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I MINA'TRENTAI UNU NA LIHESLATURAN GUÅHAN
2011 (FIRST) Regular Session

Bill No. 44-31(COY)

Introduced By:

Sam Mabini, Ph.D. *Sm*
F.F. Blas, Jr. *Fz*

**AN ACT TO REPEAL AND AMEND CHAPTER 28, TITLE 11
OF THE GUAM CODE ANNOTATED RELATIVE TO "USE
TAX LAW" EXEMPTIONS.**

1 **Section 1. Legislative Findings.** *I Liheslaturan Guåhan* finds that the "Use Tax
2 Law" applies to tangible personal property specifically excludes imports by "a contractor
3 importing permanent equipment for the performance of a construction contract, with
4 intent to remove, and who does remove, such equipment out of Guam upon completing
5 the contract." However, current economic conditions differ from previous periods
6 wherein legislation were designed to provide incentives for business development on
7 Guam. The pending military build-up and public infrastructure improvements have
8 attracted a large contingency of contractors that import their construction-related
9 equipment specifically for their economic gain. Importation of large amounts of
10 equipment for construction usage hinders local businesses, such as distributors and rental
11 companies, and significantly limits the economic benefit to Guam. Such importation
12 bypasses local businesses and are not subject to local taxes, equating to millions of
13 dollars of lost revenue.

14 Majority of construction equipment imported for use on Guam is brought in to
15 generate business revenue. Hauling and operation of heavy equipment have detrimental

1 local impact, to include damaged roads, highways and villages, increased emission into
2 our air and potential fluid leaks into our soil and water lens. If businesses are utilizing
3 construction equipment to generate revenue, then they should bear the associated costs to
4 the community. These are significant costs resulting from damages to public roadways
5 and our natural environment.

6 *I Liheslaturan Guåhan* finds that the Guam Customs and Quarantine Agency is
7 tasked to collect Use Tax. However, there is no designation as to which agency is
8 responsible for ensuring that the untaxed imported equipment are actually removed out of
9 Guam upon completion of contracts. There is a need to improve the monitoring of
10 imported construction equipment for the performance of a construction contract as
11 referenced in current legislation, which would reduce the possibility of equipment left
12 behind or sold, and never taxed.

13 *I Liheslaturan Guåhan* finds that for the privilege of doing business in Guam,
14 contractors shall also be subject to the Use Tax, if any work is performed by them for
15 projects located in Guam.

16 *I Liheslaturan Guåhan* finds a need that for the interest of Guam, a repeal of
17 current legislation is to impose current Use Tax on imported construction equipment for
18 the performance of a construction contract.

19 **Section 2. Chapter 28, Title 11, Guam Code Annotated, is hereby amended to**
20 **add new sub-items to read:**

21 **§ 28101: “(m) Contractor means a person who contracts to erect, construct, repair, or**
22 **improve buildings, highways, and other structures and includes those engaged in the**
23 **practice of architecture, professional engineering, land surveying, landscape architecture,**
24 **and pest control or fumigation. A contractor is any person or business making repairs,**
25 **alterations or additions to real property. For purposes of discussion, the term contractor**
26 **means construction contractor.**

1 (n) Construction Equipment means light and heavy, off- road and on-road, gas,
2 diesel, electric or other powered equipment or tools

3 (o) Landed value means the greater amount between the insured value or fair
4 market value the item has at the time it arrives in Guam, based on industry standards used
5 to assess items.

6 **Section 3. §28102 (c) (1) of Chapter 28, Title 11, Guam Code Annotated,**
7 **is hereby amended and subsequent numbers to be revised in sequence to read:**

8 “Wherever used in this Chapter, unless otherwise required by the context, use or
9 consumption (and any verbal, adjective, adverbial and other equivalent from of any of
10 these terms), herein used interchangeably, means any use, whether such use is of such
11 nature as to cause the property to be appreciably consumed or not, or the keeping of
12 such property for such use or consumption; but shall not include:

13 (a) the sale or the keeping solely for the sale of such property.

14 (b) the use or keeping for use of property as material which is or is to be
15 incorporated by the taxpayer into a finished or saleable product, including the
16 container or package in which the product is contained during the course of its
17 preservation, manufacture or processing, including preparation for market, and which
18 remains or will remain in such finished or saleable product in such form as to be
19 perceptible to the senses, and which finished or saleable product is or is to be sold and
20 not otherwise used by the taxpayer.

