 AND 26407, TO AMEND §26406 AND RECODIFY IT TO §26404, AND TO ADD NEW §§26405, 26406, 26407, 26408 AND 26504, ALL TO CHAPTER 26, DIVISION 2 OF TITLE 11 OF THE GUAM CODE ANNOTATED, RELATIVE TO THE LIQUID FUEL TAX AND AUTOMOTIVE SURCHARGES.", which I have signed into law today as **Public Law No. 24-205**. Enclosed also please find a draft bill to provide for liquid fuel used solely for agricultural and marine purposes.

The liquid fuel tax is imposed at the time when the liquid fuel is imported into Guam. The current law provides a drawback, or refund, on liquid fuel that is purchased solely for agricultural purposes, solely for marine purposes, or is subsequently sold off-island for use elsewhere.

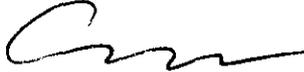
It is administratively difficult to track the import and the subsequent storage of liquid fuel, as well as to determine which fuel is subsequently transferred off island or sold for certain purposes. This method also makes it more expensive and very inconvenient for businesses who must pay a tax up front, and later, when it is determined that there is an exemption for a particular portion of liquid fuel, receive a refund. It is inefficient both for businesses and for the Department of Revenue and Taxation to try to impose a tax and later grant exemptions and drawbacks.

00817

This legislation imposes the liquid fuel tax at the point of transfer or sale, rather than at the point of import into Guam.

After researching this legislation it is discovered that the prior exemption for liquid fuel used for agricultural purposes and for marine purposes was deleted from this legislation. This particularly affects one business, Cabras Marine Tugboats, as well as our local fishermen. I am asking I Liheslaturan Guåhan to impose the liquid fuel tax at a different rate for agricultural purposes and for marine purposes, to preserve what used to be the former exemption for those two businesses, previously granted through the "drawback" method in Section 26404 of Title 11, Guam Code Annotated. See attached draft legislation which I ask to be introduced into the legislative process.

Very truly yours,


Carl T. C. Gutierrez
I Maga'lahaen Guåhan
Governor of Guam

00017

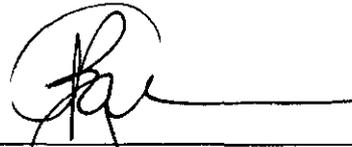
Attachment: copy attached for signed bill
 original attached for vetoed bill

cc: The Honorable Joanne M. S. Brown
 Legislative Secretary

MINA'BENTE KUATTRO NA LIHESLATURAN GUAHAN
1998 (SECOND) Regular Session

CERTIFICATION OF PASSAGE OF AN ACT TO I MAGA'LAHEN GUAHAN

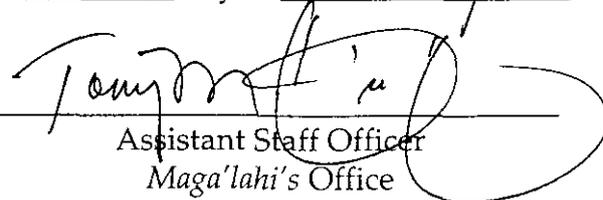
This is to certify that Substitute Bill No. 566 (LS), "AN ACT TO AMEND §§26401, 26402 AND 26101(v), TO REPEAL §§26404, 26405 AND 26407, TO AMEND §26406 AND RECODIFY IT TO §26404, AND TO ADD NEW §§26405, 26406, 26407, 26408 AND 26504, ALL TO CHAPTER 26, DIVISION 2 OF TITLE 11 OF THE GUAM CODE ANNOTATED, RELATIVE TO THE LIQUID FUEL TAX AND AUTOMOTIVE SURCHARGES," was on the 1st day of May, 1998, duly and regularly passed.


ANTONIO R. UNPINGCO
Speaker

Attested:


JOANNE M.S. BROWN
Senator and Legislative Secretary

This Act was received by *I Maga'lahen Guahan* this 6th day of May, 1998,
at 3:15 o'clock P.M.

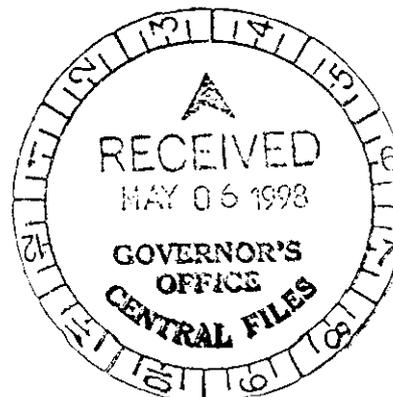

Assistant Staff Officer
Maga'lahi's Office

APPROVED:


CARL T. C. GUTIERREZ
I Maga'lahen Guahan

Date: 5-8-98

Public Law No. 24-205



**MINA'BENTE KUATTRO NA LIHESLATURAN GUAHAN
1998 (SECOND) Regular Session**

Bill No. 566 (LS)

As substituted by the Committee on
Finance and Taxation and amended
on the Floor.

Introduced by:

A. C. Blaz
E. J. Cruz
Felix P. Camacho
L. F. Kasperbauer
A. C. Lamorena, V
M. C. Charfauros
F. B. Aguon, Jr.
Francisco P. Camacho
T. C. Ada
J. M.S. Brown
W. B.S.M. Flores
Mark Forbes
C. A. Leon Guerrero
L. Leon Guerrero
V. C. Pangelinan
J. C. Salas
A. L.G. Santos
F. E. Santos
A. R. Unpingco
J. Won Pat-Borja

**AN ACT TO AMEND §§26401, 26402 AND 26101(v),
TO REPEAL §§26404, 26405 AND 26407, TO AMEND
§26406 AND RECODIFY IT TO §26404, AND TO
ADD NEW §§26405, 26406, 26407, 26408 AND 26504,
ALL TO CHAPTER 26, DIVISION 2 OF TITLE 11 OF
THE GUAM CODE ANNOTATED, RELATIVE TO
THE LIQUID FUEL TAX AND AUTOMOTIVE
SURCHARGES.**

1 **BE IT ENACTED BY THE PEOPLE OF GUAM:**

2 **Section 1. Legislative Declaration, Findings and Intent.** Guam's
3 liquid fuel tax law was enacted as Public Law Number 2-43 (2nd *Liheslaturan*
4 *Guahan*, 1st Session) on July 22, 1953. Guam's liquid fuel tax laws are now
5 codified in Article 4, Chapter 26, Division 2 of Title 11 of the Guam Code
6 Annotated.

7 Over the years our liquid fuel tax statutes have been amended, repealed
8 and modified to meet the changing needs of our community. New sections,
9 subsections or paragraphs have been added through subsequent revisions.
10 These changes have included exemptions for commercial fishing and
11 storage/export consignment and delivery to a point outside of Guam.

12 The timing of the tax, that is when it becomes due, has been the subject
13 of much contention in recent years. Therein lies the difficulty. Taxing upon
14 importation and storage requires the tax be paid although the fuel has not
15 been sold. This burdens the distributors as it presents a significant cash flow
16 problem industry wide.

17 The recently enacted export/storage exemption gave rise to proposed
18 and temporary regulations that provided for the distributors to identify
19 storage facilities dedicated to imported fuel destined for eventual export. Due
20 to the fungible nature of fuel oil, keeping track of fuel imported for storage
21 necessitated procedures that were both time consuming and costly. Due to
22 the lack of excess storage facilities, the regulations frustrated the legislature's
23 intent in granting the exemptions in the first place.

1 Finally, the drawback provisions in the current statute meant money
2 would be tied up while the government identified funds to be paid to the
3 distributors, causing more significant cash flow problems. Months would
4 pass before distributors would receive their cash drawbacks.

