



# COMMITTEE ON RULES

*I Mina'trentai Unu na Libeslaturan Guåhan* • The 31<sup>st</sup> Guam Legislature  
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E-mail: [roryforguam@gmail.com](mailto:roryforguam@gmail.com) • Tel: (671)472-7679 • Fax: (671)472-3547

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Senator  
Rory J. Respicio  
CHAIRPERSON  
MAJORITY LEADER

Senator  
Judith P. Guthertz  
VICE CHAIRPERSON  
ASST. MAJORITY LEADER

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vicente c. pangelinan

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Aline A. Yamashita  
ASST. MINORITY LEADER

Senator  
Christopher M. Ducnas

May 9, 2011

**MEMORANDUM**

**To:** Patricia C. Santos  
*Clerk of the Legislature*

**From:** Rory J. Respicio  
*Chairperson, Committee on Rules*

**Subject:** Written Testimonies -Bill No. 140-31 (COR)

*Hafa Adai!*

Transmitted herewith is a memo from Senator vicente (ben) c. pangelinan, Chairperson, Committee on Appropriations, Taxation, Public Debt, Banking, Insurance, Retirement and Land, forwarding additional testimonies on Bill No. 140.

Please include this memo and the attachment as a "Supplement" to the Committee Report on Bill No. 140-31 (COR).

Please make the appropriate indication in your records; and forward to MIS for posting on our website.

*Si Yu'os ma'åse'!*

cc: Senator vicente c. pangelinan



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Senator  
Christopher M. Duenas

## Supplement to the Committee Report On Bill No. 140-31 (COR)

**“AN ACT RELATIVE TO  
PRIORITIZING THE PAYMENT OF  
INCOME TAX REFUNDS IN  
ACCORDANCE WITH THE  
PROVISIONS OF ANNUAL  
APPROPRIATIONS ACTS AT A RATE  
PROPORTIONAL TO REVENUE  
COLLECTIONS BY ESTABLISHING  
THE “PAY INCOME TAX REFUNDS  
FIRST ACT OF 2011”.**

\*NOTE: The original Committee Report on  
Bill No. 140-31 (COR)  
was filed on May 2, 2011.



# I Mina'trentai Unu Na Liheslaturan Guåhan

Senator Vicente (ben) Cabrera Pangelinan (D)

May 6, 2011

## Memorandum

Chairman  
Committee on Appropriations,  
Taxation, Public Debt, Banking,  
Insurance, Retirement, and  
Land

To: Senator Rory Respicio  
Chairman  
Committee on Rules

From: Senator Vicente (ben) Cabrera Pangelinan

Vice Chairman  
Committee on Education

Re: Testimonies

Member  
Committee on Rules,  
Federal, Foreign &  
Micronesian Affairs and  
Human & Natural  
Resources

Hafa Adai Senator Respicio,

Please find attached copies of testimonies for Bill No. 139 and Bill No. 149, which were received after their respective committee reports, were filed.

I hereby request that the following testimonies be included:

Member  
Committee on  
Municipal Affairs,  
Tourism, Housing, and  
Recreation

Bill No 139:

Testimony from Mr. Frank Campillo, Select Care  
Testimony from Mr. Jerry Crisostomo, Net Care  
Testimony from Mr. John Camacho, the Department of Revenue &  
Taxation  
Testimony from David Leddy, Guam Chamber of Commerce

Member  
Committee on the Guam  
Military Buildup and  
Homeland Security

Bill No. 140:

Testimony from Mr. John Camacho, Director of the Department of  
Revenue & Taxation  
Testimony from Ms. Benita Manglona, Director of the Department of  
Administration

Member  
Committee on Health and  
Human Services, Senior  
Citizens, Economic  
Development, and Election  
Reform

*Si Yu'os Ma'ase.*



Eddie Baza Calvo  
Governor  
Ray Tenorio  
Lieutenant Governor

**Government of Guam**  
(Gubetnomention Guahan)  
**Department of Administration**  
(Dipattamenton Atmenestration)  
Post Office Box 884 Hagatña, Guam 96932  
Tel: (671) 475-1101/1250 \* Fax: (671) 477-6788



