


**I MINA'TRENTAI TRES NA LIHESLATURAN GUÅHAN**  
**2015 (FIRST) Regular Session**

Bill No. 178-33 (cop)

Introduced by:

Michael F.Q. San Nicolas 

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**AN ACT TO ADD A NEW §26217 TO 11 GCA,  
RELATIVE TO REQUIRING THE ESCROW OF  
BUSINESS PRIVILEGE TAX FOR CONTRACTS  
OVER ONE MILLION DOLLARS (\$1,000,000).**

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

2 **Section 1. Short Title.** This Act *shall* be cited as the “Responsible Business  
3 Tax Escrow Act.”

4 **Section 2. Legislative Findings and Intent.** *I Liheslaturan Guåhan* finds  
5 that the Business Privilege Tax is the largest single source of revenue to the  
6 General Fund of the Government of Guam, responsible for roughly one-third (1/3)  
7 of its revenue. The 2008 audit of the Inspector General of the United States found  
8 that inadequate enforcement of Guam’s taxes cost millions of dollars each year.

9 *I Liheslatura* further finds that the federal government withholds income  
10 taxes initially from wages to ensure income taxes are paid, providing for an  
11 efficient income tax system at the federal level. The creation of a similar system  
12 through an escrow agent for large Business Privilege Tax transactions would  
13 provide for an equally effective system.

14 *I Liheslaturan Guåhan* finds that there has been a significant tax collection  
15 issue with an average of over one hundred million dollars (\$100,000,000) in  
16 receivables owed to the government. Ensuring improved Business Privilege Tax  
17 collections during the projected military expansion on Guam would strengthen the  
18 benefits of this increased activity.

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1            *I Liheslatura* further finds that establishing a system similar to withholding  
2 for high contract amounts will help improve the ease of Business Privilege Tax  
3 compliance for off-island military contractors who engage in large Guam-based  
4 projects.

5            *I Liheslatura* finds that exempting businesses through § 2617 (e) of 11 GCA  
6 will allow for businesses who have a substantiated record of paying their  
7 respective Business Privilege Tax to bypass the escrow requirement. This creates  
8 an incentive for businesses to be in good standing with their Business Privilege  
9 Tax filings.

10           *I Liheslatura* further finds that requiring the escrow of four percent (4%) of  
11 the contract amount for large contracts could make collection easier for the  
12 Department of Revenue and Taxation, while also ensuring that businesses are able  
13 to pay the Business Privilege Tax they owe on large contracts. Without a  
14 significant improvement of collection capabilities, given the historic levels of  
15 receivables, the full potential revenue of the military buildup may not be realized.

16           It is further the intent of *I Liheslaturan Guåhan* to mirror the penalties of a  
17 failure to comply with federal withholding taxes and federal anti-money laundering  
18 penalties, to strongly disincentivize non-compliance with the provisions to escrow  
19 as required by this Act, in a manner than has proven effective at the federal level.

20           It is therefore the intent of *I Liheslaturan Guåhan* to require the escrow of  
21 four percent (4%) of the contract amount for the payment of Business Privilege  
22 Tax for contracts over one million dollars (\$1,000,000), by adding a new §26217  
23 to 11 GCA.

24           **Section 2. Escrow of Business Privilege Tax payments required for**  
25 **contracts over one million dollars (\$1,000,000).** *A new § 26217 is hereby added*  
26 *to 11 GCA, to read:*

1           **“§ 26217. Escrow of Estimated Business Privilege Tax Payments**  
2           **Required for Contracts Over One Million Dollars (\$1,000,000).**

3           (a) Definitions. Unless the context clearly requires otherwise, the  
4           following definitions apply throughout this Section:

5                     (1) ‘Contract’ *means* an agreement between the payor and  
6                     payee for the provision of goods or services for remuneration.

7                     (2) ‘Department’ *means* the Department of Revenue and  
8                     Taxation.

9                     (3) ‘Disbursement amount’ *means* the payment increments of  
10                    the gross proceeds of sale agreed to by the payor and payee for the  
11                    provision of goods or services.

12                    (4) ‘Escrow Agent’ *means* a financial institution, organized and  
13                    licensed to do business in the Territory of Guam, and insured by either  
14                    the Federal Deposit Insurance Corporation or the National Credit  
15                    Union Administration.

16                    (5) ‘Payee’ *means* the contracting party from which goods or  
17                    services are to be provided for remuneration.

18                    (6) ‘Payor’ *means* the contracting party for which goods or  
19                    services are to be provided for remuneration.

20           (b) Escrow of Estimated Business Privilege Tax for Certain Contracts.

21                     (1) Payor to Escrow Four Percent (4%) of Disbursement  
22                     Amount. When a Guam licensed business enters into a contractual  
23                     arrangement with another party to provide goods or services on Guam  
24                     for an amount greater than one million dollars (\$1,000,000), then the  
25                     contract *shall* stipulate that the payor for such contract *shall* pay the  
26                     disbursement amount through an escrow agent. The escrow agent

1           *shall* deposit four percent (4%) into an escrow account and remit the  
2 remaining ninety-six percent (96%) of the disbursement to the payee.

