

I Mina' Trentai Dos Na Liheslaturan Guåhan
Resolutions Log Sheet

Resolution No.	Sponsor	Title	Date Intro	Date of Presentation	Date Referred	Committee / Ofc Referred	Date Adopted
312-32 (LS)	Vicente (ben) C. Pangelinan Michael F. Q. San Nicolas T. C. Ada FRANK B. AGUON, JR. T. R. Muña Barnes B. J.F. Cruz R.J. Respicio Dennis G. Rodriguez, Jr. Judith T. Won Pat, Ed.D.	Relative to requesting Declaratory Judgment from the Supreme Court of Guam as to the withdrawal of funds from the Income Tax Refund Efficient Payment Trust Fund for purposes other than the payment of Income Tax Refunds, and more particularly the interpretation and application of the prohibitions on the use of the Income Tax Refund Efficient Payment Trust Fund as set forth in 11 G.C.A. 50101, et seq. and 11 G.C.A. 51101, et seq.	1/31/14 4:28 p.m.				

MINA'TRENTAI DOS NA LIHESLATURAN GUÅHAN
2014 (SECOND) Regular Session

Resolution No. 312-32 (LS)

Introduced by:

V.C. Pangelinan
M.F.Q. San Nicolas

T.C. Ada
F.B. Aguon, Jr.
T.R.M. Barnes
B.J.F. Cruz
R.J. Respicio
D.G. Rodriguez, Jr.
J.T. Won Pat, Ed.D.

Relative to requesting Declaratory Judgment from the Supreme Court of Guam as to the withdrawal of funds from the Income Tax Refund Efficient Payment Trust Fund for purposes other than the payment of Income Tax Refunds, and more particularly the interpretation and application of the prohibitions on the use of the Income Tax Refund Efficient Payment Trust Fund as set forth in 11 G.C.A. 50101, et seq. and 11 G.C.A. 51101, et seq.

2014 JAN 21 PM 4:28

1 **BE IT RESOLVED BY *I LIHESLATURAN GUÅHAN*:**
2 **WHEREAS,** 7 GCA § 4104 authorizes *I Liheslaturan Guåhan* to request
3 declaratory judgment from the Supreme Court of Guam as to the interpretation of any
4 law, federal or local, lying within the jurisdiction of the courts of Guam to decide, and
5 upon any question affecting the powers and duties of *I Liheslaturan Guåhan*, where it
6 is a matter of great public interest and the normal process of law would cause undue
7 delay; specifically, § 4104 provides “*I Maga’låhi* and *I Liheslatura* May Request
8 Declaratory Judgment. *I Maga’låhen Guåhan*, in writing, or *I Liheslaturan Guåhan*,
9 by resolution, may request declaratory judgments from the Supreme Court of Guam as
10 to the interpretation of any law, federal or local, lying within the jurisdiction of the

1 courts of Guam to decide, and upon any question affecting the powers and duties of *I*
2 *Maga'låhi* and the operation of the Executive Branch, or *I Liheslaturan Guåhan*,
3 respectively. The declaratory judgments may be issued only where it is a matter of
4 great public interest and the normal process of law would cause undue delay. Such
5 declaratory judgments shall not be available to private parties. The Supreme Court of
6 Guam shall, pursuant to its rules and procedures, permit interested parties to be heard
7 on the questions presented and shall render its written judgment thereon.”; and

8 **WHEREAS**, 11 GCA §51102 requires the deposit of a definite percentage of
9 income taxes into an Income Tax Refund Efficient Payment Trust Fund (Trust Fund)
10 to be used strictly for income tax refunds and further requires that “[t]he funds
11 deposited in the Trust Fund by the Director of Administration shall immediately be
12 transferred to the Income Tax Reserve Fund upon the written request of the Tax
13 Commissioner only for payments made pursuant to § 50105 of Chapter 50, Division 2
14 of Title 11 of the Guam Code Annotated”; and

15 **WHEREAS**, 11 GCA § 50105 provides that “[a]ny and all expenditures from
16 the [Income Tax Reserve] Fund shall be for the payment of income tax refunds,
17 earned income tax credits, child tax credits, tax rebate relief and for no other purpose”;
18 and

19 **WHEREAS**, OPA Report No. 11-10 released December 2011 stated that in
20 Fiscal Year 2011, approximately Twenty Five Million Six Hundred Eighty Seven
21 Thousand Five Hundred Ninety Nine Dollars (**\$25,687,599**) in transfers were made
22 from the Income Tax Refund Efficient Payment Trust Fund to fund government of
23 Guam operations and not for the payment of Income Tax Refunds; and

24 **WHEREAS**, this non-compliance was also the subject of a January 2013 letter
25 from *I Liheslaturan Guåhan*'s Committee on Appropriations, Public Debt, Legal
26 Affairs, Retirement, Public Parks, Recreation, Historic Preservation, and Land
27 (Committee) to the Office of the Attorney General citing withdrawals in the amount of

1 Ten Million Nine Hundred Seventy Four Thousand Three Hundred Two Dollars and
2 Ninety Six Cents (**\$10,974,302.96**) from the Trust Fund that were transferred to other
3 bank accounts not in compliance with 11 GCA §51102 for the period November 2011
4 to December 2012; and

5 **WHEREAS**, the District Court of Guam, in its January 30, 2013 proceedings of
6 Civil Case No. CV11-0008, *Paeste et al. v. GovGuam et al.*, discussed the
7 aforementioned January 2013 letter from the Committee that was provided to
8 Honorable Judge Consuelo B. Marshall, that Government of Guam officials had not
9 complied with either of the Guam laws passed to compel timely payment of Guam
10 Territorial Income Tax refunds; and

