



Office of the Governor of Guam

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Office of the People's Speaker
vicente (ben) c. pangelinan

JUL 09 2003

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08 JUL 2003

Felix Perez Camacho
Governor

Kaleo Scott Moylan
Lieutenant Governor

The Honorable Vicente C. Pangelinan
Speaker
Mina'Bente Siete Na Liheslaturan Guåhan
Twenty-Seventh Guam Legislature
155 Hessler Street
Hagåtña, Guam 96910

Dear Speaker Pangelinan:

Transmitted herewith please find Bill No. 88 (COR) "AN ACT TO ADD A NEW § 26202.1 TO ARTICLE 2, CHAPTER 26, DIVISION 2 OF TITLE 11 OF THE GUAM CODE ANNOTATED TO EXEMPT INCOME GENERATED FROM CERTAIN BID CONTRACTS AWARDED PRIOR TO AND AFTER APRIL 1, 2003 [*sic*], FROM THE INCREASE IN THE GROSS RECEIPTS TAX IMPOSED BY PUBLIC LAW 27-05, CHAPTER V, SECTION 6(a)," which I signed into law on July 7, 2003 as Public Law 27-23.

Public Law 27-05 raised the gross receipts tax ("GRT") rate from four percent (4%) to six percent (6%) to increase the stream of revenue to fund government operations. Bill No. 88 seeks to exempt from the application of the GRT increase any and all income generated from contracts executed or awarded prior to and after February 28, 2003 that took into account and provided for accommodations for the previous four percent (4%) GRT rate and that cannot be amended or renegotiated to accommodate the increase in GRT.

To reverse any adverse impact from the GRT increase that the private sector did not originally anticipate or intend when they entered into these contacts, I felt it necessary that I sign Bill No. 88 into law. However, I do have concerns with the Bill's immediate and future impact on certain matters and would be remiss in not articulating them.

First, the new legislation may affect the government's contemplated issuance of bond financing. The premise of the government's proposed bond borrowing is its reliance on revenue generated from the GRT increase. Pursuant to Public Law 27-19, the sole source of and sole security for payment of the bonds is from revenues derived by the government of Guam from taxes imposed or levied against businesses. Bill No. 88 may exempt a large percent of tax-payers from the increased GRT rate which will inevitably reduce the revenue pledged as security and payment for the bonds, thus impeding the government's ability to secure the best possible interest rate in the bond market. Moreover, my Administration has been pursuing a long arduous battle to execute the issuance of bonds pursuant to Public Law 27-19 in response to arguments raised by

the Attorney General. As you know, the matter is currently being litigated in the Supreme Court of Guam and is advancing more quickly than previously anticipated. If this Administration is successful in court, all our efforts may be proven futile unless *I Liheslaturan Guåhan* passes legislation to supplement any lost revenue. As explained above, any erosion of revenue generated from the GRT, may, as a practical matter, prevent us from proceeding with the bond issuance.

Furthermore, the 6% GRT increase was taken into account in the preparation of the budget for Fiscal Year 2004. The budget for Fiscal Year 2004 cuts funding by \$57 million. By further reducing government revenue, the government would be forced to undertake more drastic cuts that may inevitably affect critical and essential government functions and services.

Finally, the Department of Revenue and Taxation would be forced to revamp its system to manage the exemption requests brought pursuant to Bill No. 88. Currently, the computer programs at the department are set up for a six percent (6%) GRT rate. With the anticipated exemptions, the department will have to spend what limited funds are available, to pay for program software that would accommodate both tax rates. Furthermore, the department will have to adjust their forms and create the necessary affidavits.

In light of these concerns, I urge *I Liheslaturan Guåhan* to enact legislation to remedy any adverse impact this law may produce as discussed above.

Sincerely yours,



FELIX P. CAMACHO
I Maga'Lahen Guåhan
Governor of Guam

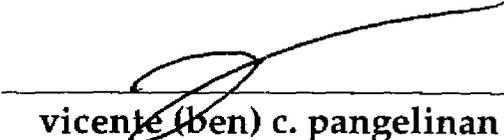
Attachment: copy attached of signed bill

cc: The Honorable Tina Muna-Barnes

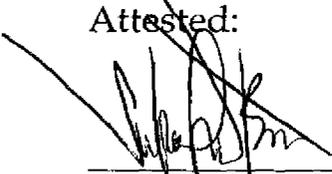
I MINA'BENTE SIETE NA LIHESLATURAN GUÅHAN
2003 (FIRST) Regular Session

