

I MINA'TRENTAI UNU NA LIHESLATURAN GUÅHAN
2012 (SECOND) Regular Session

Resolution No. 539-31 (COR)

Introduced by:

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Relative to supporting the prompt payment of income tax refunds by the government of Guam in taxpayer lawsuit *Paeste, et al v. Government of Guam, et al.*

BE IT RESOLVED BY *I MINA'TRENTAI UNU NA LIHESLATURAN GUÅHAN*:

WHEREAS, the government of Guam was sued by taxpayers due to the unfair and untimely payment of income tax refunds, and the U.S. District Court of Guam has ordered the parties to submit a Proposed Order for the prompt payment of those refunds; and

1 **WHEREAS**, the Plaintiff taxpayers have proposed that refunds be paid within
2 six (6) months of the filing of income tax returns; and

3 **WHEREAS**, the Attorney General of Guam (AG) represents the government of
4 Guam in this lawsuit pursuant to the Organic Act of Guam and Title 5 Guam Code
5 Annotated, Chapter 30; and the AG's Motion for Extension of Time, filed on
6 September 21, 2012 in response to Plaintiffs' proposed order, purports to advocate a
7 position on behalf of the government of Guam that is contrary to the fiscal policy of
8 the government of Guam, as reflected in the existing laws of Guam; and

9 **WHEREAS**, specifically, the AG stated to the District Court in its September
10 21, 2012 Motion that "*Projected revenues for Fiscal Year 2013 are earmarked for*
11 *specific expenditures and do not include payments for remaining Tax Year 2011 and*
12 *prior year refunds. Nor do they include payments for Tax Year 2012 tax refunds.*
13 *While the Fiscal Year 2013 budget includes a provision for tax refunds, this is a set-*
14 *aside for the Tax Year 2013 refunds. The government will be lagging behind by one*
15 *(1) year as the Tax Year 2012 required funds were not set aside for this purpose.*
16 *Moreover, there are "non-tax refund" related obligations that have to be paid and*
17 *these obligations were also not addressed in the Fiscal Year 2013 budget*"; and

18 **WHEREAS**, since 1994, *I Liheslaturan Guåhan* (the Guam Legislature)
19 attempted, through the enactment of Title 11 GCA, Chapter 50, to prioritize the
20 prompt payment of income tax refunds from actual revenues by requiring the
21 reservation of a specific percentage of income tax receipts in the Income Tax Refund
22 Reserve Fund (the Fund) for the payment of current or prior years' income tax
23 refunds; and

24 **WHEREAS**, in 2002, *I Liheslaturan Guåhan* (the Guam Legislature) enacted
25 Title 11 GCA, Chapter 51, requiring the Director of Administration to directly deposit
26 a portion of all tax income payments into the Income Tax Refund Efficient Payment

1 Trust Fund (Trust Fund). Trust Fund amounts are subsequently transferred on request
2 of the Director of Revenue and Taxation to the Income Tax Refund Reserve Fund
3 (and used for the regular monthly payment of current or prior years' tax refunds); and

4 **WHEREAS**, together, Title 11 GCA, Chapters 50 and 51 express the
5 unequivocal policy of the government of Guam to reserve, deposit, and pay tax
6 refunds as a matter of priority, above any other use of income tax receipts. §50103 and
7 §51102 specifically provide:

8 ***“§ 50103. Formula for Reserve Funds for Income Tax Refunds,***
9 ***Earned Income Tax Credits, and Child Tax Credits.***

10 *Each year, the Director of Revenue and Taxation, in consultation with the*
11 *Director of Administration and the Director of the Bureau of Budget and*
12 *Management Research, shall establish a formula for reserving income tax*
13 *receipts to pay income tax refunds, earned income tax credits, and child tax*
14 *credits. Such formula shall be derived from the statistical average of income tax*
15 *refunds, earned income tax credits, and child tax credits issued in the previous*
16 *three (3) years, and shall further provide for reserving income tax receipts, on a*
17 *percentage basis, in order to accumulate sufficient cash reserves to pay*
18 *projected income tax refunds, earned income tax credits, and child tax credits*
19 *in a timely manner. Notwithstanding any other provision of law, such cash*
20 *receipts may be used to pay for prior years' income tax refunds, earned income*
21 *tax credits, and child tax credits.”*

22 ***“§ 51102. Deposit of Funds.*** *The Director of the Department of*
23 *Administration (DOA) shall directly deposit, upon receipt of any payment of*
24 *income tax, including, but not limited to, individual, corporate and withholding*
25 *taxes, interest and penalties, to the Trust Fund a portion of the tax payment*
26 *received to be calculated by multiplying the amount of the tax payment received*

