

I Mina' Trentai Unu Na Liheslaturan Guåhan
Resolutions Log Sheet

Resolution No.	Sponsor	Title	Date Intro	Date of Presentation	Date Referred	Committee / Ofc Referred	Date Adopted
539-31 (COR)	V. C. Pangelinan, Judith T. Won Pat, Ed.D.	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.	09/28/2012 4:20 pm				

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

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Resolution No. 539-31 (cor)

Introduced by:

V.C. Pangelinan
Judith T. Won Pat, Ed.D.

**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 District Court of Guam has
ordered the parties to submit a Proposed Order for the prompt payment of those
refunds; and

WHEREAS, the Plaintiff taxpayers have proposed that refunds be paid within
six months of the filing of income tax returns; and

WHEREAS, the Attorney General of Guam (AG) represents the government of
Guam in this lawsuit pursuant to the Organic Act of Guam and 5 GCA Ch. 30, and the

1 AG's Motion for Extension of Time filed on September 21, 2012, in response to
2 Plaintiffs' proposed order, purports to advocate a position on behalf of the government
3 of Guam that is contrary to the fiscal policy of the government of Guam, as reflected
4 in the existing laws of Guam; and

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

14 **WHEREAS**, since 1994, the Guam Legislature attempted through the
15 enactment of 11 GCA Chapter 50, to prioritize the prompt payment of income tax
16 refunds from actual revenues by requiring the reservation of a specific percentage of
17 income tax receipts in the Income Tax Refund Reserve Fund ("the Fund") for the
18 payment of current or prior years' income tax refunds; and

19 **WHEREAS**, in 2002, the Guam Legislature enacted 11 GCA Chapter 51,
20 requiring the Director of Administration to directly deposit a portion of all tax income
21 payments into the Income Tax Refund Efficient Payment Trust Fund ("*Trust Fund*").
22 Trust Fund amounts are subsequently transferred on request of the Director of
23 Revenue and Taxation to the Income Tax Refund Reserve Fund (and used for the
24 regular monthly payment of current or prior years' tax refunds); and

25 **WHEREAS**, together, 11 GCA Chapters 50 and 51 express the unequivocal
26 policy of the government of Guam to reserve, deposit, and pay tax refunds as a matter

1 of priority, above any other use of income tax receipts. §50103 and §51102
2 specifically provide:

3 ***“§ 50103. Formula for Reserve Funds for Income Tax Refunds,***
4 ***Earned Income Tax Credits, and Child Tax Credits.***

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

17 ***“51102. Deposit of Funds.*** *The Director of the Department of*
18 *Administration (DOA) shall directly deposit, upon receipt of any payment of*
19 *income tax, including, but not limited to, individual, corporate and withholding*
20 *taxes, interest and penalties, to the Trust Fund a portion of the tax payment*
21 *received to be calculated by multiplying the amount of the tax payment received*
22 *by the quotient derived by the provision for tax refunds (the dividend) divided*
23 *by the total income taxes, including, but not limited to, individual, corporate*
24 *and withholding taxes, interest and penalties, (the divisor) amounts adopted in*
25 *the pertinent government of Guam fiscal year budget, so that, at the end of the*
26 *fiscal year, the total amount set aside in said budget for income tax refunds, the*
27 *earned income tax credit and advanced child tax credits shall have been*
28 *deposited in said Fund. The funds deposited in the Trust Fund by the Director*
29 *of Administration shall immediately be transferred to the Income Tax Reserve*
30 *Fund upon the written request of the Tax Commissioner for payments made*
31 *pursuant to § 50105 of Chapter 50, Division 2 of Title 11 of the Guam Code*
32 *Annotated. The interest earned by money in the Trust Fund shall be held in the*
33 *Fund.”; and*

34 **WHEREAS**, the Guam Legislature has prioritized the set aside of revenues
35 specifically for income tax refunds prior to any other expenditures of the government
36 through the specific delineation of a set aside amount as the Provision for Income Tax

1 Refunds—above any other expenditure of the government of Guam—in the Revenues
2 Chapter of every Budget Act since FY 2009 thus prioritizing the respective set aside
3 amounts above the payment of bond debt. Thereafter, every other expenditure of the
4 government was, by law, to be paid from revenues remaining *after* the income tax
5 refund amounts and bond payments were set aside. In addition, every Governor was
6 authorized to cut expenditures of the Executive Branch and to transfer between the
7 various appropriations, in order to effectuate the reduction of Guam’s deficit and
8 ensure the timely payment of the current year tax refunds; and

9 **WHEREAS**, in 2007, 5GCA Chapter 4 §4109(f) was passed which mandates a
10 Fiscal Realignment Plan be developed by *I Maga’låhen Guåhan* when projected fiscal
11 year revenues, based on actual revenues collected, are three percent (3%) or more
12 below revenue projections adopted by the annual Budget Act. Such Plan was
13 mandated by the Guam Legislature such that in the event the government is not
14 collecting the revenues adopted in the Budget Act, that a realignment of revenues and
15 expenditures occur by *I Maga’låhen Guåhan* which would provide that Income Tax
16 Refunds, which are set-aside before all other expenditures and debt service obligations
17 of the government of Guam, are paid in a timely manner. §4109(f) specifically
18 provides:

