

I MINA'TRENTAI UNU NA LIHESLATURAN GUÅHAN
2011 (FIRST) REGULAR SESSION

Bill No. 40-31 (COR)
Introduced by:

V.C. Pangelinan

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AM 11:44

AN ACT RELATIVE TO PRIORITIZING THE PAYMENT OF INCOME TAX REFUNDS IN ACCORDANCE WITH THE PROVISIONS OF ANNUAL APPROPRIATIONS ACTS AT A RATE PROPORTIONAL TO REVENUE COLLECTIONS BY ESTABLISHING THE “PAY INCOME TAX REFUNDS FIRST ACT OF 2011”.

BE IT ENACTED BY THE PEOPLE OF GUAM:

1 **SECTION 1. Legislative Statement and Findings.** Section 1423(j) of the
2 Organic Act of Guam establishes the authority of *I Liheslaturan Guåhan* to set the
3 spending priorities of the government of Guam through the appropriation of public
4 funds. The culmination of this authority is through the adoption of the *Annual*
5 *Appropriations Act of 2011*, which sets forth the spending priorities of the
6 government of Guam for each fiscal year. The *Annual Appropriations Act of 2011*
7 is the legal authority to expend public monies for the government of Guam.
8 Subsequent changes to it require that the established process of amendments be
9 adhered to so as to preserve the separation of powers between the executive and
10 legislative branches.

11 In executing its Organic authority, *I Liheslaturan Guåhan* shall anticipate
12 the taxes and revenues owed to the government of Guam for each fiscal year. In
13 developing the estimates, *I Liheslaturan Guåhan* shall use a reasonable

1 methodology that utilizes current data, reasonable assumptions, and prevailing
2 economic conditions.

3 *I Liheslaturan Guåhan* finds that as of February 28, 2011, the actual
4 revenues recognized by the government of Guam for Fiscal Year 2011 are above
5 projections by Six Million Four Hundred Thirty Nine Thousand Five Hundred
6 Four Dollars (\$6,439,504), resulting in a surplus for the first five months of FY
7 2011.

8 For decades, *I Maga'låhen Guåhan* has continued to not pay income tax
9 returns as a way of balancing the *Annual Appropriations Act* when revenue
10 collections are not commensurate with revenue projections. Rather than make
11 modifications to the operations of the government of Guam, *I Maga'låhen Guåhan*
12 has used income tax refunds as revolving lines of credit to deficit spend.

13 *I Liheslaturan Guåhan* has no authority to administer the treasury of Guam.
14 By establishing the "Pay Income Tax Refunds First Act of 2011," shall bring
15 Guam residents owed income tax refunds to the front of the line for payment and
16 no longer allow *I Maga'låhen Guåhan* to ignore the law set forth by *I Liheslaturan*
17 *Guåhan*, on behalf of the people of Guam.

18 In adopting its annual revenue projections, *I Liheslaturan Guåhan*
19 acknowledges the authority reserved to *I Maga'låhen Guåhan* to execute and
20 implement the spending priorities as passed by *I Liheslaturan Guåhan* and signed
21 into law by *I Maga'låhen Guåhan*.

22 *I Maga'låhen Guåhan*, through the Bureau of Budget and Management
23 Research (BBMR), shall make necessary adjustments to the budget in its
24 implementation. Events that may require action by the BBMR to make adjustments
25 to the budget include shortfalls between actual revenue collections and adopted
26 revenues to avert possible cash shortfalls for the fiscal year. However, in making
27 the adjustments, *I Maga'låhen Guåhan* shall preserve the spirit and letter of the

1 *Annual Appropriations Act* in its entirety, including policy initiatives set forth. For
2 the Fiscal Year 2011, the spending priorities of *I Liheslaturan Guåhan* are clearly
3 stipulated in P.L. 30-196, the *Annual Appropriations Act of 2011*.