11 **WHEREAS**, the District Court of Guam in *Paeste et al. v. GovGuam et al.*,
12 citing 11 GCA Chapters 50 and 51, found on January 30, 2013, that government of
13 Guam officials had not complied with either of the Guam laws passed to compel
14 timely payment of Guam Territorial Income Tax refunds; and

15 **WHEREAS**, for nine months subsequent to the *Paeste* Court's Findings of Fact
16 and Conclusions of Law, including January 2013 to October 2013, the government of
17 Guam did not withdraw and/or transfer funds from the Trust Fund to fund government
18 of Guam operations;

19 **WHEREAS**, the Committee, however, in its review of November and
20 December 2013 Trust Fund bank statements, found withdrawals and/or transfers from
21 the Trust Fund to fund government of Guam operational funds; and

22 **WHEREAS**, such withdrawals and/or transfers in November and December
23 2013 were the subject of two January 2014 letters from the Committee citing bank
24 statements showing withdrawals in the amount of Twelve Million Eighty Five
25 Thousand Dollars (**\$12,085,000**) from the Trust Fund that were transferred to other
26 bank accounts not in compliance with 11 GCA §51102; and

27 **WHEREAS**, the General Appropriations Act of Fiscal Year 2014, enacted as

1 P.L. 32-068 and effective October 1, 2014, the government of Guam prioritized and
2 made a provision of One Hundred Twenty Million Dollars (**\$120,000,000**) for the
3 purpose of paying income tax refunds, based on historical income tax refund
4 payments from official reports of the Department of Revenue and Taxation; and

5 **WHEREAS**, approximately Twenty One Million Four Hundred Forty Six
6 Thousand Fifty Three Dollars (**\$21,446,053**) of the required Twenty Five Million
7 Seven Hundred Thousand Dollars (**\$25,700,000**) through December 31, 2013, has
8 been deposited into the Trust Fund and of that amount, Twelve Million Eighty Five
9 Thousand Dollars (**\$12,085,000**) was withdrawn and/or transferred to government of
10 Guam operational accounts not pursuant to 11 GCA §51102; and

11 **WHEREAS**, *I Liheslaturan Guåhan* finds that timely payment of income tax
12 refunds is a matter of great public interest, and the establishment of both the Trust
13 Fund and the Income Tax Reserve Fund, and the mandated processes in place toward
14 the payment of income tax refunds and the prohibitions on expenditures from such
15 funds were intended to ensure taxpayers of adequate funds for the timely payment of
16 income tax refunds; and as was found in *Paeste*, “the public has an interest in the
17 lawful administration of the GTIT as indicated by the Guam Legislature’s two
18 attempts to compel the Government to pay refunds on time through the passage of
19 legislation. Those laws have been largely ignored and the requested injunctive relief is
20 needed to bring the administration of the GTIT into compliance with the Organic Act
21 and the Equal Protection Clause”; and

22 **WHEREAS**, the government of Guam’s ability to borrow for future income tax
23 refunds was severely limited when the government of Guam reached its debt ceiling
24 with the Fiscal Year 2012 borrowing for Tax Years 2011 and prior income tax refunds
25 (Business Privilege Tax Bonds Series 2011A and 2012B), among other things, and the
26 recent and ongoing siphoning of funds away from the Trust Fund directly impacts the
27 ability of the government to pay income tax refunds when income tax returns are filed

1 during Fiscal Year 2014 for Tax Year 2013; and

2 **WHEREAS**, the normal process of law would cause undue delay in preventing
3 the further siphoning of funds and the further delay in paying income tax refunds and *I*
4 *Liheslaturan Guåhan* seeks this special judicial determination to prevent the
5 continued withdrawal and irretrievable expenditure of funds that are by law set aside
6 for the payment of income tax refunds; now therefore be it

7 **RESOLVED**, that *I Mina'trentai Dos Na Liheslaturan Guåhan* does hereby
8 request for Declaratory Judgment from the Supreme Court of Guam relative to the
9 withdrawal and/or transfer of funds from the Trust Fund to accounts and/or funds
10 other than to the Income Tax Reserve Fund, for purposes other than for the payment
11 of income tax refunds; and more particularly the interpretation and application of 11
12 G.C.A. Chapters 50 and 51 in this regard; and be it further

13 **RESOLVED**, that *I Mina'trentai Dos Na Liheslaturan Guåhan* authorizes and
14 directs the Chairperson of the Committee on Appropriations, Public Debt, Legal
15 Affairs, Retirement, Public Parks, Recreation, Historic Preservation, and Land and the
16 Office of Finance and Budget to pursue a Declaratory Judgment on behalf
17 of *I Liheslatura* and authorizes said Chairperson to do all things necessary in
18 furtherance of this Request for Declaratory Judgment, including the assistance of a
19 legal counsel as required; and be it further

20 **RESOLVED**, that the Speaker of *I Liheslaturan Guåhan* certify, and the
21 Legislative Secretary attests to, the adoption hereof and that copies of the same be
22 thereafter transmitted to the Committee on Rules; to the Clerk of the Supreme Court
23 of Guam; and to the Honorable Edward J.B. Calvo, *I Maga'låhen Guåhan*.

DULY AND REGULARLY ADOPTED ON THE ___ DAY OF JANUARY, 2014.

JUDITH T. WON PAT
Speaker

TINA ROSE MUNA-BARNES
Senator and Legislative Secretary