Benita A. Manglona  
Acting Director  
George A. Santos  
Deputy Director

April 30, 2011

Senator Ben Pangelinan  
Chairman  
I Mina' trentai Unu Na Liheslaturan Guahan  
Committee on Appropriations, Taxation, Public Debt, Banking, Insurance,  
Retirement, and Land  
324 W. Soledad Ave. Suite 100  
Hagatna, Guam 96910



Hafa Adai yan Buenas Dias Senator Pangelinan:

Thank you for the opportunity to submit written testimony on the following Bills 140-31, 155-31 and 156-31.

**BILL 140-31**

“AN ACT RELATIVE TO PRIORITIZING THE PAYMENT OF INCOME TAX REFUNDS IN ACCORDANCE WITH THE PROVISIONS OF ANNUAL APPROPRIATIONS ACTS AT A RATE PROPORTIONAL TO REVENUE COLLECTIONS BY ESTABLISHING THE “PAY INCOME TAX REFUNDS FIRST ACT OF 2011”.”

The administration mutually agrees and supports the payment of tax refunds to all taxpayers as evident in the Governor’s submission of the Biennial Budget on April 8, 2011. Contingent and subject to *I Liheslaturan Guahan*’s support and endorsement, it detailed our plan for the issuance of a \$344M “Revenue Anticipation Financing Bond” for the payment of tax refunds. This plan will address your objective in reducing the millions of dollars owed to hardworking taxpayers without the necessity for Bill 140-31. The passage of Bill 140-31 does not take into consideration carryover obligations, unfunded liabilities, and the pre-existing cash balance shortfall.

As you are aware, Fiscal Year 2010 closed with an operational deficit of \$83.5M dollars as verified by the Office of Public Accountability. The increase in the deficit was essentially from the Make Work Pay Credit funds totaling \$55M, plus temporary borrowings from other funds, inclusive of all funds the Government can access, such as the Tourist Attraction Fund, The Healthy Futures Special Revenue Funds, and temporary transfers from restricted accounts up to the end of the first quarter of fiscal year 2011. Additionally, in October 2010 (current fiscal year), DOA used \$41.9M in current year receipts to pay 2010 (prior year) payables, inclusive of Special Revenue Fund payments. Thus, the ending cash balance available for operations was a negative \$18.27M.

**ORIGINAL**

In November 2010, \$13.2M of current year receipts was again used to pay prior year payables. Additionally, the first installment of \$2M was paid for the Department of Mental Health and Substance Abuse court ordered permanent injunction. November 2010 closed with a negative \$14.3 million available for operations.

Despite the negative \$14.3M cash balance at the beginning of December; substantial non-payment of subsidies to the Judiciary and semi-autonomous agencies such as UOG and GCC; limited vendor payables; non-profit organizations; reduced payouts of tax refunds; and a \$2M payment toward the DHSA permanent injunction; the Hay Implementation payout was made retroactive to October 2010. Thus December 2010 closed with an actual negative of \$10.5 million available for operations which includes inter-fund borrowings of \$8.4 million that had to be repaid in the following months.

In January 2011, the new administration paid the following:

- \$8.36M inter-fund borrowings
- \$4.8M of prior year payables using current year receipts

Since this administration took office, we have worked diligently to improve and develop a CashFlow Model to better manage the limited resources of our government. This Bill seeks to pay tax refunds in proportion to Revenues. However, our monthly revenues are volatile and occur as “peaks and valleys,” while our expenditures are virtually fixed each month. For months like November, February, July & August, we collect much less than what is required to satisfy DOE’s allotment requirement, GMHA, Debt Service, payroll, Supplemental Benefits, Supplemental Annuities, non-profit organization vendors, utilities, MIP vendors, other vendors, and *I Liheslaturan Guahan*. For example, if we collect \$36 million for the month and our monthly cash outflow requirement is \$45 million, we are left with no choice but to reduce tax refund payments as opposed to not paying out to GMHA or DOE.