4 *I Liheslaturan Guåhan* finds that the recent actions by *I Maga'låhen Guåhan*
5 in handling the fiscal affairs of the government of Guam run contrary to the intent
6 of P.L. 30-196; more specifically, the failure to pay the provisions for income tax
7 refunds at a rate consistent with revenue collections and the suspension of the
8 *Competitive Wage Act of 2011*. As actual revenue projections are above projected
9 revenues, *I Maga'låhen Guåhan* does not have sufficient cause *not* to pay tax
10 refunds.

11 *I Liheslaturan Guåhan* finds that in making these decisions, *I Maga'låhen Guåhan*
12 has provided cause for taxpayers of Guam to bring forth legal action to assert their
13 claims. The non-payment of the provision of income tax refunds at a rate
14 proportional to revenue collections represents the greatest injustice to the people by
15 *I Maga'låhen Guåhan*.

16 Pursuant to §1421(i)(c) of the Organic Act of Guam, the collection and
17 administration of the Guam Territorial Income Tax shall be under the supervision
18 of *I Maga'låhen Guåhan*. In administering the Guam Territorial Income Tax, *I*
19 *Maga'låhen Guåhan* shall ensure the payment of the income tax refund provision
20 pursuant to P.L. 30-196, as these monies are legal claims of the taxpayers.

21 *I Liheslaturan Guåhan* finds that the unreasonable delay of the payment of
22 the provision for income tax refunds borders on additional unauthorized tax
23 imposition of the Guam Territorial Income Tax. As such, legal actions for the
24 recovery of the income tax refunds against *I Maga'låhen Guåhan* are permissible
25 in accordance with §1421(i)(h)(2) of the Organic Act of Guam. As the government
26 of Guam does not have legal claim over income tax refunds, which are the property

1 of taxpayers, unreasonable delay in the payment of these income tax refunds
2 represents erroneous collection of Guam Territorial Income Tax.

3 *I Liheslaturan Guåhan* finds to take the necessary steps to mitigate any
4 possible legal actions taken against the government of Guam by ensuring the
5 timely payment of income tax refunds.

6 **SECTION 2. A new Chapter 53 is added to Title 11, Guam Code Annotated**
7 **to read as follows:**

8 **"CHAPTER 53**

9 **PAY INCOME TAX REFUNDS FIRST ACT OF 2011**

10 **§53101. Short Title.**

11 **§53102. Definitions.**

12 **§53103. Establishment of Income Tax Refund Claims**

13 **§53104. Income Tax Refund Payment as a Proportion of Revenue Collections**

14 **§53105. Garnishment of General Fund Account**

15 **§53106. Criminal Obstruction of Justice**

16 **§53101. Short Title.** This Chapter shall be known and may be cited as the
17 Pay Income Tax Refunds First Act of 2011.

18 **§53102. Definitions.** For purposes of this section, except as otherwise
19 specifically provided, the following words and phrases, together with all of the
20 common derivatives thereof (i.e. verbs, plurals, feminine, gender, etc.) shall have
21 the meaning ascribed to them in this Section.

22 (a) "Taxpayer" means an individual person and not a legal entity such as
23 corporations, partnerships, etc., that pays taxes or is subject to taxation;

24 (b) "Provision" means the annual provision for income tax refunds
25 stipulated in the annual Budget Act;

26 (c) "Refunds" means taxes due to taxpayer for excess payments to
27 assessment;

1 (d) "Revenues" means cash collections of the government of Guam that
2 have been earned prior to the close of the fiscal year;

3 (e) "Court" means the Superior Court of Guam;

4 (f) "Department" means the Department of Revenue and Taxation;

5 (g) "Revenue Projection" means the adopted revenues by the *I*
6 *Liheslaturan Guåhan* for the fiscal year;

7 (h) "Return" means an income tax return form along with necessary
8 schedules and addendums; and

9 (i) "A-Status Return" means an income tax return that is certified by the
10 Department of Revenue and Taxation as ready for payment

11 **§53103. Establishment of Income Tax Refund Claims.** A legal claim to
12 an income tax refund shall be established as soon as the Department has processed
13 and certified the income tax return as complete and a refund is payable; net of any
14 outstanding liability owed by the taxpayer to the government of Guam or any of its
15 entities. For taxpayers with "A-Status Return," the Department shall maintain a roll
16 of their names and the tax refund amount owed to the taxpayer and for which tax
17 year. No legal claims shall be established for incomplete and unprocessed income
18 tax returns.

