


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

2011 MAY 24 10:11:31  
*RWR*

Bill No. 210.31(Cor)

Introduced by:

J.T. Won Pat, Ed.D. 

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**AN ACT TO ADD A NEW CHAPTER 53 TO  
TITLE 11, OF THE GUAM CODE ANNOTATED,  
TO PROVIDE THE DEPARTMENT OF REVENUE  
AND TAXATION ENFORCEMENT AND  
COLLECTION RESOURCES TO TARGET HIGH  
RISK, CASH-BASED BUSINESSES AND FOR  
NON LICENSED BUSINESSES ENGAGED IN  
MILITARY CONSTRUCTION PROJECTS. THIS  
ACT SHALL BE KNOWN AS “THE CASH  
ECONOMY ENFORCEMENT ACT OF 2011”**

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

2 **SECTION 1. Short Title.** This Act may be cited as the “Cash Economy  
3 Enforcement Act of 2011”.

4 **SECTION 2.** A new Chapter 53 of Title 11, Guam Code Annotated is hereby  
5 *added* to read:

6 **“CHAPTER 53”**

7 **“The Cash Economy Enforcement Act”**

8 **§53101. Statement and Legislative Purpose**

9 **§53102. Tax Enforcement Division; additional functions, powers and**

1 **duties.**

2 §53103. **Identification of cash-economy cases; retention of funds.**

3 §53104. **Citations for violations; deposits.**

4 §53105. **Cash-based businesses; injunction.**

5 §53106. **Cash-based businesses; defined**

6 §53107. **Failure to produce license upon demand.**

7 §53108. **Failure to keep adequate books and records.**

8 §53109. **Failure to record transaction by receipt.**

9 §53110. **Failure to record transaction by register.**

10 §53111. **Tax avoidance price fixing.**

11 §53112. **Possession of currency for tax avoidance purposes.**

12 §53113. **Interference with a tax official.**

13 §53114. **Reporting requirement for contractors on federal construction**  
14 **projects.**

15 §53101. **Statement and Legislative Purpose.** *I Liheslaturan Guåhan* finds that in  
16 all tax systems, government administrators are continually working to reduce tax  
17 noncompliance known as the "tax gap." In the United States, the tax gap, which is the  
18 difference between the amount of tax that is required to be reported and timely paid and  
19 the amount of tax that is actually reported and paid, is estimated to be almost Four  
20 Hundred Billion Dollars (\$400,000,000,000) per year. Of this tax gap, it is further  
21 estimated that about Two Hundred Billion Dollars (\$200,000,000,000), or half of the

1 tax gap, is composed of what is known as the "cash economy."

2 Cash-based transactions are a fundamental part of any economy. As the oldest form  
3 of payment, cash continues to dominate many facets of the local economy. Cash is  
4 inherently private, efficient, and predictable for both purchaser and seller. However,  
5 cash transactions are also the simplest means of underreporting or non-reporting for tax  
6 purposes, because no bank, no means of electronic oversight, and no intermediary  
7 maintains records of the movement of funds from one pocket to another.

8 The purpose of this Act is to provide the Department of Revenue and Taxation  
9 (DRT) with the necessary resources and tools to target high-risk, cash-based  
10 transactions to shore up confidence in Guam's tax system for those that do comply.  
11 Importantly, *I Liheslaturan Guåhan* intends that the enforcement resources provided  
12 focus on the civil collection and enforcement nature of Guam's tax laws. In an effort to  
13 demonstrate the targets of this undertaking, this Act defines "cash-based business" for  
14 enforcement purposes and DRT is directed to focus on such businesses. At the same  
15 time, education is equally important as enforcement. Therefore, this Act requires the  
16 DRT to reach out to industry groups, specific demographics in the economy, and  
17 practitioners to educate taxpayers on their tax responsibilities.

18 **§53102. Tax Enforcement Division (TED) ; Special functions, powers and**  
19 **duties.** Notwithstanding any other provision of law, there is provided within the  
20 Department of Revenue and Taxation, Tax Enforcement Division (TED), additional  
21 special functions, powers and duties to carry out civil enforcement efforts of this Act as

1 directed by DRT. The Director of DRT (Director) may staff the division as the  
2 exigencies of the public service may require.

