

**MINA' BENTE NUEBI NA LIHESLATURAN GUAHAN
2007 (FIRST) REGULAR SESSION**

Bill No. 158 (EC)

Introduced by:

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AN ACT TO PROVIDE ADDITIONAL TAX COLLECTING ASSISTANCE TO THE DEPARTMENT OF REVENUE AND TAXATION BY ADDING A NEW § 15104 TO CHAPTER 15, TITLE 11 GUAM CODE ANNOTATED RELATIVE TO AUTHORIZING THE DIRECTOR OF REVENUE AND TAXATION TO ENTER INTO DELINQUENT TAX COLLECTION CONTRACTS; TO ADD A NEW CHAPTER 53 TO TITLE 11 GUAM CODE ANNOTATED RELATIVE TO THE CREATION OF THE DELINQUENT TAX COLLECTION FUND; TO PROVIDE A SUNSET PROVISION TO THE DELINQUENT TAX COLLECTION CONTRACTS PROGRAM, AND TO ADD A NEW § 15105 TO CHAPTER 15, TITLE 11 GUAM CODE ANNOTATED TO PERMIT THE CONTRACTING OF DEPUTY TAX COLLECTORS.

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

2 **Section 1. Legislative Findings and Intent.** *I Liheslaturan Guåhan*
3 finds that a significant amount of taxes owed to the Government of Guam
4 has remained uncollected despite more aggressive tax collection efforts and
5 limited tax amnesty periods. The state of government finances has been an
6 impediment to the full staffing of permanent employees needed at the
7 Department of Revenue and Taxation. It is the intent of *I Liheslaturan*
8 *Guåhan* to provide the Director of Revenue and Taxation with the

1 discretion and authority to both (a) contract private companies and
2 corporations to collect delinquent tax assessments for a period of five (5)
3 years; and (b) give the Director the authority to contract deputy tax
4 collectors. This will allow the Director to stabilize permanent employee
5 staff levels, improve collection of delinquent taxes, and modernize the
6 department in concert with the goals of the Better Public Service Fund
7 (Title 11 Guam Code Annotated Chapter 161): "...to improve and
8 modernize systems that are used to provide Department services to the
9 public, including on-line filing of all taxes, on-line renewal of licenses and
10 permits, upgrades of computer hardware and software to improve record
11 retrieval by members of the public, and the training of Department staff in
12 technical skills and customer service."

13 **Section 2. Delinquent Tax Collection Contracts.** A new 11 GCA
14 Chapter 15 § 15104 is hereby added to read as follows:

15 **"§ 15104. (a) Delinquent Tax Collection Contracts.**
16 Notwithstanding any other provision of law, the Director of Revenue
17 and Taxation ('Director') shall enter into contractual agreements with
18 one or more Guam companies or corporations with demonstrated
19 collection experience. For purposes of this Act, the term "Delinquent
20 Tax Collection Contract" means any contract that shall be made for
21 the following services:

1 (1) To locate and contact any taxpayer specified by the
2 Director for the purpose of collecting delinquent tax
3 assessments, including Real Property; Individual Income;
4 Corporate Income; Withholding Taxes, Interest and Penalties;
5 and Business Privilege Tax liabilities; and

6 (2) To request full payment from such taxpayer and if
7 such request cannot be met by the taxpayer, to determine a
8 payment agreement for full payment of such liabilities over a
9 period not exceeding five (5) years.

10 (b) **Request for Proposals.** The Director shall issue a Request
11 for Proposals (“RFP”), inviting qualified, licensed private companies
12 and corporations to submit RFPs for the services described herein.
13 All contracts are to be awarded pursuant to the Guam Procurement
14 Law as contained in 5 GCA Chapter 5, and shall be valid for any term
15 up to, but not in excess of five (5) years, but in no case beyond
16 September 30, 2012, unless otherwise prescribed by law.

17 (1) The contractual agreement shall provide the rate of
18 payment and the manner in which compensation for services
19 are to be paid, except that contractors shall not be paid more
20 than 25% of the total amount actually collected per case, and
21 payments to contractors shall be made only upon receipt of the

1 taxpayer's payment. For taxpayers with payment agreements,
2 contractors shall be paid in installments to coincide with each
3 of the delinquent taxpayer's remittances.

4 (2) The contractual agreement shall require that the
5 contractor monitor their employees and establish internal
6 controls to protect against public disclosure of private taxpayer
7 information.

8 (3) The Director shall provide the necessary
9 information for the contractor to fulfill its obligation under the
10 contractual agreement, including maintaining full compliance
11 with federal and local tax laws and clearances necessary to
12 allow private contractors to access confidential tax records.

13 (4) For real property subject to sale by operation of law
14 for the purpose of collecting delinquent real property tax and
15 with the approval of the Director, the contractor may, as part of
16 the collection process, refer the tax debt for litigation by its legal
17 representatives.