We also have timing issues with collections and expenditures. Our Section 30 funds, which are supposed to last throughout the year, are exhausted by the end of November. Also, twice a year we must address three pay periods per month, as opposed to two.

As demonstrated by the cash challenges the government has had to deal with on an ongoing basis, it would be gravely detrimental to the government’s operations to impose a mandated payment of the tax refunds. This would mean nonpayment of debt service, payless paydays for teachers, police, firemen, other line agencies, UOG, GCC, the Judiciary, non-profit organization vendors, and the inability to meet unfunded court mandates, just to name a few. The Department of Administration is the agency responsible for generating the report on the cash flow condition of the General Fund. It has provided valuable information to support judicious decision-making in the cash balancing act. We have been able to manage the cash flow for the past 4 months with no critical services being jeopardized. We are requesting for your support to have confidence in the administration’s ability to manage the limited cash resources of the government without threatening critical and essential government services. Again, the administration believes strongly in the importance of paying tax refunds to our hardworking taxpayers, which is exactly why I ask for your support in the authorization to issue a \$344M “Revenue Anticipation Financing Bond” for the payment of those very same tax refunds.

**BILL 155-31**

“AN ACT TO DE-APPROPRIATE THE SUMS APPROPRIATED AND TRANSFERRED BY *I MAGA'LAHEN GUAHAN* DURING FISCAL YEARS 2004 THROUGH 2009 FOR EXPENDITURES RELATED TO THE MUNICIPAL SOLID WASTE LANDFILL FACILITY AND THE CLOSURE OF THE ORDOT DUMP AND TO RE-APPROPRIATE SAID SUM AMOUNT FOR THE PAYMENT OF EMERGENCY INCOME TAX REFUNDS FOR TAX YEAR 2009 AND PRIOR AND TO APPROPRIATE FIVE HUNDRED THOUSAND DOLLARS (\$500,000) TO THE DEPARTMENT OF PUBLIC WORKS FOR THE UMATAC AND MERIZO CEMETERIES.

I would like to refer to my testimony on Bill 140-31. The payment of tax refunds is addressed in the Biennial Budget submission. Furthermore, since we are tracking a budget shortfall for fiscal year 2011, additional revenue sources received for the General Fund should be used to cover the existing unfunded obligations such as the permanent injunction, the structural deficit of various critical departments such as the public safety, fire, corrections, the additional cost of health insurance, and other programs equally as important. Therefore, due to our financial challenges, we highly recommended all new funding sources identified in General Fund be prioritized to initially pay unfunded legal obligations and pay down prior year obligations before any legislation for new appropriations is considered.

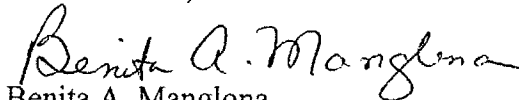
**BILL 156-31**

“AN ACT TO APPROPRIATE NINE MILLION EIGHT HUNDRED THOUSAND DOLLARS (\$9,800,000.00) REIMBURSED FROM THE GUAM WATERWORKS AUTHORITY IN ACCORDANCE WITH PUBLIC LAW 30-145 TO THE GOVERNMENT OF GUAM FOR THE PAYMENT OF TAX REFUNDS FOR 2009 AND PRIOR AND TO PAY FOR INTEREST AND PRINCIPAL FOR COST OF LIVING ALLOWANCES PURSUANT TO SUPERIOR COURT NO. SP0206-93.

Again, I would like to refer to my testimonies on Bills 140-31 and 155-31 regarding the payment of tax refunds. Additionally, there is a concern expressed by GWA's bond counsel that use of these proceeds not for GWA's benefit would violate the bond indenture.

Si yu'os ma'ase.