3 In addition to existing powers and duties already provided by law, the TED shall also  
4 have the following additional powers pursuant to this Act:

5 (1) Investigate reported or suspected violations of tax laws for civil enforcement  
6 purposes, including through covert means, with a stated priority of  
7 investigating cash-based businesses as defined in this chapter;

8 (2) Enforce the tax laws by issuing, enforcing, or executing citations, fines,  
9 infractions, assessments, liens, levies, writs, warrants, injunctions, or other  
10 process;

11 (3) Serve as fraud referral specialists to assist in the development and review of  
12 fraud cases for appropriate disposition of potentially fraudulent activities,  
13 including referral to criminal investigators and assessment of civil fraud  
14 penalties; provided that personnel assigned to the tax enforcement division  
15 may not participate in any criminal investigation;

16 (4) Organize and hold public informational meetings on issues of tax laws,  
17 including compliance deficiencies in segments of the economy, and  
18 undertake any other activities to encourage taxpayers, practitioners, or  
19 others to maintain responsibility and compliance with their tax obligations;

20 (5) Coordinate with other sections or divisions within DRT, other departments or  
21 branches of the government or the federal government on matters relating

1 to civil enforcement of the tax laws, including joint investigations,  
2 information-sharing arrangements, or concurrent collection efforts;  
3 provided that personnel assigned to the tax enforcement division may not  
4 participate in any criminal investigation;

5 (6) Compile information received by third parties, including taxpayers, competitors,  
6 government agencies, confidential sources, or public sources and delegate  
7 this information within the department for proper handling. Proper  
8 handling may include referral internally to other civil or criminal  
9 enforcement divisions;

10 (7) Conduct investigations, research, and studies of matters relevant to the complex  
11 or sensitive civil enforcement of the tax laws; and

12 (8) Perform such other acts as may be incidental to the exercise of the functions,  
13 powers, and duties set forth in this section and existing law or as otherwise  
14 directed by the Director of the DRT.

15 **§53103. Identification of cash-economy cases; retention of funds.**

16 Notwithstanding any law to the contrary, each fiscal year, the TED may identify any  
17 taxpayer, assessment, investigation, or collection matter as a matter of the tax  
18 enforcement division. All revenues collected from tax enforcement division matters  
19 shall be deposited into the Better Public Service Fund.

20 **CASH ECONOMY ENFORCEMENT; CITATIONS**

21 **§53104. Citations for violations; deposits.**

1 (a) The TED may issue cease and desist citations to any person if the TED has  
2 cause to believe the person has violated, is violating, or is about to violate any provision  
3 of this chapter or administrative rule adopted thereunder. Any person who violates this  
4 section shall be subject to a fine not to exceed one-thousand (\$1,000) dollars; provided  
5 that if the person is a cash-based business, the fine shall not exceed two-thousand  
6 (\$2,000) dollars.

7 (b) The department may recommend legislation defining the circumstances and the  
8 civil monetary fines citable for unlawful actions under this chapter.

9 (c) Any fine assessed under this section shall be a matter of the TED under this  
10 chapter and shall be retained and deposited into the Better Public Service Fund.

11 (d) Any fine assessed shall be due and payable thirty (30) days after issuance,  
12 subject to appeal rights provided under subsection (e); provided that if payment of the  
13 fine is determined to be in jeopardy, such fine shall be payable immediately and shall be  
14 immediately collected. A finding of jeopardy shall be made in writing, setting forth the  
15 specific reasons for the finding. The finding of jeopardy shall be subject to immediate  
16 appeal under subsection (e), and at the taxpayer's request the appeal shall be expedited  
17 and heard as soon as reasonably practicable. Any amount of fine collected under  
18 jeopardy shall only be returned upon a finding by the Director of DRT or the Superior  
19 Court of Guam that there was no violation under this chapter.

20 (e) Cease and desist citations may be appealed to the Director or the Director's  
21 designee, and the determination of the Director may be appealed to the Superior Court

1 of Guam under this chapter.

2       **§53105. Cash-based businesses; injunction.** The TED, with the Director's  
3 approval, may bring civil actions in the Superior Court of Guam to enjoin any unlawful  
4 act under this chapter, including any administrative rule adopted thereunder, by a cash-  
5 based business. To the extent provided by statute, the TED may include in any action  
6 an assessment of a monetary fine.

7       **§53106. Cash-based businesses; defined.** For purposes of this chapter, "cash-  
8 based business" means any person who operates a business, including for-profit or not-  
9 for-profit, where transactions in goods or services are exchanged substantially for cash  
10 and where the business is found, based upon reasonable cause including observation or  
11 evidence, to have met one of the following factors:

12       (1) Is found to have substantially underreported or misrepresented the proper  
13 amount of tax liability on any return or other submission to the  
14 department. For purposes of this section, an amount has been substantially  
15 underreported if the amount properly includible on the return or  
16 submission is in excess of twenty-five per cent (25%) of the amount stated  
17 on the return or submission;

18       (2) Is required to be licensed, registered, or permitted under Title 11, Guam Code  
19 Annotated and is in fact not so licensed, registered, or permitted;

20       (3) Has a past pattern of noncompliance of obligations under Title 11, Guam Code  
21 Annotated;