5 *I Liheslaturan Guahan* declares that Article 4, Chapter 26, Division 2 of
6 Title 11 of the Guam Code Annotated must be further amended to ensure that
7 our tax laws are administered in a more responsible, efficient and equitable
8 manner, consistent with the Legislature’s intent. To do this, we need to
9 analyze our current statute and identify ways to improve tax collections and
10 resolve problems that modernization may bring to our developing economy.

11 *I Liheslaturan Guahan* intends to amend Title 11, GCA, as it pertains to
12 liquid fuel tax to serve the following purposes: (a) simplification of our tax
13 statutes so as to ease the administrative burden on the fuel industry; (b) to
14 relieve the cash flow burden upon both the industry and our government; and
15 (c) to collect the correct amount of tax with the least amount of effort.

16 Further, and from an enforcement perspective, regulations for this
17 Chapter must include a method whereby the Department of Revenue and
18 Taxation can receive current information from the industry as to movement of
19 fuel into, out of and within Guam. This will allow the Department of Revenue
20 and Taxation to successfully monitor fuel to ascertain the amount of taxable
21 fuel.

22 **Section 2.** Section 26401 of Article 4, Chapter 26, Division 2 of Title 11
23 of the Guam Code Annotated is hereby amended to read as follows:

24 **“Section 26401. General Provisions.** The following general
25 provisions are restricted in application to this Article, and are in

1 addition to the general provisions of Article 1 and the rules and
2 regulations promulgated under authority of law by the Tax
3 Commissioner.

4 (a) **Definitions.** When used in this Article the
5 following definitions of words and phrases used herein shall
6 govern the interpretations:

7 (1) *'Distributors'* shall mean and include any person
8 who refines, manufactures, produces, blends or compounds
9 liquid fuel in Guam, or who imports liquid fuel into Guam,
10 or who receives in Guam liquid fuel with respect to which
11 the liquid fuel tax is not already imposed hereunder, or who
12 receives liquid fuel in Guam in bulk form from a Distributor,
13 as defined in this Subsection and who acquires physical
14 possession of such liquid fuel or rights in such liquid fuel
15 directly from a pipeline, directly from a cargo ship, or via an
16 in-tank change or ownership of such liquid fuel occurring in
17 a petroleum facility, and includes the United States, and any
18 agency or instrumentality thereof, as well as any other
19 person, to the extent such inclusion is authorized by the laws
20 of the United States, and particularly by 4 U.S.C. §104, as
21 amended.

22 (2) *'Consumer'* shall mean and include any person
23 who purchases liquid fuel for his own use or storage, but
24 shall not mean a person who purchases for resale, provided
25 such person is properly licensed to engage in the business of

1 selling liquid fuel. Consumer shall also mean and include
2 any distributor who consumes the liquid fuel itself as the
3 end-user.

4 (3) *'Liquid fuel' or 'fuel'* shall mean and include all
5 liquids ordinarily, practically and commercially usable in
6 internal combustion, turbo-jet and jet engines for the
7 generation of power and shall include all distillates of, and
8 condensates from petroleum, natural gas, coal, coal tar and
9 vegetable ferments, such distillates and condensates being
10 ordinarily designated as gasoline, butane, naphtha, benzol,
11 benzine, kerosene and alcohol so usable, but not restricted to
12 such designation. However, kerosene purchased for actual
13 use other than internal combustion, turbo-jet, or jet engines
14 and crude oil are specifically excluded from the meaning of
15 'liquid fuel' under this Article.

16 (4) *'Diesel fuel'* shall mean and include all liquids
17 ordinarily, practically and commercially usable in those
18 ignition-compression engines commonly known as diesel
19 engines.

20 (5) (a) *'Transfer'* shall mean and include any sale,
21 conveyance, assignment, disposition or change of possession
22 of liquid fuel made or effected in Guam by a distributor to
23 Consumer, and shall also mean and include all liquid fuel
24 dedicated or made available by a distributor for retail sales
25 to consumers in Guam by the said distributor or wholesale

1 sales to independent retailers, or use by the distributor as a
2 consumer.

3 (b) *'Export Transfer'* shall mean any export of
4 liquid fuel from a point within Guam to a point outside of
5 Guam.

6 (6) *'Dedicated or made available'*

7 (a) shall mean and include the point in time
8 when liquid fuel is delivered by a distributor to any
9 facility or device used or to be used by the said
10 distributor to dispense liquid fuel to consumers in the
11 case of a distributor who operates its own retail
12 activities; or

13 (b) the point in time when liquid fuel is
14 delivered to an independent retailer in the case
15 wherein a distributor transfers liquid fuel to an
16 independent retailer.

17 (7) *'Stock gain or loss'* is any gain or loss in quantity
18 or volume of liquid fuel resulting from natural phenomena
19 that may give rise to a gain or loss or any other gain or loss
20 deemed by the Tax Commissioner to have resulted from an
21 effect not caused directly or indirectly by such distributor."

22 **Section 3.** Section 26402 of Article 4, Chapter 26, Division 2 of Title 11
23 of the Guam Code Annotated is hereby amended to read as follows:

24 "Section 26402. Levy. There is hereby levied, and shall be
25 assessed and collected, upon every distributor, in addition to any other

1 taxes provided by law, an excise tax to be measured by the application
2 of the rates set forth in the next succeeding §26403 against any transfer
3 in Guam of liquid fuel made by a distributor, except that the liquid fuel
4 tax shall not be applied more than once with respect to the same liquid
5 fuel. Provided, however, that the provisions of this Article shall not
6 apply to liquefied petroleum gas, unless the same is used as fuel for
7 transportation purposes.”

8 **Section 4.** Section 26404 of Article 4, Chapter 26, Division 2 of Title 11
9 of the Guam Code Annotated is hereby repealed.

10 **Section 5.** Section 26406 is hereby amended, and recodified to §26404,
11 to read as follows:

12 **“Section 26404. Exemption from Levy Under §26402 and Special**
13 **Rule Regarding Drawbacks.** The following transfers of liquid fuel
14 in Guam made by a distributor shall be exempt from the liquid fuel tax
15 levied under §26402:

16 (a) Liquid fuel transferred to vessels engaged in
17 commercial fishing.

18 (b) Liquid fuel transferred to the United States, or any
19 agency or instrumentality thereof for its use or consumption.

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

23 (d) Transfer of liquid fuel by a distributor to another
24 distributor.

1 (e) Transfer of liquid fuel to the government of Guam or
2 any of its instrumentalities.

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

4 (g) Stock losses of less than one half of one percent (.5%)
5 (.005) during the fiscal year of the taxpayer. In computing taxable
6 or non-taxable stock losses, any gross stock gains shall be off-set
7 against any gross stock losses in determining net stock losses for
8 the purposes of assessing the tax."

9 **Section 6.** Sections 26405 and 26407 of Article 4, Chapter 26, Division 2
10 of Title 11 of the Guam Code Annotated are repealed.

11 **Section 7.** Sections 26405, 26406, 26407 and 26408 are hereby added to
12 Article 4, Chapter 26, Division 2 of Title 11 of the Guam Code Annotated to
13 read as follows:

14 **"Section 26405. Regulations, Reports of Transfers, Etc.** All
15 transfers of liquid fuel in Guam shall be reported by the distributor
16 transferring the liquid fuel in such manner and at such time as the Tax
17 Commissioner may adopt by regulation. The Tax Commissioner may
18 also adopt such other regulations as to be consistent with the statute and
19 as may be necessary to administer and implement this Article 4.

20 **Section 26406. Penalty.** In addition to all other penalties
21 provided by law, a penalty of One Thousand Dollars (\$1,000.00) shall be
22 assessed and collected from a distributor who fails to report to the Tax
23 Commissioner a transfer in Guam of liquid fuel unless it is shown by the
24 distributor that such failure is due to reasonable cause and not due to

1 (e) Transfer of liquid fuel to the government of Guam or
2 any of its instrumentalities.

