

MINA'BENTE OCHO NA LIHESLATURAN GUÅHAN
2006 (SECOND) Regular Session

Bill No. 353 (LS / ~~EC~~)

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**AN ACT TO REPEAL TITLE 11 G.C.A., DIVISION 1,
CHAPTER 1, § 1106, ITEM (d) AND TO ADD A NEW TITLE
11 G.C.A., DIVISION 1, CHAPTER 1, § 1106.1 RELATIVE
TO CREATING THE OFFICE OF THE PRINCIPAL
GUAM TERRITORIAL INCOME TAX ATTORNEY.**

1 **Section One.** *I Liheslaturan Guahan* finds:

2 1. 48 USC §1421i (c) (a section of the Organic Act) provides:

3 “(c) Enforcement of Tax. The administration and enforcement of the Guam Territorial
4 Income Tax shall be performed by or under the supervision of the Governor. Any function
5 needful to the administration and enforcement of the income tax laws in force in Guam pursuant
6 to subsection (a) of this section shall be performed by any officer or employee of the government
7 of Guam duly authorized by the Governor (either directly, or indirectly by one or more
8 redelegations of authority) to perform such function.”

9 2. 48 USC §1421i (d) (2) (a section of the Organic Act) provides in pertinent part:

10 “(2) The Governor or his delegate shall have the same administrative and enforcement powers
11 and remedies with regard to the Guam Territorial Income Tax as the Secretary of the Treasury,
12 and other United States officials of the executive branch, have with respect to the United States
13 income tax. ...”

14 3. On March 23 the District Court of Guam in Julie Babauta Santos, et al. v. Felix A

1 Camacho, et al., Civil Case No. 04-00006, stated, “The court finds that, at least in this context,
 2 the Government of Guam’s representative should be the Governor. Moreover, the court
 3 concludes, as matter of law, that the Governor has authority over the enforcement of tax matters,
 4 and thus, may dictate the litigation strategy of this matter.”

5 4. Thirteen days after the decision in Santos the Attorney General sent a memo titled
 6 “TRANSFER OF ALL CASES (LITIGATION/ NON-LITIGATION)” to the Director of
 7 Revenue and Taxation telling the Director to coordinate the transfer of 111 files to his office.
 8 There are 10 kinds of files to be transferred:

Guam Territorial Income Tax	19
Regulatory	26
Regulatory/Other	1
Liquid Fuel Tax	5
Division of Motor Vehicle	2
Gross Receipts	1
Gross Receipts/Sunshine Request	1
Gross Receipts/GEDA Rebate	21
Real Property Tax	2
Other	33
Total	111

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21 5. In the memo the Attorney General requested that the Director retain counsel to
 22 represent his interests.

23 6. The Governor’s administration and enforcement of the Guam Territorial Income Tax
 24 requires the use of officers and employees of the Government of Guam. It is impracticable to
 25 employ officers e.g. Director of Revenue and Taxation and the Principal Guam Territorial
 26 Income Tax Attorney in the in the merit system. These officers’ authority is delegated or
 27 redelegated from the Governor pursuant to 48 USC §1421i (c) therefore their performance can
 28 not be the subject of the kinds of job protections applicable to employees in the classified
 29 service.

30 7. In order to effect the administration and enforcement of the Guam Territorial Income
 31 Tax it is necessary to create the **Office of the Principal Guam Territorial Income Tax**

1 Attorney headed by the **Principal Guam Territorial Income Tax Attorney** within the
2 Department of Revenue and Taxation.

3 **Section Two.** Title 11 G.C.A., Division 1, Chapter 1, § 1106, Item (d) is repealed.

4 **Section Three.** A new § 1106.1 is added to Title 11 G.C.A., Division 1, Chapter 1 to
5 read:

6 **§ 1106.1. Office of the Principal Guam Territorial Income Tax Attorney.** There is
7 within the Department of Revenue and Taxation the Office of the Principal Guam Territorial
8 Income Tax Attorney. The Director shall appoint the **Principal Guam Territorial Income Tax**
9 **Attorney** who shall be a member of the unclassified service who shall serve at his pleasure. The
10 Director of Revenue and Taxation shall, pursuant to Title 48 U.S.C. § 1421i, supervise the Office
11 the **Principal Guam Territorial Income Tax Attorney**. The Director shall appoint, as
12 members of the classified service, such Assistants to the **Principal Guam Territorial Income**
13 **Tax Attorney** as may be required to assist the **Principal Guam Territorial Income Tax**
14 **Attorney** in the performance of his duties. The **Principal Guam Territorial Income Tax**
15 **Attorney** and the Assistants Principal Tax Attorneys shall be compensated in accordance with
16 Title 4 G.C.A. § 6208.1. The **Principal Guam Territorial Income Tax Attorney** shall:

17 (1) Assist the Director and I Maga'lahi Guahan in administering and enforcing the Guam
18 Territorial Income Tax;

19 (2) Represent I Maga'lahi Guahan in all civil actions arising from or pertaining to the Guam
20 Territorial Income Tax, provided that the Principal Guam Income Tax Attorney may appear on
21 behalf of the Director in a criminal action in which the Department seeks restitution of funds or
22 payment of overdue taxes ;

23 (3) Represent the Director of Revenue and Taxation in court and administrative proceedings
24 in legal matters in which the Department is interested, except for criminal prosecutions;

25 (4) Diligently protect the rights and property of the government of Guam in matters under the
26 Director's purview;

27 (5) Perform such other tasks as the Director of Revenue and Taxation assigns to him;

28 (6) Nothing herein shall be construed to prevent the **Principal Guam Territorial Income**
29 **Tax Attorney** from assisting and representing the Director of Revenue and Taxation regarding
30 all legal matters in which the Department is interested, including tax, regulatory, licensing issues
31 and personnel matters and all other legal matters within the Director's purview.