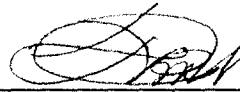


I MINA'TRENTA NA LIHESLATURAN GUÅHAN
2010 (SECOND) Regular Session

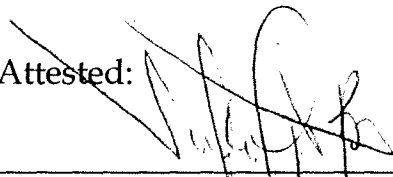
CERTIFICATION OF PASSAGE OF AN ACT TO I MAGA'LAHEN GUÅHAN

This is to certify that Substitute Bill No. 491-30 (COR), "AN ACT TO AMEND §§26201 AND 26202(e) OF ARTICLE 2 OF CHAPTER 26, TITLE 11, GUAM CODE ANNOTATED, RELATIVE TO THE BUSINESS PRIVILEGE TAX ON CONTRACTORS," was on the 22nd day of December, 2010, duly and regularly passed.



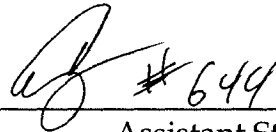
Judith T. Won Pat, Ed. D.
Speaker

Attested:



Tina Rose Muña Barnes
Legislative Secretary

This Act was received by *I Maga'lahaen Guåhan* this 23 day of Dec., 2010, at 8:02 o'clock P.M.



Assistant Staff Officer
Maga'lahaen's Office

APPROVED:

FELIX P. CAMACHO
I Maga'lahaen Guåhan

Date: _____

Public Law No. _____

I MINA'TRENTA NA LIHESLATURAN GUÅHAN
2010 (SECOND) Regular Session

Bill No. 491-30 (COR)

As substituted by the Committee on Appropriations,
Taxation, Banking, Insurance, Retirement, and Land,
and amended on the Floor.

Introduced by:

v. c. pangelinan
Judith T. Won Pat, Ed.D.
Judith P. Guthertz, DPA
T. C. Ada
V. Anthony Ada
F. B. Aguon, Jr.
F. F. Blas, Jr.
E. J.B. Calvo
B. J.F. Cruz
J. V. Espaldon
T. R. Muña Barnes
Adolpho B. Palacios, Sr.
R. J. Respicio
Telo Taitague
Ray Tenorio

**AN ACT TO *AMEND* §§26201 AND 26202(e) OF
ARTICLE 2 OF CHAPTER 26, TITLE 11, GUAM CODE
ANNOTATED, RELATIVE TO THE BUSINESS
PRIVILEGE TAX ON CONTRACTORS.**

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

2 **Section 1. Legislative Statement and Intent.** *I Liheslaturan Guåhan*
3 finds that sound fiscal policy rests upon the creation, review, and modification of
4 revenue statutes. As prevailing economic conditions vary over time, a periodic
5 review of existing revenue statutes must be performed to ensure they continue to

1 be relevant, effective, and efficient in meeting the original intended policy goals. In
2 examining the prevailing economic conditions and foreseeing trigger events, *I*
3 *Liheslaturan Guåhan* has determined a review of these statutes is deemed
4 necessary.

5 *I Liheslaturan Guåhan* sees the impending expansion of the military
6 footprint qualifies as a trigger event necessitating the review. *I Liheslaturan*
7 *Guåhan* intends that it *shall* play a constructive role forging partnerships in the
8 military expansion, wherever possible. However, *I Liheslaturan Guåhan* also is
9 charged to exercise its authority when necessary to ensure that the interests of the
10 people and the resources of the island are protected.

11 At present, *I Liheslaturan Guåhan* has clarified its position in Resolution
12 Nos. 420-30 and 444-30 in response to the military expansion and its economic
13 impact to Guam. The tax collection estimates provided in the assessments by the
14 Department of Defense (DoD) resulting from the military expansion *do not*
15 account for the Department of Revenue and Taxation's (DRT) difficulty in
16 tracking and collecting Business Privilege Taxes (BPT) from sub contractors of
17 construction projects.

18 *I Liheslaturan Guåhan* finds that a significant portion of the increased
19 economic activity of the expansion of the military footprint will occur in the
20 industry. Along with the increased activity in the construction industry, there will
21 be a concurrent increase in the complexity of financial transactions and
22 arrangements whereby the following activities will be consummated, due to the
23 scope of the task involved.

24 *I Liheslaturan Guåhan* recognizes that contractors outside of Guam will
25 play a role in fulfilling the needs of the DoD in executing this expansion. However,
26 *I Liheslaturan Guåhan* also recognizes that activities and revenues generated by
27 the military expansion should yield economic benefits to Guam as these incomes

1 are derived from development on the island. The following concept rests upon
2 sound financial principles of maximizing tax revenue collections and matches them
3 to the required increased expenditures related to military expansion on Guam.

