


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

Resolution No. 579 -31 ^{COR⁴⁰} (LS)

2012 OCT 24 PM 12:26

Introduced by:

V.C. Pangelinan 

**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.**

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

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

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

9 **WHEREAS**, the Attorney General of Guam (AG) represents the
10 government of Guam in this lawsuit pursuant to the Organic Act of Guam and 5
11 GCA Ch. 30, and the AG's Motion for Extension of Time filed on September 21,
12 2012, in response to Plaintiffs' proposed order, purports to advocate a position on
13 behalf of the government of Guam that is contrary to the fiscal policy of the
14 government of Guam, as reflected in the existing laws of Guam; and

15 **WHEREAS**, specifically, the AG stated to the Court in its September 21
16 Motion that "*Projected revenues for Fiscal Year 2013 are earmarked for specific*
17 *expenditures and do not include payments for remaining Tax Year 2011 and prior*

1 *year refunds. Nor do they include payments for Tax Year 2012 tax refunds. While*
2 *the Fiscal Year 2013 budget includes a provision for tax refunds, this is a set-aside*
3 *for the Tax Year 2013 refunds. The government will be lagging behind by one (1)*
4 *year as the Tax Year 2012 required funds were not set aside for this purpose.*
5 *Moreover, there are "non-tax refund" related obligations that have to be paid and*
6 *these obligations were also not addressed in the Fiscal Year 2013 budget"; and*

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

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

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

22 ***“§ 50103. Formula for Reserve Funds for Income Tax Refunds,***
23 ***Earned Income Tax Credits, and Child Tax Credits.***

24 *Each year, the Director of Revenue and Taxation, in consultation with the*
25 *Director of Administration and the Director of the Bureau of Budget and*
26 *Management Research, shall establish a formula for reserving income tax*
27 *receipts to pay income tax refunds, earned income tax credits, and child tax*

1 *credits. Such formula shall be derived from the statistical average of income*
2 *tax refunds, earned income tax credits, and child tax credits issued in the*
3 *previous three (3) years, and shall further provide for reserving income tax*
4 *receipts, on a percentage basis, in order to accumulate sufficient cash*
5 *reserves to pay projected income tax refunds, earned income tax credits, and*
6 *child tax credits in a timely manner. Notwithstanding any other provision of*
7 *law, such cash receipts may be used to pay for prior years' income tax*
8 *refunds, earned income tax credits, and child tax credits.”*

9 **“51102. Deposit of Funds.** *The Director of the Department of*
10 *Administration (DOA) shall directly deposit, upon receipt of any payment of*
11 *income tax, including, but not limited to, individual, corporate and*
12 *withholding taxes, interest and penalties, to the Trust Fund a portion of the*
13 *tax payment received to be calculated by multiplying the amount of the tax*
14 *payment received by the quotient derived by the provision for tax refunds*
15 *(the dividend) divided by the total income taxes, including, but not limited to,*
16 *individual, corporate and withholding taxes, interest and penalties, (the*
17 *divisor) amounts adopted in the pertinent government of Guam fiscal year*
18 *budget, so that, at the end of the fiscal year, the total amount set aside in*
19 *said budget for income tax refunds, the earned income tax credit and*
20 *advanced child tax credits shall have been deposited in said Fund. The funds*
21 *deposited in the Trust Fund by the Director of Administration shall*
22 *immediately be transferred to the Income Tax Reserve Fund upon the written*
23 *request of the Tax Commissioner for payments made pursuant to § 50105 of*
24 *Chapter 50, Division 2 of Title 11 of the Guam Code Annotated. The interest*
25 *earned by money in the Trust Fund shall be held in the Fund.”; and*

26 **WHEREAS,** the Guam Legislature has prioritized the set aside of revenues
27 specifically for income tax refunds prior to any other expenditures of the

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

11 **WHEREAS**, in 2007, 5GCA Chapter 4 §4109(f) was passed which
12 mandates a Fiscal Realignment Plan be developed by *I Maga’låhen Guåhan* when
13 projected fiscal year revenues, based on actual revenues collected, are three percent
14 (3%) or more below revenue projections adopted by the annual Budget Act. Such
15 Plan was mandated by the Guam Legislature such that in the event the government
16 is not collecting the revenues adopted in the Budget Act, that a realignment of
17 revenues and expenditures occur by *I Maga’låhen Guåhan* which would provide
18 that Income Tax Refunds, which are set-aside before all other expenditures and
19 debt service obligations of the government of Guam, are paid in a timely manner.
20 §4109(f) specifically provides:

21 *“(f) **Fiscal Realignment Plan.** Thirty (30) days after the close of each*
22 *quarter of the fiscal year, the Directors of the Department of Administration,*
23 *Department of Revenue and Taxation, and the Bureau of Budget and Management*
24 *Research shall determine whether actual revenues collected for that quarter are*
25 *consistent with the projected revenues for the fiscal year. If said Directors*
26 *determine that projected fiscal year revenues, based on actual revenues collected,*
27 *are three percent (3%) or more less than revenue projections adopted by the*

1 *annual Budget Act, I Maga'låhen Guåhan shall submit to the Speaker of I*
2 *Liheslaturan Guåhan a Fiscal Realignment Plan that shall address the revenue*
3 *disparity. Said Plan may include, but is not limited to, cost-containment and*
4 *austerity measures, governmental reorganization plans and other such actions. I*
5 *Maga'lai shall submit to the Speaker of I Liheslaturan Guåhan proposed*
6 *legislation, in a bill format, to implement the Fiscal Realignment Plan if legislative*
7 *action is required.”; and*