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

4 (g) Stock losses of less than one half of one percent (.5%)
5 (.005) during the fiscal year of the taxpayer. In computing taxable
6 or non-taxable stock losses, any gross stock gains shall be off-set
7 against any gross stock losses in determining net stock losses for
8 the purposes of assessing the tax."

9 **Section 6.** Sections 26405 and 26407 of Article 4, Chapter 26, Division 2
10 of Title 11 of the Guam Code Annotated are repealed.

11 **Section 7.** Sections 26405, 26406, 26407 and 26408 are hereby added to
12 Article 4, Chapter 26, Division 2 of Title 11 of the Guam Code Annotated to
13 read as follows:

14 **"Section 26405. Regulations, Reports of Transfers, Etc.** All
15 transfers of liquid fuel in Guam shall be reported by the distributor
16 transferring the liquid fuel in such manner and at such time as the Tax
17 Commissioner may adopt by regulation. The Tax Commissioner may
18 also adopt such other regulations as to be consistent with the statute and
19 as may be necessary to administer and implement this Article 4.

20 **Section 26406. Penalty.** In addition to all other penalties
21 provided by law, a penalty of One Thousand Dollars (\$1,000.00) shall be
22 assessed and collected from a distributor who fails to report to the Tax
23 Commissioner a transfer in Guam of liquid fuel unless it is shown by the
24 distributor that such failure is due to reasonable cause and not due to

1 willful neglect. The penalty shall apply to each such failure to report a
2 transfer.

3 **Section 26407. Liquid Fuel Monitoring Unit.** There is
4 hereby created a Liquid Fuel Monitoring Unit within the Examination
5 Branch of the Department of Revenue and Taxation. Such Unit shall be
6 staffed by a Revenue Agent II, one Tax Auditor II, and three Tax
7 Technicians II. These positions shall be in addition to positions already
8 contained within the budget of the Department of Revenue and
9 Taxation for the Tax Enforcement Division.

10 **Section 26408. Special Rule Regarding Drawbacks.** The
11 provisions of Article 4, *Liquid Fuel Tax*, Chapter 26, Division 2 of Title 11
12 of the Guam Code Annotated, regarding drawbacks of the liquid fuel
13 tax as in effect prior to the effective date of this Act shall apply to
14 transfers of liquid fuel made prior to such effective date.”

15 **Section 8.** Section 26504 is hereby added to Article 5, Chapter 26,
16 Division 2 of Title 11 of the Guam Code Annotated to read as follows:

17 **“Section 26504. Automotive Surcharges.** The Automotive
18 Surcharges levied pursuant to §§26502 and 26503 of this Title shall not
19 apply to liquid fuel which is exempt from the liquid fuel tax under this
20 Article 4. If any Automotive Surcharges is levied pursuant to §§26501
21 and 26503 of this Title regarding liquid fuel taxed pursuant to this
22 Article 4, and a drawback of the liquid tax is allowed, there shall be
23 allowed a drawback of such Automotive Surcharges along with the
24 drawback of the liquid fuel tax.”

1 **Section 9.** Section 26101(v) of Article 1, Chapter 26, Division 2 of Title
2 11 of the Guam Code Annotated is hereby amended to read as follows:

3 **“Section 26101(v).** *‘Vessels engaged in commercial fishing’*
4 shall mean those vessels solely employed in the activity of catching fish
5 for commercial sale and those vessels used to support such vessels such
6 as provisioning vessels and tanker vessels.”



‘NA’ BENTE KUÁTRO NA LIHES TURAN GUÁHAN
Office of the Vice Speaker
ANTHONY C. BLAZ

April 20, 1998

Chairman,
Finance & Taxation

Chairman,
Ethics & Standards

Vice-Chairman,
Committee on Rules

Member,
Judiciary, Public Safety &
Consumer Protection

Member,
Natural Resources

Member,
Tourism, Economic
Development, & Cultural
Affairs

Member,
Transportation,
Telecommunications &
Micronesia Affairs

Member,
Guam Finance
Commission

Member,
Commission on Self
Determination

The Honorable Speaker Antonio R. Unpingco
MINA’ BENTE KUÁTRO NA LIHESLATURAN GUÁHAN
155 Hesler Street
HĀGAT’NĀ, GUÁHAN 96910

Dear Mr. Speaker:

The Committee on Finance and Taxation, to which was referred Bill No. 566 (COR), " AN ACT TO AMEND §26401, §26402 AND §26406, REPEAL §26405 AND §26407 AND REPEAL AND REENACT §26404 AND TO ADD NEW §26405, §26406, §26407, §26408 AND §26409 TO ARTICLE 4, CHAPTER 26, DIVISION 2 OF TITLE 11, GUAM CODE ANNOTATED (GCA) RELATIVE TO THE LIQUID FUEL TAX AND TO ADD §26504 TO ARTICLE 5, CHAPTER 26, DIVISION 2 OF TITLE 11, GCA RELATIVE TO AUTOMOTIVE SURCHARGES." and herein reports back with the recommendation TO DO PASS.

Votes of the committee members are as follows:

To Pass
 Not To Pass
 To Place in Inactive File
 Abstained
 Off-Island
 Not Available

Sincerely,


Anthony C. Blaz

Attachment



Committee on Finance & Taxation

Vice Speaker Anthony C. Blaz, Chairman

***Committee Report on
Bill No. 566***

"AN ACT TO AMEND §26401, §26402 AND §26406, REPEAL §26405 AND §26407 AND REPEAL AND REENACT §26404 AND TO ADD NEW §26405, §26406, §26407, §26408 AND §26409 TO ARTICLE 4, CHAPTER 26, DIVISION 2 OF TITLE 11, GUAM CODE ANNOTATED (GCA) RELATIVE TO THE LIQUID FUEL TAX AND TO ADD §26504 TO ARTICLE 5, CHAPTER 26, DIVISION 2 OF TITLE 11, GCA RELATIVE TO AUTOMOTIVE SURCHARGES."

**SUBSTITUTE BILL
BILL NO. 566**

COMMITTEE ON FINANCE & TAXATION

TWENTY-FOURTH GUAM LEGISLATURE

155 Hesler Street, Agana, Guam 96910

Chairman: Vice Speaker Anthony C. Blaz Vice Chairman: Senator Mark Forbes
 Ex-Officio Member: Speaker Antonio R. Unpingco

VOTING SHEET ON:

Bill No. 566(COR) "AN ACT TO AMEND §26401, §26402 AND §26406, REPEAL §26405 AND §26407 AND REPEAL AND REENACT §26404 AND TO ADD NEW §26405, §26406, §26407, §26408 AND §26409 TO ARTICLE 4, CHAPTER 26, DIVISION 2 OF TITLE 11, GUAM CODE ANNOTATED (GCA) RELATIVE TO THE LIQUID FUEL TAX AND TO ADD §26504 TO ARTICLE 5, CHAPTER 26, DIVISION 2 OF TITLE 11, GCA RELATIVE TO AUTOMOTIVE SURCHARGES.