3           (2) Release of Escrow. As the goods and services are provided  
4 by the payee to the payor and disbursement is made to the payee  
5 through the escrow agent, the escrow agent *shall* deposit four percent  
6 (4%) of the disbursement amount into an escrow account. When such  
7 Business Privilege Tax is due and payable, the escrow agent *shall*  
8 make payment on behalf of the payee for the payment of the payee's  
9 Business Privilege Tax liability for the respective escrow account,  
10 owing from the fulfillment of the contract terms. Any excess  
11 payments made by the escrow agent on behalf of the payee's Business  
12 Privilege Tax liability *shall* be refunded by the Department to the  
13 payee via the escrow account. Upon completion of the terms of the  
14 contract or its termination, should any amount remain deposited with  
15 the escrow agent in excess of that required for the payment of the  
16 payee's Business Privilege Tax liability, it *shall* be refunded to the  
17 payee.

18           (c) Disclosure. The payor *shall* disclose the names and addresses of  
19 the payee and the escrow agent, respectively, the contract amount, and the  
20 amount deposited with the escrow agent to the Department, for tax  
21 enforcement purposes only.

22           (d) Regulation of Escrow Agent. The Banking and Insurance Board  
23 may establish, pursuant to the Administrative Adjudication Law, rules and  
24 regulations pertaining to the conduct of the escrow agent in performance of  
25 duties pursuant to this section.

26           (e) Exemptions. The following *shall* be exempt from the provisions of  
27 subsection (b) of this section:

1 (1) Licensed contractors who have renewed their contractor's  
2 license, pursuant to 21 GCA §70108, and remain in good standing  
3 with the Contractors Licensing Board,

4 (2) Licensed real estate brokers or salesmen who have renewed  
5 their real estate licenses, pursuant to 21 GCA Chapter 104,

6 (3) Licensed insurance professionals who have renewed their  
7 license, pursuant to 22 GCA §15701, and remain in good standing  
8 with the Banking and Insurance Board,

9 (4) Banks or other financial institutions which have renewed a  
10 banking commercial license and remain in good standing with the  
11 Banking and Insurance Board, pursuant to 11 GCA §72102, and

12 (5) Engineers, architects, or land surveyors who have renewed  
13 their professional licenses, and remain in good standing with the  
14 Professional Engineers, Architects and Land Surveyors Board.

15 (f) Failure to Escrow.

16 (1) Penalties for Failure to Escrow. A payor who is required to  
17 escrow payment(s) under this section who fails to comply with  
18 subsection (b) of this section *shall* pay the amount of Business  
19 Privilege Tax owed by the payee pursuant to the contract to the  
20 Department of Revenue and Taxation which was not escrowed by the  
21 payor in accordance with subsection (b) as a tax payment made on  
22 behalf of the payee, inclusive of interest thereon, a fine equal to the  
23 Business Privilege Tax owed by the payee pursuant to the contract to  
24 the Department of Revenue and Taxation which was not escrowed by  
25 the payor in accordance with subsection (b), inclusive of interest  
26 thereon, and the costs, if any, of prosecution.

1 (2) Penalties for Avoidance of Escrow Requirement. A payor  
2 who, with the intent to avoid the requirement to escrow under this  
3 section, conducts a transaction or series of transactions to conceal or  
4 disguise the nature, location source, ownership, or control of the  
5 proceeds of a transaction covered under this section is guilty of a  
6 felony of the first degree and, upon conviction, shall pay a fine of not  
7 more than either five hundred thousand dollars (\$500,000) or twice  
8 the value of the monetary instrument or funds involved in the  
9 transportation, transmission, or transfer, whichever is greater, or  
10 imprisonment for not more than twenty (20) years, or both.

11 (g) Failure of Escrow Agent to Perform Duties. The failure of an  
12 escrow agent to perform the duties required of it under subsection (b) of this  
13 Section shall

14 (1) pay to the Department any Business Privilege Tax and any  
15 interest and/or penalties thereon owed by the payee due to the failure  
16 of the escrow agent to perform its fiduciary responsibilities under  
17 subsection (d) of this section;

18 (2) as a penalty, pay into the Banking and Insurance  
19 Enforcement Fund an additional twenty five percent (25%) penalty on  
20 such tax, interest and/or penalties paid pursuant to item (1) of this  
21 subsection); and

22 (3) as a penalty, pay into the Banking and Insurance  
23 Enforcement Fund any fees or other amounts earned by the escrow  
24 agent relative to its escrow duties pursuant tho this section.”

25 **Section 3. Severability.** If a provision of this act or its application to  
26 any person or circumstance is held invalid, the invalidity does not affect  
27 other provisions or applications of the act that can be given effect without

1 the invalid provision or application, and to this end the provisions of this act  
2 are severable.