- 1 (4) Does not have a fixed and permanent principal place of business;
- 2 (5) Has not obtained any required tax clearance;
- 3 (6) Has failed to maintain adequate books and records, or those records required to  
4 be maintained by law or administrative rule;
- 5 (7) Does not accept checks or electronic payment devices for business transactions;  
6 provided that a business may establish reasonable criteria for accepting  
7 personal checks;
- 8 (8) Offers price differentials or otherwise deviates from usual business practices  
9 when the business transaction substantially involves payment of cash,  
10 except where there is a bona-fide business reason for a price differential,  
11 such as the avoidance of merchant fees imposed by credit card companies;  
12 or
- 13 (9) Any other factor relevant to describing a cash-based business capable of  
14 noncompliance as determined by the Director of the Department of  
15 Revenue and Taxation and issued pursuant to a tax information release;  
16 provided that a business shall not be deemed to have met any of these  
17 factors while a genuine dispute as to that factor is pending in a contested  
18 case before any administrative agency or in any court.

19 **§53107. Failure to produce license upon demand.** Every person required to be  
20 licensed or permitted under Title 11, Guam Code Annotated, whether or not so licensed  
21 or permitted, shall be required to produce the license or permit upon demand by the



1 TED. Failure to produce the license or permit upon demand shall be unlawful. Any  
2 person who violates this section shall be subject to a fine not to exceed five-hundred  
3 (\$500) dollars; provided that if the person is a cash-based business, the fine shall not  
4 exceed one-thousand (\$1,000) dollars. It shall be an absolute defense to this section if  
5 the person produces a license or permit number on file with the department and the  
6 department confirms that the person associated with the number is true and accurate.

7 **§53108. Failure to keep adequate books and records.** It shall be unlawful for any  
8 person required under Title 11, Guam Code Annotated to keep books or records to fail  
9 to produce the books or records upon demand by the TED, or as soon thereafter as is  
10 reasonable under the circumstances. Any person who violates this section shall be  
11 subject to a fine not to exceed one-thousand (\$1,000) dollars; provided that if the person  
12 is a cash-based business, the fine shall not exceed two-thousand (\$2,000) dollars.

13 **§53109. Failure to record transaction by receipt.** It shall be unlawful to conduct  
14 more than ten (10) taxable business transactions per day in cash and fail to provide a  
15 receipt or other record of the transaction when the means for issuing a receipt or  
16 recording the transaction are available. Each day a person is in violation of this section  
17 shall be treated as a separate violation. Any person who violates this section shall be  
18 subject to a fine not to exceed one-thousand (\$1,000) dollars; provided that if the person  
19 is a cash-based business, the fine shall not exceed two-thousand (\$2,000) dollars.

20 **§53110. Failure to record transaction by register.** It shall be unlawful to conduct  
21 more than ten (10) taxable business transactions per day in cash and fail to record the

1 transaction in a cash register when the means for recording the transaction in a cash  
2 register are available. Each day a person is in violation of this section shall be treated  
3 as a separate violation. Any person who violates this section shall be subject to a fine  
4 not to exceed one-thousand (\$1,000) dollars; provided that if the person is a cash-based  
5 business, the fine shall not exceed two-thousand (\$2,000) dollars.

6 **§53111. Tax avoidance price fixing.** It shall be unlawful for any person to sell,  
7 offer to sell, or otherwise convey more than one price for any business to be transacted  
8 when the lower price is offered if the transaction is paid for in cash. It shall not be an  
9 offense under this section if a business charges a higher price for legitimate business  
10 purposes, such as for the purpose of recovering any charges assessed the business,  
11 including for facilitating electronic payment. Any person who violates this section shall  
12 be subject to a fine not to exceed two-thousand (\$2,000) dollars; provided that if the  
13 person is a cash-based business, the fine shall not exceed three-thousand (\$3,000)  
14 dollars.

15 **§53112. Possession of currency for tax avoidance purposes.** It shall be unlawful  
16 for any person engaged in business in Guam to possess currency in the form of coin or  
17 note, where the possession is for tax avoidance purposes. It shall be the department's  
18 burden to establish that currency is possessed for tax avoidance purposes; provided that  
19 circumstantial evidence may be used by the department in any proceeding. Any person  
20 who violates this section shall be subject to a fine not to exceed two-thousand (\$2,000)  
21 dollars; provided that if the person is a cash-based business, the fine shall not exceed

1 three-thousand (\$3,000) dollars.

2 **§53113. Interference with a tax official.** It is unlawful for any person to  
3 intentionally interfere with, hinder, obstruct, prevent, or impede any investigator,  
4 auditor, collector, or other employee of the department from obtaining license  
5 information, books, records, articles, or items of business transacted, or other  
6 information or property rightfully entitled the department. Any person who violates this  
7 section shall be subject to a fine of not more than two-thousand (\$2,000) dollars. It  
8 shall be an absolute defense to the fine under this section that the person acted with  
9 good cause.