<u>COMMITTEE MEMBERS</u>	<u>INITIAL</u>	<u>TO PASS</u>	<u>NOT TO PASS</u>	<u>ABSTAIN</u>	<u>TO PLACE IN INACTIVE FILE</u>
Sen. Anthony C. Blaz <i>Chairman</i>	✓	✓			
Sen. Mark Forbes <i>Vice-Chairman</i>	[Signature]	✓			
Spkr. Antonio R. Unpingco <i>Ex-Officio Member</i>					
Sen. Thomas C. Ada <i>Member</i>					
Sen. Joanne M.S. Brown <i>Member</i>	[Signature]	✓			
Sen. Mark Charfauros <i>Member</i>					
Sen. Edwardo J. Cruz <i>Member</i>	[Signature]	✓	TO Report out only		
Sen. William B.S.M. Flores <i>Member</i>	[Signature]				
Sen. Lawrence F. Kasperbauer <i>Member</i>	[Signature]	X			
Sen. Alberto A.C. Lamorena, V <i>Member</i>					
Sen. Carlotta A. Leon Guerrero <i>Member</i>					
Sen. John C. Salas <i>Member</i>	[Signature]	✓			
Sen. Francis E. Santos <i>Member</i>					



Committee on Finance & Taxation
Vice Speaker Anthony C. Blaz, Chairman

***Committee Report on
Bill No. 566***

"AN ACT TO AMEND §26401, §26402 AND §26406, REPEAL §26405 AND §26407 AND REPEAL AND REENACT §26404 AND TO ADD NEW §26405, §26406, §26407, §26408 AND §26409 TO ARTICLE 4, CHAPTER 26, DIVISION 2 OF TITLE 11, GUAM CODE ANNOTATED (GCA) RELATIVE TO THE LIQUID FUEL TAX AND TO ADD §26504 TO ARTICLE 5, CHAPTER 26, DIVISION 2 OF TITLE 11, GCA RELATIVE TO AUTOMOTIVE SURCHARGES."

**ORIGINAL BILL
BILL NO. 566**



24th Guam Legislature
Committee on Rules, Government
Reform and Federal Affairs
Senator Mark Forbes, Chairman

APR 07 1998

MEMORANDUM

TO: Chairman
Committee on Finance and Taxation

FROM: Chairman
Committee on Rules, Government Reform and Federal Affairs

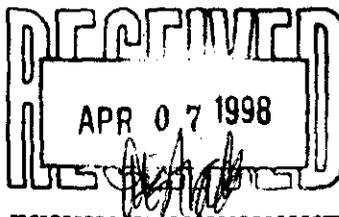
SUBJECT: Referral- Bill No. 566 ✓

The above Bill is referred to your Committee as the principal committee. It is recommended you schedule a public hearing at your earliest convenience.

Thank you for your attention to this matter.

MARK FORBES

Attachment





Committee on Finance & Taxation
Vice Speaker Anthony C. Blaz, Chairman

***Committee Report on
Bill No. 566***

"AN ACT TO AMEND §26401, §26402 AND §26406, REPEAL §26405 AND §26407 AND REPEAL AND REENACT §26404 AND TO ADD NEW §26405, §26406, §26407, §26408 AND §26409 TO ARTICLE 4, CHAPTER 26, DIVISION 2 OF TITLE 11, GUAM CODE ANNOTATED (GCA) RELATIVE TO THE LIQUID FUEL TAX AND TO ADD §26504 TO ARTICLE 5, CHAPTER 26, DIVISION 2 OF TITLE 11, GCA RELATIVE TO AUTOMOTIVE SURCHARGES."

**SIGN-IN SHEET
BILL NO. 566**



Committee on Finance & Taxation
Vice Speaker Anthony C. Blaz, Chairman

***Committee Report on
Bill No. 566***

“AN ACT TO AMEND §26401, §26402 AND §26406, REPEAL §26405 AND §26407 AND REPEAL AND REENACT §26404 AND TO ADD NEW §26405, §26406, §26407, §26408 AND §26409 TO ARTICLE 4, CHAPTER 26, DIVISION 2 OF TITLE 11, GUAM CODE ANNOTATED (GCA) RELATIVE TO THE LIQUID FUEL TAX AND TO ADD §26504 TO ARTICLE 5, CHAPTER 26, DIVISION 2 OF TITLE 11, GCA RELATIVE TO AUTOMOTIVE SURCHARGES.”

**TESTIMONIES
BILL NO. 566**

LIQUID FUEL TAX LAW

REFORM RECOMMENDATIONS

OVERVIEW

Guam's liquid fuel tax law was enacted as public law 2-43 (2ND Guam Legislature, 1st Session) on July 22, 1953. Guam's liquid fuel tax laws are now codified in Article 4 of Chapter 26, Title 11 of the Guam Code Annotated.

Over the years, our liquid fuel tax statutes have been amended, repealed, and modified to meet the changing needs of our community. New sections, subsections, or paragraphs have been added through subsequent revisions. These changes have included exemptions for commercial fishing and storage/export consignment and delivery to a point outside of Guam.

The timing of the tax, that is when it becomes due, has been the subject of much contention in recent years. The current statute imposes the tax upon the earliest of several different events which include the time of importation. Therein lies the difficulty. Taxing upon importation requires the tax be paid although the fuel has not been sold. This burdens the distributors as it presents a significant cash flow problem industry wide.

The recently enacted export/storage exemption gave rise to temporary regulations that required the distributors to identify storage facilities dedicated to imported fuel destined for eventual export. Once dedicated, these facilities might not be used for storage of fuel intended for local sale. Due to the fungible nature of fuel oil, keeping track of fuel imported for storage necessitated procedures that were both time consuming and costly.

Finally the drawback provisions in the current statute meant money would be tied up while the government identified funds to be paid to the distributors causing more significant cash flow problems. Months would pass before distributors would receive their cash drawbacks.

The reform recommendations contained in **Appendix 1** are being proposed to serve three worthwhile purposes: First, simplification of our tax statutes so as to ease the administrative burden on the fuel industry and secondly, to relieve the cash flow burden upon both the industry and our government and finally, to collect the correct amount of tax with the least amount of effort.

These recommendations are part of our efforts to ensure that our tax laws are administered in a more responsible, efficient, and equitable manner. This we do by analyzing our current statute and identifying ways to improve tax collections and resolve problems that modernization may bring to our developing economy.

From an enforcement perspective, regulations for the proposed law must include a method whereby the Department of Revenue & Taxation can receive current information from the industry as to movement of fuel into, out of, and within Guam. This will allow the department to successfully monitor fuel to ascertain the amount of taxable fuel. This may eventually eliminate the need for annual post reporting audits thereby reducing subsequent enforcement action.

Although the proposed statute never succinctly states so, conceptually, an economic enterprise zone will be created. Within this zone, fuel may be moved without any liquid fuel tax consequences. This would allow major economic activity, now and in the future, without the burden of tax considerations. The only time the tax would be imposed is in the event fuel is made available for local consumption. This is the goal this proposal hopes to achieve. This should be kept in mind when reviewing the proposed language.

A complete draft of the proposed liquid fuel tax amendments are contained in **Appendix 2**.

LIQUID FUEL TAX REFORM

APPENDIX 1

PROPOSED AMENDMENTS/ADDITIONS TO CURRENT STATUTES.

11 GCA, CH. 26 - Business Privilege Tax Law - Taxes

Article 4. Liquid Fuel Tax

- \$26401. General Provisions. (to be amended)
- \$26402. Levy. (to be amended)
- \$26403. Rates.
- \$26404. Drawback. (to be repealed)
- \$26405. Claim for Drawback. (to be repealed)
- \$26406. Exemption. (to be amended)
- \$26407. Regulations, Report of Transfers, etc.
(to be added)
- \$26408. Penalty. (to be added)
- \$26409. Liquid Fuel Monitoring Unit. (to be added)

The following proposed provisions change the timing of the tax to the point of sale from that of importation.

RECOMMENDATIONS UNDER §§26401 THROUGH 26406 AND THE CREATION OF §§26407 THROUGH 26409.

1. \$26401. General Provisions.