19 **§53104. Income Tax Refund Payment as a Proportion of Revenue**
20 **Collections.** On the 20th of each month, the Director of the Department of
21 Administration in conjunction with the Director of the Department of Revenue and
22 Taxation shall transmit a status report to *I Maga'låhen Guåhan*, the Speaker of *I*
23 *Liheslaturan Guåhan* and the Attorney General of Guam on actual revenues
24 collected from the prior month versus the projected revenues for the same month.
25 The status report shall note any variances between projected revenues and actual
26 revenue collections. The same report shall provide the total amount of income tax
27 refunds paid for in the same month.

1 One of the following actions shall be taken within three (3) days of the
2 report's transmittal by the Director of the Department based on the variance noted
3 in the status report:

4 (a) If actual revenue collections are equal to projected revenues, the
5 Director of the Department of Administration shall pay the full value of the
6 provision apportioned for the month;

7 (b) If actual revenue collections exceed projected revenues, the Director
8 of the Department of Administration shall pay the full value of the provision
9 apportioned for the month; actual revenue collections in excess of
10 projections shall be paid pursuant to the *Annual Appropriations Act* or
11 through an appropriation by *I Liheslaturan Guåhan*; or

12 (c) If actual revenue collections are below projected revenues, the
13 Director of the Department of Administration shall pay a proportional value
14 of the provision commensurate with revenue collections.

15 If the Director of the Department of Administration fails to implement
16 (a), (b), or (c) above by the end of the month, the Attorney General of Guam
17 shall file a motion to force the garnishment by the court in accordance with
18 §53105 for the difference between the income tax refunds paid and provision
19 apportioned for the month.

20 **§53105. Garnishment of Government of Guam Bank Accounts.** If
21 the Director of the Department of Administration fails to pay the provision as
22 stipulated in §53104, the court shall garnish the balance payable from the General
23 Fund bank accounts of the government of Guam. The garnished funds shall be
24 deposited to the Income Tax Refund Reserve Fund–Taxpayers with “A-status
25 Return” shall be paid directly from the Income Tax Refund Reserve Fund by the
26 Director of the Department of Administration on a First In-First Out basis. In the
27 event General Fund bank accounts are insufficient to meet the income tax payable

1 balance for the month, *I Maga'låhen Guåhan* shall utilize the Line of Credit in
2 §22413, Chapter 22, Title 5 of the Guam Code Annotated and pay the garnishment
3 claim obligation.

4 **§53106. Obstructing Governmental Functions.** Should funds of the
5 government of Guam be hidden or willfully diverted from garnishment, the court
6 shall order the Office of Public Accountability to conduct an investigation and
7 determine the extent of cash collections diverted from garnishment. If funds are
8 found to be collected after any garnishment for reasons outlined in §53105, the
9 Director of the Department of Administration and the Treasurer of Guam shall be
10 charged with Obstructing Governmental Functions as defined in 9 GCA, Chapter
11 55, Section 55.45.”

12 **SECTION 3. A new §1114 is hereby added to Chapter 1, Title 11, Guam**
13 **Code Annotated to read:**

14 **“§1114. Income Tax Refund Assistance Hotline.** The Director of the
15 Department of Revenue and Taxation shall establish income tax refund assistance
16 automated telephonic hotline. The automated hotline shall include the following:

17 (a) Shall provide information to taxpayers on the status of processing of
18 income tax return(s);

19 (b) Shall provide information to taxpayers relative to any income tax
20 refunds owed to them, including the amount and the tax year;

21 (c) Shall provide information if the tax return is an “A-status return”; and

22 (d) Shall establish reasonable security measures for the protection of
23 taxpayer privacy in accordance with local and federal statutes and
24 regulations.”

