EDDIE BAZA CALVO
Governor

RAY TENORIO
Lieutenant Governor

Office of the Governor of Guam

JUL 08 2016

Honorable Judith T. Won Pat, Ed.D.
Speaker
I Mina'trentai Tres Na Liheslaturan Guåhan
155 Hesler Street
Hagåtña, Guam 96910

2016 JUL 12 AM 10:49

Dear Madame Speaker:

Transmitted herewith is Bill No. 282-33 (COR), **"AN ACT TO *ADD* A NEW § 71114 TO CHAPTER 71 OF DIVISION 3, TITLE 11, GUAM CODE ANNOTATED, RELATIVE TO ESTABLISHING A WITHHOLDING ASSESSMENT FEE FOR A NON-RESIDENT PERSON TO CAPTURE THE FOUR PERCENT (4%) EQUIVALENT OF THE BUSINESS PRIVILEGE TAX ON CONTRACTS AWARDED BY THE GOVERNMENT OF GUAM FOR PROFESSIONAL SERVICES,"** which was signed into law on June 30, 2016, as **Public Law 33-166**.

Senseramente,

EDDIE BAZA CALVO

33-16-1780
Office of the Speaker
Judith T. Won Pat, Ed.D
Date: 7-11-16
Time: 12:11 pm
Received By: DM

1780

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I MINA'TRENTAI TRES NA LIHESLATURAN GUÅHAN
2016 (SECOND) Regular Session

CERTIFICATION OF PASSAGE OF AN ACT TO *I MAGA'LÅHEN GUÅHAN*

This is to certify that **Bill No. 282-33 (COR), "AN ACT TO *ADD* A NEW § 71114 TO CHAPTER 71 OF DIVISION 3, TITLE 11, GUAM CODE ANNOTATED, RELATIVE TO ESTABLISHING A WITHHOLDING ASSESSMENT FEE FOR A NON-RESIDENT PERSON TO CAPTURE THE FOUR PERCENT (4%) EQUIVALENT OF THE BUSINESS PRIVILEGE TAX ON CONTRACTS AWARDED BY THE GOVERNMENT OF GUAM FOR PROFESSIONAL SERVICES,"** was on the 17th day of June 2016, duly and regularly passed.

Benjamin J.F. Cruz
Acting Speaker

Attested:

Tina Rose Muña Barnes
Legislative Secretary

This Act was received by *I Maga'låhen Guåhan* this 20th day of June, 2016, at 5:35 o'clock P.M.

PO2 RS Mauricio #341
Assistant Staff Officer
Maga'låhi's Office

APPROVED:

EDWARD J.B. CALVO
I Maga'låhen Guåhan

Date: JUN 30 2016

Public Law No. 33-166

I MINA'TRENTAI TRES NA LIHESLATURAN GUAHAN
2016 (SECOND) Regular Session

Bill No. 282-33 (COR)
As amended on the Floor.

Introduced by:

Dennis G. Rodriguez, Jr.
Mary Camacho Torres
Judith T. Won Pat, Ed.D.
T. R. Muña Barnes
T. C. Ada
V. Anthony Ada
FRANK B. AGUON, JR.
Frank F. Blas, Jr.
B. J.F. Cruz
James V. Espaldon
Brant T. McCreadie
Tommy Morrison
R. J. Respicio
Michael F.Q. San Nicolas
N. B. Underwood, Ph.D.

AN ACT TO *ADD* A NEW § 71114 TO CHAPTER 71 OF DIVISION 3, TITLE 11, GUAM CODE ANNOTATED, RELATIVE TO ESTABLISHING A WITHHOLDING ASSESSMENT FEE FOR A NON-RESIDENT PERSON TO CAPTURE THE FOUR PERCENT (4%) EQUIVALENT OF THE BUSINESS PRIVILEGE TAX ON CONTRACTS AWARDED BY THE GOVERNMENT OF GUAM FOR PROFESSIONAL SERVICES.

BE IT ENACTED BY THE PEOPLE OF GUAM:

Section 1. Legislative Findings and Intent. Tens of millions of dollars in government of Guam contracts are annually awarded to persons without a valid Guam business license for professional services to be provided by a non-resident

person residing outside of Guam. *I Liheslaturan Guåhan* finds that these off-island offerors competing for the contract award have a four percent (4%) competitive advantage over Guam businesses in that they are not subject to the four percent (4%) business privilege tax as are Guam-based domestic businesses.