Recommend that Subsection 26401(a) Definitions be amended:

- 1.) to extend the definition of Consumer to include any distributor, (allows taxation of local consumption even within the enterprise zone)
- 2.) to include in the definitions,
 - a.) Transfers, (to differentiate between taxable and nontaxable events)
 - b.) Export Transfer, (to continue the export exemption)
 - c.) Dedicated or made available,
 - d.) Stock gain or loss,
(new terminology a-d added to substantiate the concept of the enterprise zone)

- e.) to repeal the definition of "Receipt".
(since this term is used within the drawback provisions which we recommend be eliminated, this term may likewise be eliminated although its retention will not adversely impact the remaining proposal)

The proposed recommended changes are as follows:

- (a). Add the following language to paragraph 2 of Subsection 26401(a) Consumer "Consumer shall also mean and include any distributor who consumes the liquid fuel itself as the end-user".
- (b). Paragraph (5) of Subsection 26401(a) is repealed and reenacted to read as follows:
 - (1). **(5)(A) Transfer** shall mean and include any sale, conveyance, assignment, disposition or change of possession of liquid fuel made or effected in Guam by a distributor to any person other than the said distributor, and shall also mean and include all liquid fuel dedicated or made available by a distributor for retail sales to consumers in Guam by the said distributor or wholesale sales to independent retailers, or use by the distributor as a consumer.
 - (2). **(5)(B) Export Transfer** shall mean any export of liquid fuel from a point within Guam to a point outside of Guam.
- (c). Add paragraphs (6) and (7) to Subsection 26401(a) Definitions to read as follows:
 - (1). Paragraph **(6) Dedicated or made available** (a) shall mean and include the point in time when liquid fuel is delivered by a distributor to any facility or device used or to be used by the said distributor to dispense liquid fuel to consumers in the case of a distributor who operates its own retail activities or (b) the point in time when liquid fuel is delivered to an independent retailer in the case wherein a distributor transfers liquid fuel to an independent retailer.
 - (2). Paragraph **(7) Stock gain or loss** is any gain or loss in quantity or volume of liquid fuel resulting from natural phenomena that may give rise to a gain or loss or any other gain or loss deemed by the Tax Commissioner to have resulted from an effect not caused directly or indirectly by such distributor.

(stock losses has no impact under present law as accounting for taxation was at the point of importation; stock losses under the proposal may have significant financial implication that must be addressed within the proposed statute)

2. §26402. Levy.

Under current statute Liquid fuel tax is levied, assessed and collected upon the importation of liquid fuel. This practice of taxation is problematic for any distributor for the following reasons:

- (1). Liquid Fuel Tax is not a pass on tax. This means that when distributor A sells liquid fuel to Distributor B, distributor B may not drawback liquid fuel taxes that has been charged to him as a component of cost by distributor A.

For example, Distributor A imports 5,000,000 U.S.Gallons of diesel fuel on November 15, 1997. On December 20, 1997, Distributor A paid the Government of Guam \$500,000 of Diesel fuel tax (5,000,000 gals X .10). On December 27, 1997, Distributor A sells to Distributor B 1,000,000 gals of Diesel fuel in which distributor A included diesel fuel tax of \$100,000 (1,000,000 gals X .10) as part of the cost of the sale.

Later, if Distributor B sells the diesel fuel to which an exemption applies, such as a sale to commercial fishing vessels or the Federal Government, it would not recover its diesel fuel tax charged as such diesel fuel tax was not paid by Distributor B. The diesel fuel tax is passed on to the consumer not as a tax but rather as component of cost.

However, if the liquid fuel tax is applied at the point of sale, and the transfer of diesel fuel from distributor A to distributor B is an exempt sale (as proposed later), then the diesel fuel tax will not apply thereby reducing the selling price as the LFT will not be a component of cost, meaning distributor B has nothing to drawback.

- (2). Liquid fuel tax drawbacks. Under the present law, most distributors who request an export drawback have already paid the liquid fuel tax at the time of importation. An export drawback request may take months before it is processed and actually received by the distributors. Rather than subject the distributors to this cumbersome legality, we propose elimination of the entire pay and drawback procedure.

This may be accomplished by adopting this recommended change of taxing upon local consumption rather than the act of importation.

RECOMMENDATION.

Section 26402 be amended to levy, assess, and collect the tax at the point of sale.(local consumption)

Section 26402 is amended to read as follows:

§ 26402. Levy.

There is hereby levied, and shall be assessed and collected, upon every distributor, in addition to any other taxes provided by law, an excise tax to be measured by the application of the rates set forth in the next succeeding §26403 against any transfer in Guam of liquid fuel made by a distributor except that the liquid fuel tax shall not be applied more than once with respect to the same liquid fuel. Provided, however, that the provisions of this Article shall not apply to liquified petroleum gas unless the same is used as fuel for transportation purposes.

3. §26403. Rates.

The current rates for liquid fuel tax are Ten Cents (\$0.10) per gallon on diesel fuel, Eleven Cents (\$0.11) per gallon on all other liquid fuel and Four Cents (\$0.04) per gallon on liquid fuel used for aviation purposes.

4. §§26404 and 26405. Drawback and claim for drawback.

Under current law, the drawback provisions allow drawbacks of liquid fuel tax for liquid fuel purchased solely for agricultural or marine purposes and for liquid fuel consigned, and duly delivered to a point outside of the territory of Guam (export drawback). Liquid fuel tax drawbacks are allowed under the following uses and conditions:

(1). For agricultural purposes, a drawback of Two Cents (\$0.02) per gallon on diesel fuel and Four Cents (\$0.04) per gallon on all other liquid fuels.

(2). For marine purposes, a drawback of One Cent (\$0.01) per gallon on diesel fuel and Two Cents (\$0.02) on all other liquid fuels.

(3). Export drawback, a drawback of the full amount of the tax so paid on such exported liquid fuel.

The agricultural drawback in its present form has not been utilized by the local farming community to any extent. The reason being unknown at this time. But considering that a farmer using one hundred gallons of gasoline weekly would be entitled to only two hundred and eight dollars (\$208.00) for an entire year, and only half as much if he uses diesel fuel, perhaps record keeping and administration of such a small program isn't cost effective. The same may be said of the marine drawback provision.

The export drawback's repeal is recommended, as transfers of liquid fuel outside the territory of Guam would be exempted under the proposal.

Recommend that §§ 26404 and 26405 be repealed.

5. §26406. Exemption.

Recommend that section 26406 be amended to include the following as exemptions:

- (a). Transfer of liquid fuel by a distributor to another distributor.
- (b). Transfer of liquid fuel to the Government of Guam or any of its instrumentalities.
- (c). Transfer of liquid fuel to a point outside of Guam.
- (d). Stock losses of less than .5 percent (.005) during the fiscal year of the taxpayer.

Proposed Section 26406 will leave intact current exemptions from the tax as well as allow for two new exemptions those new exemptions being (a) and (d) above. §26406 is amended to read as follows:

§26406. Exemption from levy under Section 26402.

The following transfers of liquid fuel in Guam made by a distributor shall be exempt from the liquid fuel tax levied under §26402:

- (a) Liquid fuel transferred to vessels employed solely in the activity of catching fish for commercial sale.
- (b) Liquid fuel transferred to the United States, or any agency or instrumentality thereof for its use or consumption.
- (c) Liquid fuel transferred for aviation purposes and used solely in aircraft under charter to the United States Department of Defense.

- (d) Transfer of liquid fuel by a distributor to another distributor.
- (e) Transfer of liquid fuel to the Government of Guam or any of its instrumentalities.
- (f) Transfer of liquid fuel to a point outside of Guam.
- (g) Stock losses of less than .5 percent (.005) during the fiscal year of the taxpayer. In computing taxable or non-taxable stock losses, any gross stock gains shall be off-set against any gross stock losses in determining net stock losses for the purpose of assessing the tax.

6. Add a new section §26407 to Article 4 of Chapter 26, Title 11 GCA to regulate and require reports of all transfers by a distributor. §26407 is recommended to read as follows:

§26407. Regulations, Report of transfers, etc.