25 **SECTION 4. Section 22413, Chapter 22, Title 5 of the Guam Code Annotated**
26 **is hereby amended to read:**

27 **“§22413. Line of Credit for the Payment of Income Tax Refunds.**

1 *I Maga'låhen Guåhan*, [The Governor] on behalf of the government of Guam, is
2 authorized to arrange a line of credit not to exceed Ten Million Dollars
3 (\$10,000,000) with any bank or commercial lending institution licensed on Guam
4 for the payment of income tax refunds ~~*I Maga'låhen Guåhan* [the Governor]~~ for a
5 ~~line of credit in excess of Six Million Dollars (\$6,000,000)~~ shall be subject to the
6 approval of ~~*I Liheslaturan Guåhan*~~ by resolution for the amount in excess of Six
7 Million Dollars (\$6,000,000). The terms of the line of credit shall include the
8 following:

9 (a) the line of credit shall be used by *I Maga'låhen Guåhan* to pay the
10 income tax refunds payable established through §53105 of Chapter 53, Title
11 11 of the Guam Code Annotated ~~in cases where a cash shortage is eminent~~
12 ~~and a strong likelihood exists that the shortage could hamper governmental~~
13 ~~operations;~~

14 (b) prepaid charges shall not be levied by the bank or trust department for
15 opening the line of credit;

16 (c) the interest rate shall be subject to competitive negotiations between *I*
17 *Maga'låhen Guåhan* [the Governor] and the banks; such interest rate shall
18 be computed on a monthly average and based on the actual amounts
19 extended to the government;

20 (d) interest earned by the financial institution providing the proceeds for
21 the line of credit shall be exempt from taxation by the government of Guam;

22 (e) all terms of the line of credit agreement not specifically defined in the
23 foregoing shall be negotiated by *I Maga'låhen Guåhan* [the Governor] in the
24 best interests of the people of Guam;

25 (f) funds necessary for such repayment of interest and principal on loans
26 authorized by this Section of this Article are appropriated from the General
27 Fund and shall come from current or excess revenues of current and future

1 Annual Appropriations Acts as defined in Public Law 30-196, Chapter I,
2 Section 6(b) and any pledge revenues; the duration for repayment of the loan
3 shall be negotiated by *I Maga'låhen Guåhan* [the Governor] which shall not
4 extend beyond two fiscal years;

5 ~~(g) funds necessary for the repayment of interest and principal on loans~~
6 ~~authorized by this Section and (§ 22414 of this Article are appropriated from~~
7 ~~the revenue derived from the tax increase contained in P.L. No. 17-4, and, to~~
8 ~~the extent necessary, from other revenues of the government of Guam and~~
9 ~~the General Fund; any excess funds from the tax increases contained in P.L.~~
10 ~~No. 17-4 shall be used to retire said debt instruments as additional principal~~
11 ~~payments and for no other purposes;~~

12 (h) notwithstanding the first Paragraph of this Section, or any other
13 provision of law, the terms of the line of credit arranged by *I Maga'låhen*
14 *Guåhan* [the Governor] as provided by this Section, may permit the bank or
15 commercial lending institution licensed on Guam with which such line of
16 credit is arranged to grant participation in such line of credit, at such times
17 and in such amounts and upon such terms and conditions as such bank or
18 lending institution licensed in Guam shall determine, to other banks, or
19 commercial lending institutions, including those not licensed on Guam, or to
20 any other persons, associations, or corporations; the exemption from taxation
21 by the government of Guam of the interest derived from the line of credit
22 shall be preserved to any such participant; such participation shall be made
23 by public offering;

24 (i) the loan may be secured by pledge of funds or a guaranty of the
25 government of Guam, including the revenues derived by the government of
26 Guam under §30 of the Organic Act of Guam; and

1 (j) notwithstanding any substantive or procedural provision of Chapter 6
2 of Title 5 of the Guam Code Annotated, the government of Guam hereby
3 waives immunity from any suit or action in contract on the line of credit but
4 does not waive sovereign immunity of elected or appointed officials and
5 employees of the government of Guam.”

