

# I MINA'TRENTAI SAIS NA LIHESLATURAN GUÅHAN

## 2022 (SECOND) Regular Session

### VOTING RECORD

<b>Bill No. 258-36 (LS)</b> As amended by the Committee on General Government Operations, Appropriations, and Housing; and substituted and further amended on the Floor.	Speaker Antonio R. Unpingco Legislative Session Hall Guam Congress Building April 29, 2022
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NAME	Aye	Nay	Not Voting/ Abstained	Out During Roll Call	Absent	Excused
Senator V. Anthony Ada	✓					
Senator Frank Blas Jr.	✓					
Senator Joanne Brown	✓					
Senator Christopher M. Dueñas	✓					
Senator James C. Moylan	✓					
Vice Speaker Tina Rose Muña Barnes	✓					
Senator Telen Cruz Nelson	✓					
Senator Sabina Flores Perez	✓					
Senator Clynton E. Ridgell	✓					
Senator Joe S. San Agustin	✓					
Senator Amanda L. Shelton	✓					
Senator Telo T. Taitague	✓					
Senator Jose "Pedro" Terlaje					✓	✓
Speaker Therese M. Terlaje	✓					
Senator Mary Camacho Torres	✓					

**TOTAL**

<b>14</b>	<b>0</b>			<b>1</b>	<b>1</b>
<b>Aye</b>	<b>Nay</b>	<b>Not</b>	<b>Out</b>	<b>Absent</b>	<b>Excused</b>
		<b>Voting/ Abstained</b>	<b>During Roll Call</b>		

CERTIFIED TRUE AND CORRECT:

RENNAE V.C. MENO  
Clerk of the Legislature

I = Pass

***I MINA 'TRENTAI SAIS NA LIHESLATURAN GUÅHAN***  
**2022 (SECOND) Regular Session**

**Bill No. 258-36 (LS)**

As amended by the Committee on General Government Operations,  
Appropriations, and Housing; and substituted  
and further amended on the Floor.

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Introduced by:

Frank Blas Jr.  
Telo T. Taitague  
Telena Cruz Nelson  
Sabina Flores Perez  
Tina Rose Muña Barnes  
Christopher M. Dueñas  
V. Anthony Ada  
Joanne Brown  
Joe S. San Agustin  
James C. Moylan

**AN ACT TO ADD A NEW § 26203(k)(39) TO ARTICLE 2  
OF CHAPTER 26, TITLE 11, GUAM CODE  
ANNOTATED, RELATIVE TO EXEMPTING  
HOMEOWNER ASSOCIATION MEMBERSHIP DUES  
AND COMMON AREA FEES FROM THE BUSINESS  
PRIVILEGE TAX.**

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

2        **Section 1. Legislative Findings and Intent.** *I Liheslaturan Guåhan* finds  
3 that homeowners' associations (HOA) are often organized as not-for-profit bodies  
4 incorporated into the bylaws and articles of incorporation towards operating for the  
5 community it serves. HOAs generally have non-profit status by default, and the  
6 purpose of the association is not to make money but to maintain and govern.

1 In 2022, the Department of Revenue and Taxation has compelled HOAs to  
2 pay business privilege taxes (BPT) as most do not fall within the Internal Revenue  
3 Service (IRS) section 501(c)(3) exemption. However, as not-for-profit corporations,  
4 HOAs are eligible for IRS section 501(c)(4) exemptions. Being non-profit often gets  
5 confused with being tax-exempt, which is different and unrelated.

6 An HOA must file taxes as a corporation and may also obtain IRS exemption  
7 through a section 501(c)(4) or elect to file using the provision of IRS Code section  
8 528 to receive certain tax benefits that, in effect, permit it to exclude its exempt  
9 function income from its corporate gross income.

10 *I Liheslaturan Guåhan* finds that membership fees, penalties, and common  
11 area fees paid by the HOA homeowners are integral in maintaining and repairing  
12 improvements, including infrastructure located within the common areas of a  
13 condominium or townhouse community. Regular subdivisions and housing  
14 communities in Guam expect the government of Guam to maintain and repair roads,  
15 sewers, and electrical infrastructure that service their homes.

16 Through this Act, *I Liheslaturan Guåhan* intends to exempt homeowner  
17 association membership dues and common area fees from BPT assessments, as  
18 HOAs are responsible for filing a corporate tax return every year for its operations.  
19 Though an HOA does not function for profit, some activities may result in taxable  
20 income. For example, some communities sell t-shirts or mugs with the community  
21 logo, charge for use of the exercise or clubhouse facilities, or operate a store or  
22 restaurant as part of their amenities. Income from such activities is taxable, and the  
23 HOA is therefore responsible for paying those taxes.

24 **Section 2.** A new § 26203(k)(39) is *added* to Article 2 of Chapter 26, Title  
25 11, Guam Code Annotated, to read:

26 “(39) Amounts received from homeowner association membership  
27 dues and common area fees.”

1           **Section 3. Severability.** If any portion of this Act is for any reason held  
2 invalid or unconstitutional by any court of competent jurisdiction, such portion shall  
3 be deemed a separate provision and shall not affect the validity of the remaining  
4 portions of the Act.

5           **Section 4. Effective Date.** This Act shall be effective upon enactment.