All transfers of liquid fuel in Guam shall be reported by the distributor transferring the liquid fuel in such manner and at such time as the Tax Commissioner may adopt by regulation. The Tax Commissioner may also adopt such other regulations as to be consistent with the statute and as may be necessary to administer and implement this Article 4.

7. Add a new section §26408 to Article 4 of Chapter 26, Title 11 GCA, a penalty for failure to report transfers of liquid fuel in Guam by a distributor. §26408 is recommended to read as follows:

§26408. Penalty.

In addition to all other penalties provided by law, a penalty of One Thousand Dollars (\$1,000) shall be assessed and collected from a distributor who fails to report to the Tax Commissioner a Transfer in Guam of liquid fuel unless it is shown by the distributor that such failure is due to reasonable cause and not due to willful neglect. The penalty shall apply to each such failure to report a transfer.

8. Add a new section §26409 to Article 4 of Chapter 26, Title 11 GCA, to create a liquid fuel tax monitoring unit so that all liquid fuel imported or manufactured and transferred or disposed of are all monitored and accounting for. §26409 is recommended to read as follows:

§26409. Liquid fuel monitoring unit.

There is hereby created a Liquid Fuel Monitoring Unit within the Examination Branch of the Department of Revenue and Taxation. Such Unit shall be staffed by a Revenue Agent II, one Tax Auditor II, and three Tax Technicians II. These Positions are in addition to positions already contained within the budget of the Department of Revenue and Taxation for the Tax Enforcement Division.

LIQUID FUEL TAX PROPOSED LEGISLATION

APPENDIX 2

THE EFFECTIVE DATE OF THE PROVISIONS OF THIS ACT SHALL BE THE FIRST DAY OF THE SECOND MONTH FOLLOWING ENACTMENT OF THIS ACT.

11 GCA, CH. 26 - Business Privilege Tax Law - Taxes

Article 4. Liquid Fuel Tax

§26401.	General Provisions. (to be amended)
§26402.	Levy. (to be amended)
§26403.	Rates.
§26404.	Drawback. (to be repealed)
§26405.	Claim for Drawback. (to be repealed)
§26406.	Exemption. (to be amended)
§26407.	Regulations, Report of Transfers, etc. (to be added)
§26408.	Penalty. (to be added)
§26409.	Liquid Fuel Monitoring Unit. (to be added)

§26401. General Provisions.

The following general provisions are restricted in application to this Article, and are in addition to the general provisions of Article 1 and the rules and regulations promulgated under authority of law by the Tax Commissioner.

- (a) **Definitions.** When used in this Article the following definitions of words and phrases used herein shall govern the interpretations:

- (1) **Distributor** shall mean and include any person who refines, manufactures, produces, blends or compounds liquid fuel in Guam or who imports liquid fuel into Guam or who receives in Guam liquid fuel with respect to which the liquid fuel tax is not imposed hereunder, and includes the United States, and any agency or instrumentality thereof, as well as any other person, to the extent such inclusion is authorized by the laws of the United States, and particularly by §104, Title 4, United States Code, as amended.
- (2) **Consumer** shall mean and include any person who purchases liquid fuel in Guam for his own use or storage but shall not mean a person who purchases for resale provided such person is properly licensed to engage in the business of selling liquid fuel. Consumer shall also mean and include any distributor who consumes the liquid fuel itself as the end-user.
- (3) **Liquid fuel or fuel** shall mean and include all liquids usable in internal combustion, turbo-jet, or jet engines for the generation of power and shall include all distillates of, and condensates from petroleum, natural gas, coal, coal tar and vegetable ferments, such distillates and condensates being ordinarily designated as gasoline, butane, naphtha, benzol, benzine, kerosene, and alcohol so usable but not restricted to such designation. However, kerosene purchased for actual use other than internal combustion, turbo-jet, or jet engines and crude oil are specifically excluded from the meaning of liquid fuel under this Article.
- (4) **Diesel fuel** shall mean and include all liquids usable in those ignition-compression engines commonly known as diesel engines.
- (5) (A) **Transfer** shall mean and include any sale, conveyance, assignment, disposition or change of possession of liquid fuel made or effected in Guam by a distributor to any person other than the said distributor, and shall also mean and include all liquid fuel dedicated or made available by a distributor for retail sales to consumers in Guam by the said distributor or wholesale sales to independent retailers, or use by the distributor as a consumer.

(B) **Export Transfer** shall mean any export of liquid fuel from a point within Guam to a point outside of Guam.

- (6) **Dedicated or made available** (a) shall mean and include the point in time when liquid fuel is delivered by a distributor to any facility or device used or to be used by the said distributor to dispense liquid fuel to consumers in the case of a distributor who operates its own retail activities or (b) the point in time when liquid fuel is delivered to an independent retailer in the case wherein a distributor transfers liquid fuel to an independent retailer.
- (7) **Stock gain or loss** is any gain or loss in quantity of liquid fuel resulting from natural phenomena that may give rise a gain or loss or any other gain or loss deemed by the Tax Commissioner to have resulted from an effect not caused directly or indirectly by such distributor.

SOURCE: §19574 GC.

§26402. Levy.

(a) There is hereby levied, and shall be assessed and collected, upon every distributor, in addition to any other taxes provided by law, an excise tax to be measured by the application of the rates set forth in the next succeeding §26403 against any transfer in Guam of liquid fuel made by a distributor, except that the liquid fuel tax shall not be applied more than once with respect to the same liquid fuel. Provided, however, that the provisions of this Article shall not apply to liquified petroleum gas unless the same is used as fuel for transportation purposes.

SOURCE: §19570 GC.

§26403. Rates.

The following rates shall apply in computing, assessing and collecting the liquid fuel tax:

- (a) A tax at the rate of Ten Cents (\$0.10) per gallon on diesel fuel; and
- (b) A tax at the rate of Eleven Cents (\$0.11) per gallon on all other liquid fuel as defined herein except liquid fuel used for commercial aviation purposes which is taxed at a rate of Four Cents (\$0.04) per gallon.

SOURCE: §19571 GC, amended by P.L. 15-74, further amended by P.L. 17-4.

§26406. Exemption from levy under Section 26402.

The following transfers of liquid fuel in Guam made by a distributor shall be exempt from the liquid fuel tax levied under §26402:

- (a) Liquid fuel transferred to vessels employed solely in the activity of catching fish for commercial sale.
- (b) Liquid fuel transferred to the United States, or any agency or instrumentality thereof for its use or consumption.
- (c) Liquid fuel transferred for aviation purposes and used solely in aircraft under charter to the United States Department of Defense.
- (d) Transfer of liquid fuel by a distributor to another distributor.
- (e) Transfer of liquid fuel to the Government of Guam or any of its instrumentalities.
- (f) Transfer of liquid fuel to a point outside of Guam.
- (g) Stock losses of less than .5 percent (.005) during the fiscal year of the taxpayer. In computing taxable or non-taxable stock losses, any gross stock gains shall be off-set against any gross stock losses in determining net stock losses for the purpose of assessing the tax.

§26407. Regulations, Report of Transfers, etc.

All transfers of liquid fuel in Guam shall be reported by the distributor transferring the liquid fuel in such manner and at such time as the Tax Commissioner may adopt by regulation. The Tax Commissioner may also adopt such other regulations as to be consistent with the statute and as may be necessary to administer and implement this Article 4.

§26408. Penalty.

- (a) In addition to all other penalties provided by law, a penalty of One Thousand Dollars (\$1,000) shall be assessed and collected from a distributor who fails to report to the Tax Commissioner a transfer in Guam of liquid fuel unless it is shown by the distributor that such failure is due to reasonable cause and not due to willful neglect. The penalty shall apply to each such failure to report a transfer.

Section (26409). LIQUID FUEL MONITORING UNIT.