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

This is to certify that Bill No. 88 (COR), "AN ACT TO ADD A NEW §26202.1 TO ARTICLE 2, CHAPTER 26, DIVISION 2 OF TITLE 11 OF THE GUAM CODE ANNOTATED TO EXEMPT INCOME GENERATED FROM CERTAIN BID CONTRACTS AWARDED PRIOR TO AND AFTER APRIL 1, 2003, FROM THE INCREASE IN THE GROSS RECEIPTS TAX IMPOSED BY PUBLIC LAW 27-05, CHAPTER V, SECTION 6(a)," was on the 25th day of June, 2003, duly and regularly passed.


vicente (ben) c. pangelinan
Speaker

Attested:


Tina Rose Muña-Barnes
Senator and Legislative Secretary

This Act was received by *I Maga'lahaen Guåhan* this 25 day of June, 2003, at 5:49
o'clock P.M.


Assistant Staff Officer
Maga'lahaen's Office

APPROVED:


FELIX P. CAMACHO
I Maga'lahaen Guåhan

Date: 07 July 2003

Public Law No. 27-23

MINA'BENTE SIETE NA LIHESLATURAN GUÅHAN
2003 (FIRST) Regular Session

Bill No. 88 (COR)

As amended by the Author.

Introduced by:

Toni Sanford
R. J. Respicio
F. R. Cunliffe
F. B. Aguon, Jr.
J. M. S. Brown
C. Fernandez
Mark Forbes
L. F. Kasperbauer
R. Klitzkie
L. A. Leon Guerrero
J. A. Lujan
T. Muna-Barnes
v. c. pangelinan
J. M. Quinata
Ray Tenorio

AN ACT TO ADD A NEW §26202.1 TO ARTICLE 2, CHAPTER 26, DIVISION 2 OF TITLE 11 OF THE GUAM CODE ANNOTATED TO EXEMPT INCOME GENERATED FROM CERTAIN BID CONTRACTS AWARDED PRIOR TO AND AFTER APRIL 1, 2003, FROM THE INCREASE IN THE GROSS RECEIPTS TAX IMPOSED BY PUBLIC LAW 27-05, CHAPTER V, SECTION 6(a).

1 BE IT ENACTED BY THE PEOPLE OF GUAM:

2 Section 1. Legislative Findings. *I Mina'Bente Siete Na*
3 *Liheslaturan Guåhan* hereby finds and declares all of the following:

1 (a) On February 28, 2003, Public Law 27-05 was enacted
2 into law. Section 6(a) of Chapter V of Public Law 27-05 increased
3 the Gross Receipts Tax (“GRT”) by amending the rate of GRT set
4 forth in §26202(a), (c), (d), (e), (f), (g), (h), (i), and (j) of Article 2,
5 Chapter 26, Division 2, Title 11 of the Guam Code Annotated
6 (“GCA”) from four percent (4%) to six percent (6%). The increase
7 in GRT pursuant to Public Law 27-05, Chapter V, Section 6(a) took
8 effect on April 1, 2003.

9 (b) Since April 1, 2003, *I Mina’Bente Siete Na Liheslaturan*
10 *Guåhan* has determined that the increase in the GRT, as effectuated
11 by Public Law 27-05, Chapter V, Section 6(a), has adversely
12 impacted the private sector in ways not originally anticipated or
13 intended.

14 (c) In particular, the increase in GRT has caused and will
15 cause negative impact on numerous contracts in the service and
16 construction industry which were either negotiated or entered into
17 prior to February 28, 2003, or which will be entered into after
18 February 28, 2003. Prior to the enactment of Public Law 27-05,
19 various businesses in the service and construction industry were
20 generating income under bid awards or contracts which took into
21 account and provided for accommodations for a GRT rate of four
22 percent (4%). Similarly, various businesses in these industries
23 have submitted bids or proposals pursuant to requests for
24 proposals prior to February 28, 2003, which only accounted for
25 cost estimates and GRT application at the rate of four percent (4%).