Senseramente,



Benita A. Manglona  
Director, BBMR  
Acting Director, DOA

Cc: All Senators



**Date:** December 17, 2010

**From:** Steve Larsen, Director, Office of Oversight

**Title:** Insurance Standards Bulletin Series--INFORMATION

**Subject:** OCIO Technical Guidance (OCIO 2010 – 2A): Process for a State to Submit a Request for Adjustment to the Medical Loss Ratio Standard of PHS Act Section 2718

**Markets:** Individual

#### I. Purpose

Section 2718 of the Public Health Service Act (PHS Act), as added by the Patient Protection and Affordable Care Act (Affordable Care Act), requires health insurance issuers (issuers) to submit a report to the Secretary concerning their medical loss ratio (MLR) and requires them to issue a rebate to enrollees if the issuer's MLR is less than the percentages established in section 2718(b). Section 2718(b)(1)(A)(ii) grants the Secretary authority to adjust the MLR standard in the individual market if the Secretary determines that application of the 80 percent MLR standard may destabilize the individual market in a State.

The interim final rule (IFR) for Health Insurance Issuers Implementing Medical Loss Ratio (MLR) Requirements Under the Patient Protection and Affordable Care Act, 75 FR 74864 (to be codified at 45 CFR Part 158), was published on December 1, 2010. The IFR establishes a process by which a State may request an adjustment to the MLR standard and sets forth the information that must be included in such a request (§§158.301 through 158.350). Sections 158.320 and 158.340(a) of the IFR specify that a State must submit the required information to the Secretary electronically. Specifically, §158.340(a) provides that the information must be submitted electronically to an address and in a format prescribed by the Secretary. This Bulletin sets forth the address and format by which a State must submit its MLR adjustment request to the Secretary.

#### II. Background

The PHS Act in section 2718(b) and the IFR in §§158.210 and 158.240 require an issuer to rebate to enrollees, on a pro rata portion, if the ratio of the amount of premium revenue expended by the issuer on reimbursement for clinical services provided to enrollees under the health insurance coverage and for activities that improve health care quality to the total amount of premium revenue (excluding Federal and State taxes and licensing or regulatory fees) is less than 80 percent in the individual market.

If the Secretary determines that application of the 80 percent MLR standard required by section 2718(b)(1)(A)(ii) may destabilize the individual market in a State, the Secretary has authority to adjust the MLR standard for that State. Sections 158.301 through 158.350 of the IFR detail the process by which a State may request an adjustment to the MLR standard. Sections 158.320 and 158.340(a) specify that a State must submit the required information to the Secretary electronically. Specifically, §158.320 provides that a State must submit the information required by §§158.321 through 158.323 in electronic format, and §158.340(a) requires a State to submit electronically, to an address and in a format prescribed by the Secretary, all of the information required by the IFR in order to request an adjustment to the MLR standard.

### III. Address and Format that States Must Use to Submit Request for MLR Adjustment

Pursuant to the authority granted to the Secretary in §158.340(a) to establish the address and format of requests, a State requesting an MLR adjustment must submit electronically its request and the information required in §§158.320 through 158.323 to the Secretary via the following electronic email address: MLRAdjustments@hhs.gov. HHS will generate an auto-response email to confirm receipt by HHS of the State's MLR adjustment request. If a State does not receive such an email confirming receipt, the State must contact HHS at (301) 492-4457 to confirm whether HHS received the State's email request.

A State submitting a request for an MLR adjustment must submit all data required by §158.321(d) to the Secretary in Excel spreadsheet format.

If, as provided in §158.340(b), a State, at its option, chooses to submit an application by overnight delivery service or by U.S. mail in addition to the mandatory submission by email, a State may submit the application to HHS, Office of Consumer Information and Insurance Oversight, Office of Oversight, attention MLR Division, Room 737F, 200 Independence Ave. SW, Washington, DC 20201.

#### **Where to get more information:**

If you have any questions regarding this Bulletin, please contact the Office of Consumer Information and Insurance Oversight, Office of Oversight, by telephone at (301) 492-4457 or by email at MLRQuestions@hhs.gov.