18 **(c) Identification badges.** Prior to the onset of any contact by
19 any contractor with taxpayers, the Director shall issue individual
20 photo identification badges to each contractor, associates, employees
21 and any other individuals who shall have access to confidential tax

1 information. Each contractor and all associates, employees and any
2 other individuals who have access to confidential tax information
3 shall be in full compliance with federal and local tax laws. The
4 contractor shall maintain a file for each associate or employee and
5 any other individuals having been granted access to confidential tax
6 information by the Director. The file shall be made available for
7 inspection at any time by the Director, updated semi-annually, and
8 shall include:

9 (1) Legal name, photo identification, vital statistics,
10 fingerprints and place of residence;

11 (2) Résumé, employment history, current police or
12 court clearance, and any judgments or personal liens placed on
13 the individual's property; and

14 (3) Any other information that may be required by the
15 Director.

16 **(d) Legal Status.** The contractor, its associates and employees
17 shall be U.S. citizens or permanent resident aliens, and shall not be
18 employed at the Department of Revenue and Taxation.

19 **(e) Restrictions on Employment of Former Employees.** The
20 Director shall follow the guidelines of Title 5 Guam Code Annotated

1 Chapter 5 §§ 5232 and 5233 relative to Restrictions on Employment of
2 Present and Former Employees and Use of Confidential Information.

3 **(f) Notification of Taxpayer.** When the Director has
4 assigned a taxpayer's case to the contractor, the delinquent taxpayer
5 shall receive a notification letter from both the Director and the
6 contractor. The notification letter shall detail the collection process,
7 and the rights of the delinquent taxpayer throughout the entire
8 collection process. The letter shall also provide contact information
9 for the delinquent taxpayer and shall explain the various payment
10 options available, so the delinquent taxpayer may select the best
11 payment. The delinquent taxpayer shall also be advised of the
12 services available pursuant to Title 11 Guam Code Annotated,
13 Division 1, Chapter 1, § 1113, the Taxpayer Advocate.

14 **(g) Deposit Into Delinquent Tax Collection Fund.** All
15 amounts collected by the contractor pursuant to this Act shall be
16 payable to the Treasurer of Guam and deposited into the "*Delinquent*
17 *Tax Collection Fund*" pursuant to 11 GCA, Chapter 53.

18 **(h) Federal Fair Debt Collection Practices Act.** Contractors
19 shall not use any information gleaned during tax collection to pursue
20 other unpaid debts, and shall adhere to the Federal Fair Debt
21 Collection Practices Act (Consumer Credit Protection Act 15 U.S.C.

1 1601 et seq.) and any subsequent amendments made thereto. The
2 contractors are prohibited from having face-to-face contact with the
3 delinquent taxpayer, unless implicitly authorized by the Director.

4 **(i) No Liability to the Government of Guam.** The
5 Government of Guam shall not be liable for any act or omission of
6 any person performing services under a Delinquent tax collection
7 contractor.

8 **(j) Quarterly Reporting Requirements.** Whenever the
9 Director engages private Guam companies or corporations pursuant
10 to this Act, the Director shall be required to submit a quarterly report
11 to *I Maga'Lahen Guåhan*, and to *I Lihelsatura* the following:

12 (1) Status of collection efforts; and

13 (2) The total amount of tax payers' liability recovered,
14 and itemized by tax category."

15 **Section 3. Delinquent Tax Collection Fund. A new 11 GCA Chapter**
16 **53 is added to read as follows:**

17 **"Chapter 53**

18 **Delinquent Tax Collection Fund**

19 **§ 53101. Creation of Delinquent Tax Collection Fund; No**
20 **Commingling.** There is hereby created, separate and apart from
21 other funds of the Government of Guam, a fund known as the

1 Delinquent Tax Collection Fund. The Fund shall not be commingled
2 with the General Fund or any other funds of the Government of
3 Guam, and it shall be maintained in a separate bank account as
4 required under this Chapter. All monies collected pursuant to 11
5 GCA Chapter 15 § 15104 shall be deposited into the Fund.

6 **§ 53102. Expenditures from the Fund.** Any and all
7 expenditures from the Fund shall be approved by the Director of
8 Revenue and Taxation (“the Director”) exclusively to the following:
9 payment of Income Tax Returns, payment of Government of Guam’s
10 prior year obligations to vendors paid on an aging schedule such that
11 the oldest debts are paid first, and compensation for Delinquent Tax
12 Collection Contracts pursuant to 11 GCA Chapter 15 § 15104 and
13 funding of Deputy Tax Collector positions pursuant to 11GCA
14 Chapter 15 § 15105. The fund shall not be used for any other
15 purposes.