There is hereby created a Liquid Fuel Monitoring Unit within the Examination Branch of the Department of Revenue and Taxation. Such Unit shall be staffed by a Revenue Agent II, one Tax Auditor II, and three Tax Technicians II. These Positions are in addition to positions already contained within the budget of the Department of Revenue and Taxation for the Tax Enforcement Division.

J. ARON & COMPANY

SUMMARY OF PRESENTATION TO:

Committee on Finance & Taxation

Guam Legislature Building

Public Hearing – Bill 566

April 17, 1998

OUTLINE

- Background and J. Aron Overview
- J. Aron Business Plan
- Benefits to Guam
- Proposed Legislation – Bill 566

BACKGROUND AND J. ARON OVERVIEW

J. Aron (Goldman Sachs)

- J. Aron is the commodities trading division of Goldman Sachs.
- J. Aron was founded in 1892 and has been a leader in the international commodities markets for over a century and ranks among the world's leading energy, currency and metal dealers.
- Goldman Sachs was recently voted the world's No. 1 Fuel Oil Risk Management House in a RISK magazine survey.
- We are a major trader of fuel oil in all regions and are widely recognized as the most relative supplier of risk management services to fuel oil consumers.
- We are a dominant force worldwide in swap and option markets for energy, including regional crude oils, full refinery margins, jet fuel, gasoil, heating oil, naphtha, gasoline, fuel oil, natural gas and electricity.
- Our oil group consists of 130 professionals located in New York, Singapore, Calgary and London. We have a presence in all relevant time zones, with professional sales person and traders looking after our clients' interests 24 hours a day.

GUAM TERMINAL

- GORCO built refinery & terminal beginning in 1968
 - GORCO closed refinery in 1983 (never re-opened)
- Shell purchased terminal in 1988
 - Shell invested in marketing assets in Guam, Saipan & Palau
 - 2 millions barrels of DFSC military storage (stopped '91)
- Without DFSC storage, Shell has focused on its marketing business & downsizing the Agat terminal
 - Shell does not need all of this storage for its marketing business
 - Shell and Exxon are co-terminalling at Exxon's Cabras terminal

- Shell has moved marketing storage to Exxon Cabras terminal
- In 1993 J. Aron leased tankage from Shell on temporary basis to test pilot concept of regional storage.
 - Enabled by changes in LFT legislation – storage export exemption passed in November 26, 1993 and implemented June 1994.
 - Guam is a deep water port although outside shipping routes thus making it more expensive.
 - Other choices are Philippines, Singapore, China, Korea.
 - J. Aron currently leases storage in China, Singapore and Agat.

J. ARON BUSINESS PLAN

- J. Aron making a long-term commitment
 - Major capital outlay
 - New investment
- Shell/J. Aron currently in process of refurbishing 1.5 million barrels and modernizing facilities. This is a multi-million dollar contract.
- J. Aron has business decision to make by April 30 whether to go ahead with continued capital outlay or invoke cancellation clause.
- J. Aron will lease this additional storage to develop additional import/export strategic storage within Asian Pacific region based from Guam.
- Shell will continue to own the oil storage facility at Agat and manage the F-1 dock operations. J. Aron will continue to lease the facilities from Shell on a long term basis.

BENEFITS TO GUAM PUBLIC AND PRIVATE SECTOR

- Local employment
 - 30 people employed at terminal plus long term contractors
- Security of oil supply
- Diversification of business base
- Guam as an Asian pacific transshipment center for oil trading
- New government revenues
 - Dock fees to Port Authority & GEDA (over \$3.5 million paid 1993-97) a portion of which was used to rebuild F-1 Dock. This amount should increase with increased storage capacity.
 - Construction fees
 - Inspection company fees
 - Stevedoring, crew spending
- Multiplier effect resulting from operation of Agat terminal and construction related to new investment
- J. Aron's business plan incorporates concept of economies of scale. J. Aron purchases/ships very large quantities of petroleum products thus under normal rules of supply and demand should result in lower priced oil products. A percentage of this product is then used to supply Guam.

PROPOSED LEGISLATION

- Problems with existing law
 - a) Contangoes of market – forced declaration originally as export
 - b) 50% penalty if sold on Guam – can not take advantage of economies of scale – penalized Guam
 - c) administrative burdens
- Discussions to amend law
- Bill 566
 - No decrease in tax revenue
 - Corrects unintended effects of existing law that imposes unnecessary burdens
 - “Point of Sale” more appropriate taxation event
 - Does not penalize Guam for on-island sale

TESTIMONY OF MOGI BEFORE THE COMMITTEE ON FINANCE
& TAXATION 24TH GUAM LEGISLATURE ON BILL NO. 566-
LS

Mobil Oil Guam Inc. is pleased to support Bill No. 566-LS, an act to amend and to add certain provisions of the Guam liquid fuel tax law.

The liquid fuel tax law, as it now stands, is a statute which has gone through piecemeal amendments over the past many years. While we have always believed the intent of the Legislature was clear that export sales and sales to the commercial fishing industry were meant to be exempt from tax, and while in the past directors of the Department of Revenue and Taxation have worked closely with members of the industry to ensure that these exemptions and the intent of the Legislature were fulfilled, the situation at the present time requires immediate action on the part of the Legislature.

In 1993, the Legislature enacted 11 G.C.A. §26406(c) exempting from the liquid fuel tax fuel imported expressly and exclusively for export. The Tax Commissioner was to adopt regulations regarding storage of such fuel. The former Tax Commissioner, Joaquin Blaz, tried to adopt such regulations, but saw a need for dedicated tanks and surveyors to ensure proper accountability. Unfortunately, because of a lack of

sufficient storage capacity and a lack of agreement as to who would act as surveyors, these proposed regulations were generally agreed to be unworkable and were never adopted. As a consequence, fuel distributors sought various ways to work with the Department to ensure all properly due taxes were collected, and all proper exemptions granted. Mobil, for example, has historically paid the tax and surcharges on exported fuel, and then drawn them back resulting in both the Government and Mobil getting what was due them. In fact, this gave the Government more than was rightly due it because it had the free use of substantial amounts of Mobil's money pending refund.

The current Tax Commissioner recently attempted to retroactively revoke the postponement of a 1994 directive from the prior Tax Commissioner which had continued to allow companies, like Mobil, to draw back the liquid fuel tax and surcharges on exported fuel so that the companies received the exemption to which they are so entitled under 11 G.C.A. §26406(c). While we are challenging this action, the practical impact of this revocation, if it is upheld, will be to subject to taxation liquid fuel sales over the past several years made by distributors in Guam to persons outside of Guam. This has thrown the liquid fuel tax situation into confusion and results in a situation where assessments have been made or are about to be made against the major petroleum distributors

on island. This may result in a short term gain of some funds at the expense of oil companies. In the long term, however, the business community's trust in the Government will be damaged, Guam will become a far less attractive place to anyone seeking to do business and the companies will seek alternative jurisdictions for their transshipment business.

We also feel that the commercial fishing exemption needs to be clarified. Recently, the Tax Commissioner ruled that sales to tanker vessels which exclusively service commercial fishing vessels do not fall within the exemption. We disagree. If the Tax Commissioner's ruling is upheld, the price of fuel to these tankers will increase dramatically and they will most certainly move their operations to other ports. Guam will lose not only the liquid fuel tax revenues, but also all of the other benefits those tankers bring, such as port charges and fees, other taxes, throughput charges and the like.

The bill before you goes a long way toward clarifying and reinforcing the intent of prior Legislatures in enacting certain provisions regarding the liquid fuel tax. A few changes and some additions are necessary and, in our view, desirable. We attach hereto a list of those changes we believe should be incorporated into the bill to clarify its intent and accurately set forth the history of this matter.