Dipáttamenton Kontribusion yan Adu'ána

DEPARTMENT OF

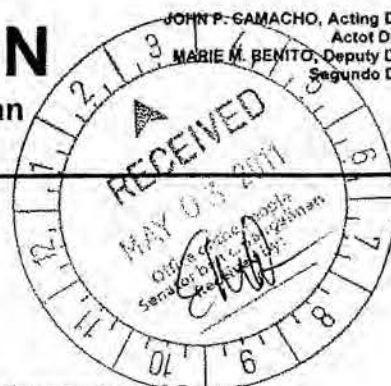
# REVENUE AND TAXATION

GOVERNMENT OF GUAM

Gubetnamenton Guåhan

EDDIE BAZA CALVO, Governor Maga'åhi  
RAY TENORIO, Lt. Governor Tifente Gubetnadot

JOHN P. GAMACHO, Acting Director  
Actot Direktot  
MARIE M. BENITO, Deputy Director  
Segundo Direktot



MAY 02 2011

The Honorable Senator Vicente (Ben) Pangelinan  
Chairman

Committee on Appropriations, Taxation, Public Debt, Banking, Insurance, Retirement, and Land

RE: AN ACT TO PRIORITIZING THE PAYMENT OF INCOME TAX REFUNDS IN ACCORDANCE WITH THE PROVISIONS OF ANNUAL APPROPRIATIONS ACTS AT A RATE PROPORTIONAL TO REVENUE COLLECTIONS BY ESTABLISHING THE "PAY INCOME TAX REFUNDS FIRST ACT OF 2011".

Buenas Yan Saludas:

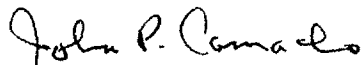
The Department of Revenue & Taxation (DRT) hereby submits written testimony regarding the aforementioned proposed legislation. At this time, DRT does not support passage of this legislation for the following reasons:

- 1) The Governor of Guam has already expressed his commitment to our island community to obtain financing so as to pay all prior year refunds and even set aside monies for upcoming years. The Governor, who is the Tax Commissioner via the Organic Act of Guam, has already undertaken steps to remedy this urgent situation. This legislation appears to usurp the Governor's authority in performing Executive Branch functions and decision making policies.
- 2) The responsibility of allocating monies for provisions of refunds has been budgeted and passed into law, however, cash flow management rests with the Director of BBMR and DOA. Amounts to be refunded are based on the cash position of the General Fund and other obligations such as vendor payments, payroll, allotments for other agencies and obligations not included in our current budget. To levy refund monies from the General Fund may further impact the efficient operation of the Government of Guam and potentially lead to furloughs, shut down, or a great reduction in Government services.
- 3) A suit has been filed in U.S. District Court of Guam attempting to certify a class action suit to recover all unpaid refunds. Actions such as this including this proposed legislation would only add additional financial burden on the General Fund as legal and court fees would be required to defend the Government's position. Imagine the Government of Guam having to pay 10% of estimated unpaid refunds of approximately \$280,000,000. This would amount to \$28,000,000 that would be directed to legal fees but could have been paid to satisfy refunds or other obligations of the Government.

- 4) Taxpayers of Guam have civil administrative remedies to obtain their refunds, even before seeking intervention by a court of law. Taxpayers can seek relief by applying for an expedited refund due to their emergency circumstance or even seek Taxpayer Advocate Assistance.
- 5) Although this legislation deals with the legislative authority in programming and mandating the use of Government funds that will be garnished for the purposes of paying out tax refunds should this legislation pass, the appropriate venue may not be the Superior Court of Guam but the U.S. District Court of Guam.
- 6) Garnishment as proposed in this form may be problematic as "A" status returns are deemed ready for processing but may be subject to offset procedures as mandated by the Guam Territorial Income Tax Laws. This proposed approach may result in the issuance of refunds without offsetting other mandated obligations.
- 7) A material portion of taxpayer refunds include unfunded provisions such as the Earned Income Tax Credit and First Time Homebuyers Credit which were never collected from taxpayer withholding deposits and are not reimbursed by the Federal Government.
- 8) The creation of an Income Tax Refund Assistance Hotline requires undetermined funding and would have to insure that taxpayer information is protected. Many estranged spouses or family members have tried to get information on refunds without consent by taxpayers.

Should you have any concerns on this matter, feel free to contact me at 635-1815.

Senseramente,

  
JOHN P. CAMACHO  
Director