8 **WHEREAS**, in FY 2010 One Hundred Thirty Four Million Two Hundred
9 Sixty Thousand Dollars (**\$134,260,000**) should have been set aside for income tax
10 refunds pursuant to the Provision for Income Tax Refunds in the FY2010 Budget
11 Act but only One Hundred One Million Five Hundred Twenty Dollars
12 (**\$101,520,000**) was actually paid in income tax refunds during that fiscal year.
13 Whereas in FY 2011 One Hundred Million Sixty Two Thousand One Hundred
14 Eighty Four Dollars (**100,062,184**) should have been set aside for income tax
15 refunds pursuant to the Provision for Income Tax Refunds in the FY2011 Budget
16 Act but only Fifty Million Three Hundred Twenty Four Thousand Eight Hundred
17 Forty Seven Dollars (**\$50,324,847**) was actually deposited and paid in income tax
18 refunds during that fiscal year. Whereas in FY 2012 One Hundred Five Million
19 Dollars (**\$105,000,000**) should have been set aside for income tax refunds pursuant
20 to the Provision for Income Tax Refunds in the FY2012 Budget Act, but
21 approximately Sixty Four Million Seven Hundred Eighty Six Thousand Seven
22 Hundred Ten Dollars (**\$64,786,710**) was actually deposited in income tax refunds;
23 and

24 **WHEREAS**, in FY 2012, to remedy the failure of the Executive Branch to
25 make the tax refund deposits as required by law, the Legislature authorized
26 unprecedented bond issuances to pay past-due income tax refunds and the
27 government of Guam has in fact reached its maximum borrowing capacity as

1 authorized by the Organic Act, 48 USC §1423a. During this period, Guam law (11
2 GCA Chapters 50 and 51) continued to require the monthly deposits of income
3 taxes into the Trust Fund ,and to require payments from the Income Tax Refund
4 Reserve Fund for current or prior year refunds; and

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

10 **WHEREAS**, of the bond proceeds authorized to pay past-due income tax
11 refunds, approximately Eighteen Million Dollars (\$18,000,000) continues to sit in
12 the bank not being paid out to those owed income tax refunds; and

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

1 for overtime in order to increase collection of past due taxes and thus revenue for
2 the government of Guam; and

3 **WHEREAS**, *I Liheslaturan Guåhan* has received inconsistent reports on the
4 income tax refund liability of the government of Guam from the Department of
5 Revenue and Taxation which has detrimental effects on the ability of the plaintiffs
6 to surmise the actual financial liabilities owed them necessitating an independent
7 audit; and

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

12 **RESOLVED**, that the Legislature objects to the AG's representation that the
13 payment of income tax refunds is dependent on passage of the Omnibus Bill. The
14 Omnibus Bill is not an existing policy or law of the government of Guam and
15 sworn testimony by the Director of Administration indicated that the Omnibus Bill
16 did not accurately reflect the intent of the Executive Branch and must be revised or
17 substituted. Absent a substitution or revision of the Omnibus Bill, there are
18 provisions in the Omnibus Bill that will negatively impact the government of
19 Guam's finances and may further interfere with prompt payment of income tax
20 refunds; and

21 **RESOLVED**, that *I Mina'trentai Unu na Liheslaturan Guåhan* does hereby,
22 on behalf of the people of Guam, officially request that the Attorney General of
23 Guam, on behalf of the government and the people of Guam, propose on behalf of
24 the people and the government of Guam that the District Court of Guam order full
25 compliance by the executive branch with Guam law, and that the income tax
26 deposits required by 11 GCA §51102 and by P.L. 31-233 be made every month by
27 the Director of Administration and the Department of Revenue and Taxation to the

1 Income Tax Refund Efficient Payment Trust Fund as required by law during FY
2 2013; 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 impart to the Attorney General of
5 Guam, on behalf of the government and the people of Guam, to enforce the
6 provisions of 11 GCA Chapters 50 and 51 and the provisions of the FY 2013
7 Budget Act, and if necessary, to propose on behalf of the government and people
8 of Guam that the District Court of Guam, as part of its Order in *Paeste et al v.*
9 *Government of Guam et al*, ensure the Department of Administration and the
10 Department of Revenue and Taxation make timely remittance of income tax
11 refund checks to taxpayers for the full amount available in the Income Tax Refund
12 Reserve Fund as required by P.L. 31-233; and be it further

13 **RESOLVED**, that *I Mina'trentai Unu na Liheslaturan Guåhan* respectfully
14 requests that the District Court of Guam order an independent audit of the
15 Department of Revenue and Taxation relative to the number and amount of income
16 tax filings claiming income tax refunds for Tax Years 2011 and prior and the total
17 income tax refunds owed for Tax Years 2011 and prior; and be it further

18 **RESOLVED**, that the Speaker certify and the Legislative Secretary attest to,
19 the adoption hereof, and that copies of the same be thereafter transmitted to the
20 Attorney General of Guam; the District Court of Guam and to the Honorable
21 Edward J.B. Calvo, *I Maga'låhen Guåhan*.

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

JUDITH T. WON PAT, Ed.D.

Speaker

TINA ROSE MUÑA BARNES

Legislative Secretary