6 **SECTION 5. Section 22414, Chapter 22, Title 5 of the Guam Code Annotated**
7 **is hereby repealed in its entirety.**

8 ~~“§ 22414. Documented Liabilities; Repayment.~~

9 ~~Liabilities of the government of Guam documented on May 26, 1984 by~~
10 ~~Touche, Ross & Co. are recognized by the Legislature, and are listed as follows:~~

11	Due to GovGuam Retirement System	\$ 16,120,000
12	Tax refunds (personal income)	13,500,000
13	Due to various vendors	2,000,000
14	Tax refunds, corp. carryback losses	2,500,000
15	Tax refunds, due to GEDA rebate program	3,000,000
16	Litigation claims payable	<u>750,000</u>
17	_____	\$ 37,870,000

18 ~~No payment by the government of Guam is to be made on any of the liabilities~~
19 ~~listed above after the effective date of this Section [June 4, 1984] except as~~
20 ~~specifically appropriated by the Legislature or as provided as follows:~~

21 ~~(a) Pursuant to § 22413 of this Article, except for subsection (a) of that~~
22 ~~Section, the Governor on behalf of the government of Guam is authorized to~~
23 ~~borrow an amount not to exceed Fourteen Million Dollars. This \$14,000,000~~
24 ~~includes the \$4,000,000 authorized to be arranged as a line of credit subject~~
25 ~~to approval by the Legislature by Resolution according to § 22413 of this~~
26 ~~Article (as found in P.L. 17-4) and not yet drawn down as of June 4, 1984~~
27 ~~and an additional \$10,000,000. The amounts, interest rates, and maturity~~

1 ~~date of the borrowing and renewals and replacements thereof of the entire~~
2 ~~amount of \$14,000,000 authorized to be borrowed by this Section shall be~~
3 ~~subject to the approval of the Legislature by Resolution, with all other terms~~
4 ~~to be determined in the discretion of the Governor through negotiation with~~
5 ~~the lending institution or institutions involved. This authorization to borrow~~
6 ~~additional funds shall be utilized first to pay the amounts appropriated in~~
7 ~~sections 6 through 20 of P.L. 17-59 and the balance to pay part of the~~
8 ~~obligations above with the obligations listed as 1) Due to Government of~~
9 ~~Guam Retirement System, 2) Due to various vendors, and 3) Litigation~~
10 ~~claims payable to be paid on a prorated basis.~~

11 ~~(b) The expenditures of the Government of Guam for FY=85 shall be~~
12 ~~95% of the expenditures of the Government of Guam in FY=83 which is~~
13 ~~95% of \$178,000,000. The money realized from the 5% reduction in~~
14 ~~expenditures shall be used to retire the liabilities of the government listed~~
15 ~~above on a prorated basis.~~

16 ~~(c) The debt of \$16,120,000 owed by the General Fund to the Retirement~~
17 ~~Fund shall be repaid by not later than June 1, 1994 with interest at the~~
18 ~~average rate of return on investments of the Retirement Fund in the~~
19 ~~preceding fiscal year. Interest and principal shall be paid in quarterly~~
20 ~~installments commencing October 1, 1984. Interest shall accrue from March~~
21 ~~31, 1984.~~

22 ~~Notwithstanding other provisions of law, the Treasurer of Guam is~~
23 ~~directed to and charged with the duties and responsibilities to insure that all~~
24 ~~principal and interest is paid on time preceding all other liabilities and~~
25 ~~obligations of the Government of Guam other than loans authorized by this~~
26 ~~Section and existing loans authorized by § 22413 of this Article.”~~

1 **SECTION 6. Severability.** If any provision of this Law or its application to
2 any person or circumstances is found to be invalid or contrary to law, such
3 invalidity shall not affect other provisions or applications of this Law which can be
4 given effect without the invalid provisions or application, and to this end the
5 provisions of this Law are severable.