4 *I Liheslaturan Guåhan* has sought to provide a solution whereby collection
5 and enforcement of the BPT on contractors *shall* be simplified, which would be to
6 take four percent (4%) on the gross value of the contracts awarded by the DoD and
7 place in escrow to be drawn down by the DRT as progress payments occur from
8 the DoD to contractors. Through its Committee on Appropriation, *I Liheslaturan*
9 *Guåhan* has communicated this proposal through documented correspondences
10 and meetings with various Federal officials. In a report to Congress in March
11 2010, the DoD responded they “are not equipped or legally responsible for
12 tracking, monitoring, or enforcing Federal, state, and local tax or licensing laws.”
13 Until such time the DoD agrees to administratively reserve four percent (4%) of
14 contracts issued on Guam for local taxes or Congress adds such requirements in
15 funding authorizations, *I Liheslaturan Guåhan* recognizes that the following issue
16 has reached ripeness for consideration. Whereas, the ability to levy and more
17 importantly enforce the BPT on contractors will become an administrative burden
18 on the DRT as a result of the military expansion, *I Liheslaturan Guåhan shall*
19 *modify territorial policy to ease the administration of the collection of the BPT on*
20 *contractors.*

21 The present structure of the BPT statute levies the tax on subcontractors and
22 allows primary contractors to deduct payments to said subcontractors from its
23 gross income. The levy of BPT on the subcontractors presents logistical issues as
24 military contracts continue to be subcontracted to companies domiciled outside
25 Guam, who in some cases *do not* file and remit BPT taxes to the DRT.

26 By effectuating the changes enumerated in this act, the outcome *shall*
27 reverse the deduction of gross income by contractors for services performed by

1 another contractor, which results in *no* new tax remitted by contractors, but *only*
2 simplifies its administration. Secondly, it will simplify and limit the enforcement
3 of BPT on primary contractors, which reduces the number of taxpayers easing
4 enforcement and compliance activities and reducing the related cost.

5 **Section 2.** §26201 of Chapter 26 of Title 11 of the Guam Code Annotated
6 is *amended* to read as follows:

7 **“§26201. Levy.**

8 There is hereby levied and *shall* be assessed and collected monthly
9 privilege taxes against the persons on account of their businesses operating
10 within and without Guam measured by the application of rates against
11 values, gross proceeds of sales or gross income, as the case may be.”

12 **Section 3.** §26202(e) of Chapter 26 of Title 11 of the Guam Code
13 Annotated is *amended* to read as follows:

14 “(e) Tax on Contractors. There *shall* be levied, assessed and
15 collected a tax rate of four percent (4%) measured against the gross income
16 of any contractor; provided, that there *shall* be deducted from the gross
17 income of the taxpayer so much thereof as has been included in the gross
18 income earned from another taxpayer who is a contractor as defined in §
19 26101(b) and who has already paid the tax levied under this Subsection for
20 goods and services that include the deductible gross income of the taxpayer
21 who is a contractor; provided, that any person claiming a deduction under
22 this Subsection *shall* be required to show in the person's return either the
23 name and contractor's license number or the registration number for a
24 professional engineer, architect or land surveyor or the Certificate of
25 Authorization (COA) number for a business authorized to provide
26 engineering, architecture or land surveying services by the Guam Board of

1 Registration for Professional Engineers, Architects, Land Surveyors of the
2 person paying the tax on the amount deducted by the person.”

3 **Section 4. Notification.** (a) The Guam Contractors Licensing Board *shall*
4 notify all licensed contractors of the change in administration of the Business
5 Privilege Tax for contractors within thirty (30) days from the date of enactment of
6 this Act.

7 (b) The Department of Revenue and Taxation, in conjunction with the
8 Contractors Licensing Board and the Guam Contractors Association, *shall* create a
9 Frequently Asked Questions (FAQ) information pamphlet on the change in
10 administration of the Business Privilege Tax for contractors within sixty (60) days
11 from the date of enactment of this Act.

12 **Section 5. Effective Date.** This Act *shall* be effective sixty (60) days after
13 enactment.

14 **Section 6. Severability.** *If* any provision of this Law or its application to
15 any person or circumstances is found to be invalid or contrary to law, such
16 invalidity shall *not* affect other provisions or applications of this Law which can be
17 given effect without the invalid provisions or application, and to this end the
18 provisions of this Law are severable.