I Liheslaturan Guåhan finds it to be in the public interest to level the playing field for the highly capable domestic Guam businesses desiring to have a fair feasible opportunity to compete for these professional services contracts.

It is the intent of *I Liheslaturan Guåhan* to assess the equivalent of the Guam business privilege tax by providing for a withholding assessment fee for a non-resident person without a valid Guam business license residing outside of Guam, which *shall* be equal to four percent (4%) of the total dollar value of a contract awarded for all government of Guam contracts for professional services as a cost of doing business with the government of Guam.

Section 2. A new § 71114 is *added* to Chapter 71 of Division 3, Title 11, Guam Code Annotated, to read:

"**§ 71114. Withholding Assessment Fee Requirement for Government Contracts; Off-Island Businesses Without Guam Business License.**

(a) For the purposes of this Section, the following *shall* mean:

(1) *Non-resident person* means a person or body who is not a permanent resident of Guam, or a business that does not possess a valid Guam business license under Title 11, Guam Code Annotated, and does not pay Business Privilege Taxes under Chapter 26 of Title 11, Guam Code Annotated, and includes any individual, firm, co-partnership, joint venture, association, corporation, estate, trust, limited liability company, limited partnership, limited liability partnership, or any other

group or combination, as a foreign entity outside of Guam, acting as a unit.

(2) *Professional services* or *services* means any kind of services rendered by a non-resident person and includes, but is not limited to, legal, promotional, advertising, public awareness, architectural and engineering services, or other services deemed applicable in the opinion of the Director of the Department of Revenue and Taxation.

(b) There is established a withholding assessment fee for a non-resident person without a valid Guam business license, which *shall* be equal to four percent (4%) of the total dollar value of a contract awarded for all government of Guam contracts for professional services provided by a non-resident person residing outside of Guam, as a cost of doing business with the government of Guam.

This Section *shall* apply as a mandatory requirement of a government of Guam contract being awarded to provide professional services required by any government of Guam agency, to include all autonomous agencies.

All agencies, to include autonomous agencies, of the government of Guam *shall* ensure that all Requests for Proposals (RFP), Invitation for Bid (IFB), or any other form of solicitation for professional services, include the notification to potential offerors that the award and issuance of a contract to provide the professional services is subject to the withholding assessment fee for contracts awarded to persons without a valid Guam business license.

The agency awarding the contract or the agency's representative awarding the contract *shall*, at the time of a contract award, in the instance of a contract for professional services to a person who does not possess a valid Guam business license under Title 11, Guam Code Annotated, and who is not

a resident of Guam, deduct from funds allocated for the contract an amount equal to four percent (4%) of the total dollar value of a contract awarded, and *shall* transmit the funds to the Treasurer of Guam for deposit in the General Fund. The amount of the withholding assessment fee withheld pursuant to this Section *shall* be duly noted in the payment statements to the contractor. The agency *shall* report to the Department of Revenue and Taxation (DRT), on forms prescribed by the Department, the amount of the withholding assessment fee withheld, or any other information requested by DRT on the prescribed form, from the awarded professional services contract within thirty (30) days of the contract being awarded.

(c) Prospective Applicability. The withholding assessment fee pursuant to this Section for a non-resident person without a valid Guam business license *shall not* be applicable to any contract for professional services entered into with the government of Guam prior to the effective date of this Act; provided, however, that it *shall* be applicable for the award of a new contract or contract renewal for the contractual provision of the same or similar services.

(d) Withholding Assessment Fee Collected Declared Government of Guam Funds. The withholding assessment fee levied, assessed and collected under this Chapter *shall* become funds of the government of Guam from the moment of collection and *shall* be subject to all laws, rules and regulations pertaining thereto, and unless specifically provided by law, all such withholding assessment fees collected *shall* be deposited into the Treasury of Guam as part of the General Fund."

Section 3. Severability. If any provision of this Act or its application to any person or circumstance is found to be invalid or contrary to law, such invalidity *shall not* affect other provisions or applications of this Act which can be given effect

1 without the invalid provisions or application, and to this end the provisions of this
2 Act are severable.
3 **Section 4. Effective Date.** This Act *shall* be effective upon enactment.