1 (d) By operation of the increase in the GRT effective April
2 1, 2003, private companies performing under pre-February 28,
3 2003, bid contracts will be required to remit GRT payments from
4 income generated thereafter at the rate of six percent (6%), which
5 was a cost and factor not accounted for under their contracts.
6 Similarly, certain parties to contracts, which may be awarded after
7 February 28, 2003, will also be required to remit payment of GRT
8 at the rate of six percent (6%) from income generated thereafter,
9 which was a cost not originally accounted for in their bids or
10 proposals. In both instances, the cost estimates and forecasts,
11 relative to the GRT, which formed the basis for bids or proposals
12 or bid awards are no longer applicable and viable. As a result,
13 these service providers and contractors will likely experience
14 substantial losses under their contracts. The possibility of further
15 layoffs and reductions in force in these industries, which has
16 already suffered great setbacks in the current waning and
17 depressed economy, is highly likely as a result of the increase in
18 the GRT.

19 (e) By enacting Public Law 27-05, it was not the intent of *I*
20 *Mina'Bente Siete Na Liheslaturan Guâhan* to create such an adverse
21 impact on the private sector. Therefore, by passage of this Act, it
22 is the intent of *I Mina'Bente Siete Na Liheslaturan Guâhan* to correct
23 the inadvertent impact caused by the increase in the GRT and to
24 provide relief to the service and construction industry, as well as
25 to any other private industry similarly situated or affected by the

1 increase in GRT. This relief shall take the form of a GRT
2 exemption whereby any income generated from contracts based
3 upon bid awards prior to February 28, 2003, and contracts
4 awarded after February 28, 2003, which are based upon bids or
5 proposals made prior to February 28, 2003, shall not be subjected
6 to the increase in the GRT imposed by Public Law 27-05, Chapter
7 V, Section 6(a).

8 **Section 2. Legislative Intent.** *I Mina'Bente Siete Na Liheslaturan*
9 *Guãhan* hereby declares its purpose and intent in enacting this Act to be
10 as follows:

11 (a) To correct any inadvertent and negative impact caused
12 by the increase in GRT from four percent (4%) to six percent (6%),
13 as set forth in Public Law 27-05, Chapter V, Section 6(a), to
14 contracts based upon bid awards prior to February 28, 2003, and
15 contracts awarded after February 28, 2003, which were based upon
16 bids or proposals made prior to February 28, 2003, that cannot be
17 amended or renegotiated to accommodate the increase in GRT;
18 and

19 (b) To exempt from the application of the increase in the
20 GRT any and all income generated from contracts based upon bid
21 awards prior to February 28, 2003, and contracts awarded after
22 February 28, 2003, which were based upon bids or proposals made
23 prior to February 28, 2003, that cannot be amended or renegotiated
24 to accommodate the increase in GRT.

1 **Section 3. Exemption to the Increase in GRT as imposed by**
2 **Section 6(a) of Chapter V of Public Law 27-05.** There shall be *added* to
3 Article 2, Chapter 26, Division 2 of Title 11 of the Guam Code
4 Annotated, a new §26202.1 as follows:

5 “§26202.1. **Exemption to Increase in GRT.** (a) The
6 increase in the Gross Receipts Tax (“GRT”) set forth in Subsections
7 26202(a), (c), (d), (e), (f), (g), (h), (i), and (j) of this Chapter effective
8 April 1, 2003, shall not apply to income generated from the
9 following contracts:

- 10 1. Contracts entered into or awarded prior to February
11 28, 2003, which were based upon bid awards made
12 prior to February 28, 2003, that cannot be amended or
13 renegotiated to accommodate the increase in GRT; and
- 14 2. Contracts entered into or awarded after February 28,
15 2003, which were based upon bids or proposals
16 submitted prior to February 28, 2003, that cannot be
17 amended or renegotiated to accommodate the increase
18 in GRT.

19 (b) For purposes of this Section, each taxpayer claiming an
20 exemption under this Section shall provide to the Department of
21 Revenue & Taxation a copy of its bid contract or award under
22 which any claimed exempt income was generated and shall
23 segregate in their tax filings, relative to the Gross Receipts Tax,
24 said exempt income from any other income generated by the
25 taxpayer.”

1 **Section 4. Affidavit.** The Director of the Department of Revenue
2 & Taxation shall create an affidavit form to be completed and submitted
3 concurrently with monthly Gross Receipts Tax filings by businesses or
4 individuals claiming exemption from the increase in Gross Receipts
5 Taxes that took effect on April 1, 2003, as provided for in this Act. Said
6 affidavit shall request from the filing entity, properly licensed to
7 conduct business in Guam, all relevant information necessary to
8 properly execute the law as provided in this Act.