Fundamentally, we believe the bill is intended to do what everyone intended all along. It is important for this legislation to say so. The result will be that the Government of Guam will get every cent in tax dollars that was intended by the Legislature and the petroleum distributors on island will have the benefit of being able to accurately forecast their tax liabilities. Again, we support this bill and we very much appreciate the time that this Committee and the members of the Legislature have taken to address these issues.

Mobil Oil Guam Inc.



Timothy M. Glath
President & General Manager

Date: 4/17/98

PROPOSED AMENDMENTS TO BILL NO. 566 (LS)

<u>Page</u>	<u>Line</u>	<u>Description</u>
2	2-3	Delete this sentence as it incorrectly sets forth the law.
2	3	After the word "importation" add the phrase "and storage". This correctly states the law.
2	4	After the word "importation" add the phrase "and storage". Same reason.
2	7	Delete the word "temporary" and insert the word "proposed". No effective regulations, temporary or otherwise, were ever adopted.
2	8	Insert the phrase "would have" before the word "required". Same reason.
2	12	At the end of the paragraph insert the following sentences, "Due to the lack of excess storage facilities, the proposed regulations were impractical or impossible to implement. This threatens to frustrate the legislature's intent in granting the exemptions in the first place."
2	19	After the word "manner" insert the phrase "consistent with the legislature's intent"
8	3-4	Replace subsection (a) with "(a) Liquid fuel transferred to vessels engaged in commercial fishing. The term vessels engaged in commercial fishing is defined in 11 G.C.A. § 26101(v)."
8	19	Add a new section 5 to read as follows: "Section 5. Section 26101(v) of Title 11 G.C.A. is amended to read: (v) vessels engaged in commercial fishing shall mean those vessels solely employed in the activity of catching fish for commercial sale and those vessels used to support such vessels such as provisioning vessels and tanker vessels."

This is to ensure that the Legislature's intent regarding the existing commercial fishing exemption is fulfilled and to maintain the existing industry in Guam.



Shell Guam, Inc.

Your Reference:

Our Reference:

Date: 17 April 1998

A Guam Corporation

Suite 100
643 Chalan San Antonio
Tamuning, Guam 96911

Telex No. (721) 6709 Shell GM

Telephone (671) 647-0000
Facsimile (671) 649-4353

Senator Anthony C. Blaz
Chairman
Committee on Finance and Taxation
Twenty - Fourth Guam Legislature
115 Hesler Street
Agana, Guam 96910

Bill No. 566 (LS)

AN ACT TO AMEND §26401, §26402, AND §26406, REPEAL §26405 AND §26407 AND REPEAL AND REENACT §26404 AND TO ADD NEW §26405, §26406, §26407, §26408 AND §26409 TO ARTICLE 4, CHAPTER 26, DIVISION 2 OF TITLE 11, GUAM CODE ANNOTATED (GCA) RELATIVE TO THE LIQUID FUEL TAX AND TO ADD §26504 TO ARTICLE 5, CHAPTER 26, DIVISION 2 OF TITLE 11, GCA RELATIVE TO AUTOMOTIVE SURCHARGES.

Dear Senator Blaz:

Hafa Adai Mr. Chairman and committee members. I want to thank you for allowing me the opportunity to submit this written testimony in support of Bill No. 566, relative to the amendments of the Liquid Fuel Tax (LFT) and the addition of a section relative to Automotive Surcharges. The amendments in Bill 566 will benefit both the Petroleum Industry and the Government of Guam as stated in section 1 (Legislative Declaration, Findings and Intent) of this bill. With the passage of Bill 566 by this legislature and enactment into law by the Governor, the Government of Guam can, without worry about drawbacks, make a more accurate prediction of the LFT revenues to be collected from the petroleum fuel imported and sold on Guam. Should you or any members of this committee have any questions or require any further information, please do not hesitate to call me at 647-0000. Thank you and Si Yu' us Masse.

Sincerely,
for Shell Guam, Inc.

Graham S. Talbot
VP Finance



**GUAM FISHERMEN'S
COOPERATIVE ASSOCIATION**

P. O. Box 24023
G.M.F., Guam 96921
Tel: (671) 472-6323 • Fax: (671) 477-2986

FILE

August 20, 1997

Honorable Anthony C. Blaz
Senator, Twenty-fourth Guam Legislature
Chairman, Committee on Finance and Taxation
155 Hesler St.
Agana, Guam 96910

Dear Senator,

The Guam Fishermen's Cooperative Association has been in existence for nearly twenty years. We are a non-profit corporation made-up of fishermen. The creation of our organization started with the assistance of a public law which allowed for operations to exist at the Agana Marina since 1978. The use of the marina proper was with the premise that the co-op shall provide for the marina the designated fueling station. The terms and conditions of our lease and by virtue of our proximity to the docks presents a bit of a dilemma for we must provide fuel for all vessels moored at the marina or those utilizing the area as a launching station.

The tax law as it stands is such a burden to comply as it pertains to our operation of the fuel dock. The liquid fuel tax and automotive surcharge (tax) is causing a financial burden to the co-op, not to mention an accounting nightmare to keep track of the LFT and NON-LFT exempt accounts. The solution provided for by the Department of Revenue and Tax is to install designated fuel pumps for record purposes. Such an action would require additional financial commitment. The co-op is not in the financial position to place funds towards such an improvement. The alternative would be to request from our fuel supplier to install additional equipment, such an expense would be past down to the user the fishermen.

We at the fishermen's co-op have been operating the fuel pumps for many years without any concerns from the Government. The GFCA has been playing the role of the government in assisting the boating industry. We have maintained and operated a fueling station which has sold fuel to the fishermen and commercial vessels for as much as **50 cents** cheaper than the road side gas stations or even the government operated Agat Marina. The boating industry is made of your friends and neighbors yet we even pay more per gallon of fuel than the average foreign long lined vessel with a foreign crew (\$.40 more).

We humbly request that the following exemptions be granted the Guam fishermen's Cooperative Association in order for us to become the extended caring arm of our Government and promote the local involvement in these industries:

- 1) The Association and its entities shall be exempted from the Liquid Fuel Tax and the Automotive surcharge (tax) when such fuel is used to operate a water craft.
- 2) The Association and its entities shall be exempted from the Liquid Fuel Tax and the automotive surcharge (tax) when such fuel is used in vehicles used to pull water craft trailers. This only applies when such vehicle is attached to the trailer with water craft on board. The wear and tear of vehicles is such that it often reduces the life of such vehicle by as much as 50%.
- 3) The Association and its entities shall be exempted from the Liquid Fuel Tax and the automotive surcharge (tax) when such fuel is used solely for agricultural purposes. This is badly needed so that all local producers can benefit.
- 4) The Association and its entities shall be exempted from the payment of Gross Receipt Taxes (GRT). An annual financial statement must be filed with the Department of Revenue and Taxation in compliance with local statute as prescribed for non-profit organizations.
- 5) The re-statement of the fact that the Guam Fishermen's Cooperative Association fuel station at the Agana Marina is the designated fueling station as prescribed by Public Law 14-149. This is badly needed since the Port Authority of Guam has seen it fit to ignore such law on based on the transfer of the marina proper to their jurisdiction. This public law has not been rescinded or amended as of this date. All types of piece meal fueling is currently being conducted and this unsafe practice is a major concern by boaters at the marina.

The passage of these measures would greatly enhance the survivability of a fragile and unstable industry. These pieces of legislation is only fair given the amount of tax incentives often given the hotels, golf courses, tuna fleets and many other none-local investment groups.

On behalf of the fishermen, farmers and the boating community we thank you for your concern and support. We hope for kind and immediate attention to our plight. Si Yu'os Ma'ase.

CO-OPeratively Yours,

A handwritten signature in black ink that reads "Manuel P. Duenas II". The signature is written in a cursive style with a double underline under the name.

Manuel P. Duenas II
President, GFCA

Attachment