16 **§ 53103. Pledge of Funds not Permitted.** The Delinquent Tax
17 Collection Fund is not subject to the provisions of 5 GCA Chapter 22
18 § 22414, which provisions would otherwise permit *I Maga’Lahen*
19 *Guåhan* to pledge this Fund. The Director shall keep adequate records
20 regarding amounts so retained and used.

1 **§ 53104. Expenditure Guidelines.** Of the amounts collected
2 pursuant to 11 GCA Chapter 15 § 15104, the Director shall first
3 compensate the contractor or contractors for services at the rate of
4 payment agreed to for each recovered delinquent taxpayer case. The
5 remaining amounts shall be expended as follows:

6 (1) Five Hundred Thousand Dollars (\$500,000) shall be
7 utilized by the Director for the purposes delineated in § 15105
8 of Chapter 15 of Title 11GCA;

9 (2) Fifty percent (50%) of the remaining amount
10 collected shall be deposited into the Income Tax Refund
11 Reserve Fund pursuant to 11 GCA Chapter 50;

12 (3) Twenty-five percent (25%) of the remaining amount
13 collected shall be set aside and available for legislative
14 appropriation to the Department of Revenue and Taxation to
15 enhance its collection enforcement activities;

16 (4) Twenty-five percent (25%) of the remaining amount
17 collected shall be set aside and earmarked to pay for
18 Government of Guam obligations arising from outstanding tax
19 refunds, Earned Income Tax Credits, and Government of
20 Guam's prior year obligations to vendors.

1 **§ 53105. No Transfer Authority.** The money placed in the
2 Delinquent Tax Collection Fund shall not be subjected to *I*
3 *Maga'Lahen Guåhan's* transfer authority.

4 **§ 53106. Reporting Requirements.** The Director shall make
5 quarterly reports to *I Maga'Lahen Guåhan, I Liheslatura,* and the Public
6 Auditor on all expenditures from and deposits into the Delinquent
7 Tax Collection Fund. These reports, and the names of the companies
8 or corporations holding Delinquent Tax Collection Contracts shall be
9 made available and updated quarterly on the Department of Revenue
10 and Taxation's website."

11 **Section 4.** A new § 15105 is added to Chapter 15 of Title 11 of the
12 Guam Code Annotated to read:

13 "§ 15105. Contracting of Deputy Tax Collectors. The Director of
14 the Department of Revenue and Taxation is authorized to contract
15 with individuals who are qualified as tax collectors to act as Deputy
16 Tax Collectors on behalf of the Director of the Department of
17 Revenue and Taxation to assist in the collection of delinquent tax
18 assessments based on the following conditions:

19 (a) Deputy Tax Collectors may be retired tax collectors, or
20 others possessing the qualifications to be tax collectors;

1 provided, they meet the criterion of tax collectors according to
2 the Department of Administration's Personnel Division; and

3 (b) Deputy Tax Collectors act under the supervision of
4 the Director of the Department of Revenue and Taxation and
5 according to the laws of Guam and the United States when
6 acting as tax collectors; and

7 (c) Compensation of Deputy Tax Collectors shall be
8 according to the Hay Study; however, shall not contain
9 provisions for retirement contributions, health insurance, or life
10 insurance; and

11 (d) Deputy Tax Collectors shall collect delinquent tax
12 assessments, including Real Property; Individual Income;
13 Corporate Income; Withholding Taxes, Interest and Penalties;
14 and Business Privilege Tax liabilities; and

15 (e) Contracts with Deputy Tax Collectors shall be for a
16 period of One (1) year; and

17 (f) The Director shall make quarterly reports to *I*
18 *Maga'Lahen Guåhan*, and *I Liheslatura* on the amounts collected
19 by the Deputy Tax Collectors."

20 **Section 5. Annual Budget.** Within 15 days of the effective date of this
21 Act, the Director of Revenue and Taxation shall prepare and submit a

1 budget request to support the provisions described in Section 2 herein to *I*
2 *Maga'Lahen Guåhan* and *I Liheslatura*, and shall include funding for this
3 function as part of future Department of Revenue and Taxation budget
4 requests.

5 **Section 6. Sunset Provision.** The provisions of Section 2 of this Act
6 shall remain in effect until September 30, 2012 at the expiration of which
7 period these provisions shall automatically be deemed repealed, unless
8 otherwise proscribed by law.

9 **Section 7. Effective Date.** Within 30 days of the effective date of this
10 Act, the Director of Revenue and Taxation shall issue a Request for
11 Proposals (“RFP”), inviting qualified, licensed private companies and
12 corporations to submit an RFP for the services described in Section 2
13 herein. All such contractual agreements shall be awarded for a period not
14 to exceed five (5) years, unless otherwise prescribed by law.

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