1 *by the quotient derived by the provision for tax refunds (the dividend) divided*
2 *by the total income taxes, including, but not limited to, individual, corporate*
3 *and withholding taxes, interest and penalties, (the divisor) amounts adopted in*
4 *the pertinent government of Guam fiscal year budget, so that, at the end of the*
5 *fiscal year, the total amount set aside in said budget for income tax refunds, the*
6 *earned income tax credit and advanced child tax credits shall have been*
7 *deposited in said Fund. The funds deposited in the Trust Fund by the Director*
8 *of Administration shall immediately be transferred to the Income Tax Reserve*
9 *Fund upon the written request of the Tax Commissioner for payments made*
10 *pursuant to § 50105 of Chapter 50, Division 2 of Title 11 of the Guam Code*
11 *Annotated. The interest earned by money in the Trust Fund shall be held in the*
12 *Fund.”; and*

13 **WHEREAS**, *I Liheslaturan Guåhan* (the Guam Legislature) has prioritized the
14 set aside of revenues specifically for income tax refunds prior to any other
15 expenditures of the government through the specific delineation of a set aside amount
16 as the Provision for Income Tax Refunds - above any other expenditure of the
17 government of Guam - in the Revenues Chapter of every Budget Act since FY 2009,
18 thus prioritizing the respective set aside amounts above the payment of bond debt.
19 Thereafter, every other expenditure of the government was, by law, to be paid from
20 revenues remaining *after* the income tax refund amounts and bond payments were set
21 aside. In addition, every Governor was authorized to cut expenditures of the Executive
22 Branch and to transfer between the various appropriations, in order to effectuate the
23 reduction of Guam’s deficit and ensure the timely payment of the current year tax
24 refunds; and

25 **WHEREAS**, in 2007, Title 5 GCA, Chapter 4, §4109(f) was passed which
26 mandates a Fiscal Realignment Plan be developed by *I Maga’låhen Guåhan* when

1 projected fiscal year revenues, based on actual revenues collected, are three percent
2 (3%) or more below revenue projections adopted by the annual Budget Act. Such Plan
3 was mandated by *I Liheslaturan Guåhan* (the Guam Legislature) such that in the event
4 the government is not collecting the revenues adopted in the Budget Act, that a
5 realignment of revenues and expenditures occur by *I Maga'låhen Guåhan* which
6 would provide that income tax refunds, which are set-aside before all other
7 expenditures and debt service obligations of the government of Guam, are paid in a
8 timely manner. §4109(f) specifically provides:

9 “(f) **Fiscal Realignment Plan.** Thirty (30) days after the close of each
10 quarter of the fiscal year, the Directors of the Department of Administration,
11 Department of Revenue and Taxation, and the Bureau of Budget and
12 Management Research shall determine whether actual revenues collected for
13 that quarter are consistent with the projected revenues for the fiscal year. If
14 said Directors determine that projected fiscal year revenues, based on actual
15 revenues collected, are three percent (3%) or more less than revenue
16 projections adopted by the annual Budget Act, *I Maga'låhen Guåhan* shall
17 submit to the Speaker of *I Liheslaturan Guåhan* a Fiscal Realignment Plan that
18 shall address the revenue disparity. Said Plan may include, but is not limited to,
19 cost-containment and austerity measures, governmental reorganization plans
20 and other such actions. *I Maga'lahi* shall submit to the Speaker of *I*
21 *Liheslaturan Guåhan* proposed legislation, in a bill format, to implement the
22 Fiscal Realignment Plan if legislative action is required.”; and

23 **WHEREAS**, in FY 2010, One Hundred Thirty-Four Million Two Hundred
24 Sixty Thousand Dollars (**\$134,260,000**) should have been set aside for income tax
25 refunds pursuant to the Provision for Income Tax Refunds in the FY 2010 Budget Act,
26 but only One Hundred One Million Five Hundred Twenty Thousand Dollars

1 (\$101,520,000) was actually deposited and paid in income tax refunds during that
2 fiscal year. Whereas, in FY 2011, One Hundred Million Sixty-Two Thousand One
3 Hundred Eighty-Four Dollars (\$100,062,184) should have been set aside for income
4 tax refunds pursuant to the Provision for Income Tax Refunds in the FY 2011 Budget
5 Act, but only Fifty Million Three Hundred Twenty-Four Thousand Eight Hundred
6 Forty-Seven Dollars (\$50,324,847) was actually deposited and paid in income tax
7 refunds during that fiscal year. Whereas, in FY 2012, One Hundred Five Million
8 Dollars (\$105,000,000) should have been set aside for income tax refunds pursuant to
9 the Provision for Income Tax Refunds in the FY 2012 Budget Act, but to date, only
10 about Sixty Eight Million Dollars (\$68,000,000) was actually deposited and paid in
11 income tax refunds; and

12 **WHEREAS**, in FY 2012, to remedy the failure of the Executive Branch to
13 make the tax refund deposits as required by law, *I Liheslatura* (the Legislature)
14 authorized unprecedented bond issuances to pay past-due income tax refunds, and the
15 government of Guam has in fact reached its maximum borrowing capacity, as
16 authorized by the Organic Act, 48 USC §1423a. During this period, Guam law (Title
17 11 GCA, Chapters 50 and 51) continued to require the monthly deposits of income
18 taxes into the Trust Fund, and to require payments from the Income Tax Refund
19 Reserve Fund for current or prior year refunds; and