10 **§53114. Reporting requirement for contractors on federal construction.**  
11 **projects.** All persons who do not possess a valid Guam Business License under Title  
12 11, Guam Code Annotated at the time of a contract award and who contract with the  
13 federal government for any construction project located in Guam shall report to DRT,  
14 on forms prescribed by the department, its estimated gross receipts or any other  
15 information requested by DRT on the prescribed form, from the construction project  
16 within thirty days of the contract being awarded. Failure to report as provided in this  
17 section shall result in a penalty of one-thousand (\$1,000) dollars per month, or fraction  
18 thereof, for each month that a failure to report exists; provided that the maximum  
19 penalty allowed under this section in the aggregate shall not be more than six-thousand  
20 (\$6,000) dollars."

21 **SECTION 3. Better Public Service Fund; Amended.** §161101, Chapter 161

1 of Title 11, Guam Code Annotated is hereby amended to read:

2 **“§ 161101. Better Public Service Fund.**

3 (a) There is hereby established, separate and apart from the General Fund, the  
4 “Better Public Service Fund.”

5 (b) ~~Ten percent (10%)~~ Fifteen percent (15%) of all fees and license revenues  
6 received by the Department of Revenue and Taxation shall be deposited into said Fund.

7 ~~(c) The Director of Revenue and Taxation shall use the Fund to improve and  
8 modernize systems that are used to provide Department services to the public, including  
9 on-line filing of all taxes, on-line renewal of licenses and permits, upgrades of computer  
10 hardware and software to improve record retrieval by members of the public, and the  
11 training of Department staff in technical skills and customer service.~~

12 (c) One hundred percent (100%) of all penalties and fines collected by the  
13 Department of Revenue and Taxation’s Tax Enforcement Division pursuant to Chapter  
14 53 of Title 11, §53104 through §53114, Guam Code Annotated; shall be deposited into  
15 said fund.

16 ~~(d) No moneys shall be expended from the Fund without legislative  
17 appropriation. The Fund shall not be subject to the transfer authority of I Maga’lahi.”~~

18 **SECTION 4. Better Public Service Fund; Use of Funds Defined.** §161102,  
19 Chapter 161 of Title 11, Guam Code Annotated is hereby *added* to read:

20 **“§ 161102. Use of Funds Defined.** The moneys in the fund shall be used for the  
21 following purposes:

22 (a) Administering the operations of the Tax Enforcement Division  
23 pursuant to Chapter 53 of Title 11, Guam Code Annotated;

24 (b) Improving and modernizing systems that are used to provide  
25 Department services to the public, including on-line filing of all taxes, on-line renewal  
26 of licenses and permits, upgrades of computer hardware and software to improve record  
27 retrieval by members of the public, and the training of Department staff in technical

1 skills and customer service.

2 (c) Issuing comfort letters, letter rulings, written opinions, educational  
3 materials and guidance to taxpayers pursuant to Chapter 53 of Title 11, Guam Code  
4 Annotated;

5 (d) Funding additional positions, investigators, investigator assistants,  
6 licensed attorneys pursuant to Chapter 53 of Title 11, Guam Code Annotated;

7 (e) This Act does not affect rights and duties that matured, penalties that  
8 were incurred, and proceedings that were begun, before its effective date.

9 (f) No moneys shall be expended from the Fund without legislative  
10 appropriation. The Fund shall not be subject to the transfer authority of *I Maga'lahen*  
11 *Guåhan.*”

12 **SECTION 5. Report to *I Liheslaturan Guåhan.***

13 (a) The Director of the Department of Revenue and Taxation shall assess  
14 Full Time Employee (FTE) vacancies and any additional positions that may be needed  
15 such as investigators, investigator assistants, licensed attorneys, or other support staff  
16 required to carry out the duties in this Act and shall submit to *I Liheslaturan Guåhan*  
17 no later than thirty (30) days a staffing pattern request as the exigencies of the public  
18 service may require.

19 (b) The Director of the Department of Revenue and Taxation shall submit a  
20 report to *I Maga'lahen Guåhan* and to the Speaker of *I Liheslaturan Guåhan* no later  
21 than thirty (30) days after the implementation of this Act, the resources committed to  
22 implementing this Act, and shall submit a regular quarterly report to *I Maga'lahen*  
23 *Guåhan*, the Speaker of *I Liheslaturan Guåhan* and the *Office of Public Accountability*  
24 of additional revenues raised thereof.”

25 **SECTION 6. Codification.** In codifying the new sections Chapter 53 of Title  
26 11, and §161101, Chapter 161 of Title 11, Guam Code Annotated, the Compiler of  
27 Laws shall substitute the appropriate section numbers and or letters used in designating

1 and referring to the new sections in these Acts.

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