21 (c) temporary use of property, not of a perishable or quickly consumable nature,
22 where such property is imported into Guam for temporary use (not sale) therein by the
23 person importing the same and is not intended to be, and is not, kept permanently
24 in Guam (as for example without limiting the generality of the foregoing language):

25 ~~(1) in the case of a contractor importing permanent equipment for the~~
26 ~~performance of a construction contract, with intent to remove, and who~~

1 ~~does remove, such equipment out of Guam upon completing the~~
2 ~~contract;~~

3 (2) in the case of moving picture films imported for use in theaters in Guam
4 with intent or under contract to transport the same out of Guam after
5 completion of such use;

6 (3) in the case of a transient visitor importing an automobile or other
7 belongings into Guam to be used by him while therein but which are to be
8 and are removed upon his departure from Guam;

9 (d) use by the taxpayer of property acquired by him solely by way of gift;

10 (e) use which is limited to the receipt of articles and the return thereof, to the
11 person from whom acquired, immediately or within a reasonable time either after
12 temporary trial or without such trial;

13 (f) use of goods imported into Guam by the owner of a vessel or vessels or of an
14 aircraft or aircrafts engaged in interstate or foreign commerce and held for and used
15 only for repair or replacement of said vessels or aircrafts or as ship or aircraft
16 stores for such vessels or aircraft;

17 (g) the use or keeping for use of materials or commodities which are to be
18 incorporated by a contractor into the finished work or project required by the
19 contract and which will remain in such finished work or project in such forms as to be
20 perceptible to the senses;

21 (h) the use or keeping for use of household goods, personal effects and private
22 automobiles imported into Guam for non-business use by a person who (1) acquired
23 them in another state, territory, district or country, (2) at the time of such
24 acquisition was a bona fide resident of another state, territory, district or country, (3)
25 acquired the property for use outside Guam, and (4) made actual and substantial use
26 thereof outside Guam; provided, that, as to an article acquired less than three (3)
27 months prior to the time of its importation into Guam it shall be presumed, until and

1 unless clearly proved to the contrary, that it was acquired for use in Guam and that
2 its use outside Guam was not actual and substantial.

3 (i) the use or keeping for use of property by a bona fide farmer engaged in
4 agriculture in Guam and used or held for use only for agricultural purposes.²²

5 **Section 4. §28103 of Chapter 28, Title 11 Guam Code Annotated, is amended**
6 **to read:** “There is hereby levied on the landed value of, and shall be paid and collected,
7 in the manner, at the times, and by the persons, hereinafter provided ~~an exercise a~~ Use Tax
8 upon the use or consumption of all property (as here in above defined) in Guam.”

9 **Section 5. §28105 of Chapter 28, Title 11, Guam Code Annotated, is amended**
10 **to read:** “Every person who imports into Guam, or acquires in Guam from any other
11 person to taxable under 11 GCA, Chapter 26, in respect to the transaction by which the
12 former acquired the same, any property for his use or consumption, shall be subject to a
13 tax in respect to such use or consumption at the rate in this Chapter provided, measured
14 by the landed value of such property, which tax shall be payable:

15 (g) The Customs and Quarantine shall collect the Use Tax on construction
16 equipment for the performance of a construction contract as mandated by this chapter,
17 and will maintain a database of the inventory of taxed equipment to reconcile with tax
18 collected.”

19 **Section 6. §28112 of Chapter 28, Title 11, Guam Code Annotated, is amended**
20 **to add new sub-items to read:**

21 Upon enactment of this Act, and each fiscal year thereafter,

22 (a) Sums based on ~~two percent (2%)~~ ten percent (10%) of the total Use Tax
23 collected in the previous fiscal year shall be appropriated to the “Customs, Agriculture
24 and Quarantine Services Charge Fund” to cover costs associated with Use Tax collection
25 inspection activities. This appropriation is continuous, but is contingent on the annual
26 submission of a detailed budget to *I Liheslaturan Guåhan* ~~Guam Legislature~~ by the
27 Director of the Customs and Quarantine Agency.

1 (b) Sums based on twenty percent (20%) of the total Use Tax collected in the
2 previous fiscal year shall be appropriated to the “Department of Public Works Services
3 Village Roadway Funds” to cover costs associated with improvements, repairs, and
4 general maintenance to roads on Guam not covered by Office of Federal Highway Funds.
5 This appropriation is continuous, but is contingent on the annual submission of a detailed
6 budget to *I Liheslaturan Guåhan* by the Director of the DPW.

7 (c) Sums based on twenty percent (20%) of the total Use Tax collected in the
8 previous fiscal year shall be appropriated to the “Guam Environmental Protection
9 Agency Environmental Cleanup Fund to cover costs associated with preserving Guam’s
10 natural resources. This appropriation is continuous, but is contingent on the annual
11 submission of a detailed budget to *I Liheslaturan Guåhan* by the Director of the GEPA.

12 **Section 7. Effective Date.** These rules and regulations shall become effective
13 immediately upon enactment.

14 **Section 8. Severability.** If any provision of this law or its application to any
15 person or circumstances is found to be invalid or contrary to law, such invalidity shall not
16 affect other provisions or applications of this law which can be given effect without the
17 invalid provisions or application, and to this end the provisions of this law are severable.