19 “(f) **Fiscal Realignment Plan.** *Thirty (30) days after the close of each quarter*
20 *of the fiscal year, the Directors of the Department of Administration, Department of*
21 *Revenue and Taxation, and the Bureau of Budget and Management Research shall*
22 *determine whether actual revenues collected for that quarter are consistent with the*
23 *projected revenues for the fiscal year. If said Directors determine that projected fiscal*
24 *year revenues, based on actual revenues collected, are three percent (3%) or more*
25 *less than revenue projections adopted by the annual Budget Act, I Maga’låhen*
26 *Guåhan shall submit to the Speaker of I Liheslaturan Guåhan a Fiscal Realignment*
27 *Plan that shall address the revenue disparity. Said Plan may include, but is not*
28 *limited to, cost-containment and austerity measures, governmental reorganization*
29 *plans and other such actions. I Maga’lai shall submit to the Speaker of I Liheslaturan*

1 *Guåhan proposed legislation, in a bill format, to implement the Fiscal Realignment*
2 *Plan if legislative action is required.”; and*
3

4 **WHEREAS**, in FY 2010 One Hundred Thirty Four Million Two Hundred
5 Sixty Thousand Dollars **(\$134,260,000)** should have been set aside for income tax
6 refunds pursuant to the Provision for Income Tax Refunds in the FY2010 Budget Act
7 but only One Hundred One Million Five Hundred Twenty Dollars **(\$101,520,000)** was
8 actually deposited and paid in income tax refunds during that fiscal year. Whereas in
9 FY 2011 One Hundred Million Sixty Two Thousand One Hundred Eighty Four
10 Dollars **(100,062,184)** should have been set aside for income tax refunds pursuant to
11 the Provision for Income Tax Refunds in the FY2011 Budget Act but only Fifty
12 Million Three Hundred Twenty Four Thousand Eight Hundred Forty Seven Dollars
13 **(\$50,324,847)** was actually deposited and paid in income tax refunds during that fiscal
14 year. Whereas in FY 2012 One Hundred Five Million Dollars **(\$105,000,000)** should
15 have been set aside for income tax refunds pursuant to the Provision for Income Tax
16 Refunds in the FY2012 Budget Act but to date, only about Sixty Eight Million
17 **(\$68,000,000)** was actually deposited and paid in income tax refunds; and

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

26 **WHEREAS**, in addition to bond proceeds and monthly tax deposits, all excess
27 revenues above the Budget Act’s revenue projection received in FY 2012 were

1 dedicated by law to the payment of additional past due income tax refunds and the
2 budget/revenues sufficiently allowed for the continuation of all critical services of the
3 government; and

4 **WHEREAS**, the FY2013 budget provides for One Hundred Million Dollars
5 **(\$100,000,000)** be prioritized above all other expenditures and set aside and deposited
6 to the Trust Fund for any due income tax refunds (for any year). P.L. 31-233 also
7 mandates that an additional reduction of Fourteen Million Five Hundred One Dollars
8 **(\$14,000,501)** from non-essential appropriations from the Executive, Legislative, and
9 Judicial branches be performed and deposited in each of the twelve (12) months of FY
10 2012, One Million One Hundred One Thousand One Hundred Forty Eight Dollars
11 **(\$1,101,148)** to the Trust Fund and dedicated exclusively for the payment of income
12 tax refunds not covered by the bonds or the set aside provision. In addition, P.L. 31-
13 233 continues to mandate that *no less than* ninety percent **(90%)** of the Additional
14 Child Tax Credit reimbursement be deposited directly into the Trust Fund and that *no*
15 *more than* ten percent **(10%)** is appropriated to the Department of Revenue and
16 Taxation Income Tax Processing and Income Tax Enforcement Divisions for the
17 hiring of additional personnel and for overtime in order to increase collection of past
18 due taxes and thus revenue for the government of Guam; and

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

23 **RESOLVED**, that the Legislature objects to the AG’s representation that the
24 payment of income tax refunds is dependent on passage of the Omnibus Bill. The
25 Omnibus Bill is not an existing policy or law of the government of Guam and sworn
26 testimony by the Director of Administration indicated that the Omnibus Bill did not

1 accurately reflect the intent of the Executive Branch and must be revised or
2 substituted. Absent a substitution or revision of the Omnibus Bill, there are provisions
3 in the Omnibus Bill that will negatively impact the government of Guam's finances
4 and may further interfere with prompt payment of income tax refunds; and

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

14 **RESOLVED**, that *I Mina'Trentai Unu Na Liheslaturan Guåhan* does hereby,
15 on behalf of the people of Guam, officially impart to the Attorney General of Guam,
16 on behalf of the government and the people of Guam, to enforce the provisions of 11
17 GCA Chapters 50 and 51 and the provisions of the FY 2013 Budget Act, and if
18 necessary, to propose on behalf of the government and people of Guam that the
19 District Court of Guam, as part of its Order in *Paeste et al v. Government of Guam et*
20 *al*, ensure the Department of Administration and the Department of Revenue and
21 Taxation make timely remittance of income tax refund checks to taxpayers for the full
22 amount available in the Income Tax Refund Reserve Fund as required by P.L. 31-
23 233; and be it further

24 **RESOLVED**, that the Speaker certify and the Legislative Secretary attest to,
25 the adoption hereof, and that copies of the same be thereafter transmitted to the

- 1 Attorney General of Guam; the District Court of Guam and to the Honorable Edward
- 2 J.B. Calvo, *I Maga'lahen Guåhan*.

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

JUDITH T. WON PAT, Ed.D.
Speaker

TINA ROSE MUÑA BARNES
Legislative Secretary