20 **WHEREAS**, in addition to bond proceeds and monthly tax deposits, all excess
21 revenues above the Budget Act's revenue projection received in FY 2012 were
22 dedicated by law to the payment of additional past due income tax refunds, and the
23 budget/revenues sufficiently allowed for the continuation of all critical services of the
24 government; and

25 **WHEREAS**, the FY 2013 Budget Act (Public Law 31-233) provides for One
26 Hundred Million Dollars (\$100,000,000) to be prioritized above all other expenditures

1 and set aside and deposited to the Trust Fund for any due income tax refunds (for any
2 year). Public Law 31-233 also mandates that an additional reduction of Fourteen
3 Million Five Hundred One Dollars (**\$14,000,501**) from non-essential appropriations
4 from the Executive, Legislative, and Judicial branches be performed and deposited in
5 each of the twelve (12) months of FY 2013?, One Million One Hundred One
6 Thousand One Hundred Forty-Eight Dollars (**\$1,101,148**) to the Trust Fund, and
7 dedicated exclusively for the payment of income tax refunds not covered by the bonds
8 or the set aside provision. In addition, Public Law 31-233 continues to mandate that
9 *no less than* ninety percent (90%) of the Additional Child Tax Credit reimbursement
10 be deposited directly into the Trust Fund, and that *no more than* ten percent (10%) is
11 appropriated to the Department of Revenue and Taxation Income Tax Processing and
12 Income Tax Enforcement Divisions for the hiring of additional personnel and for
13 overtime in order to increase collection of past due taxes, and thus revenue for the
14 government of Guam; and

15 **WHEREAS**, the AG has also stated to the District Court in its Motion for
16 Summary Judgment that “[t]he Governor's Fiscal Team's development of a final plan
17 to pay tax refunds also depends on whether the Legislature passes the Governor's
18 proposed Omnibus Fiscal Reform Act of 2012”; now therefore, be it

19 **RESOLVED**, that *I Liheslaturan Guåhan* (the Guam Legislature) objects to the
20 AG's representation that the payment of income tax refunds is dependent on the
21 passage of the Omnibus Bill. The Omnibus Bill is not an existing policy or law of the
22 government of Guam, and sworn testimony by the Director of Administration
23 indicated that the Omnibus Bill did not accurately reflect the intent of the Executive
24 Branch and must be revised or substituted. Absent a substitution or revision of the
25 Omnibus Bill, there are provisions in the Omnibus Bill that will negatively impact the


1 government of Guam's finances and may further interfere with prompt payment of
2 income tax refunds; and be it further

3 **RESOLVED**, that *I Mina'Trentai Unu Na Liheslaturan Guåhan* does hereby,
4 on behalf of the people of Guam, officially request that the Attorney General of
5 Guam, on behalf of the government and the people of Guam, propose that the U.S.
6 District Court of Guam order full compliance by the Executive Branch with Guam
7 law, and that the income tax deposits required by Title 11 GCA, §51102, and by
8 Public Law 31-233, be made every month during FY 2013 by the Director of
9 Administration and the Department of Revenue and Taxation to the Income Tax
10 Refund Efficient Payment Trust Fund as required by law; and be it further

11 **RESOLVED**, that *I Mina'Trentai Unu Na Liheslaturan Guåhan* does hereby,
12 on behalf of the people of Guam, officially impart to the Attorney General of Guam,
13 on behalf of the government and the people of Guam, to enforce the provisions of
14 Title 11 GCA, Chapters 50 and 51, and the provisions of the FY 2013 Budget Act, and
15 if necessary, to propose on behalf of the government and people of Guam that the U.S.
16 District Court of Guam, as part of its Order in *Paeste et al v. Government of Guam et*
17 *al*, ensure that the Department of Administration and the Department of Revenue and
18 Taxation make the timely remittance of income tax refund checks to taxpayers for the
19 full amount available in the Income Tax Refund Reserve Fund as required by Public
20 Law 31-233; and be it further

1 **RESOLVED**, that the Speaker certify, and the Legislative Secretary attest to,
2 the adoption hereof, and that copies of the same be thereafter transmitted to the
3 Attorney General of Guam; to the U.S. District Court of Guam; and to the Honorable
4 Edward J.B. Calvo, *I Maga'lahaen Guåhan*.

DULY AND REGULARLY ADOPTED BY *I MINA'TRENTAI UNU NA LIHESLATURAN GUÅHAN* ON THE 16TH DAY OF NOVEMBER 2012.



JUDITH T. WON PAT, Ed.D.
Speaker



TINA ROSE MUÑA BARNES
Legislative Secretary