

EDDIE BAZA CALVO  
Governor



RAY TENORIO  
Lieutenant Governor

Office of the Governor of Guam

32-13-1010  
Office of the Speaker  
Judith T. Won Pat, Ed. D.

NOV 27 2013

Date 11.27.13  
Time 5:11 PM  
Received by: [Signature]

Honorable Judith T. Won Pat, Ed.D  
Speaker  
I Mina'trentai Dos Na Liheslaturan Guåhan  
155 Hesler Street  
Hagåtña, Guam 96910

Dear Madame Speaker:

Attached is Bill No. 205-32 (COR), entitled, ***"AN ACT TO ADD A NEW ARTICLE 6 TO CHAPTER 77, DIVISION 2 OF TITLE 12, GUAM CODE ANNOTATED, RELATIVE TO PROMOTING ECONOMIC DEVELOPMENT BY AUTHORIZING THE ISSUANCE OF TAX CREDITS TO ENTITIES WHO ASSIST WITH THE DEVELOPMENT OF GUAM'S AGRICULTURAL AND "GUAM PRODUCT SEAL" PRODUCTS EXPORT INITIATIVE THROUGH CONTRIBUTIONS TO OFFSET SHIPPING"*** which I have vetoed.

As written, the bill entitles business entities to take tax credits against any income tax liabilities, and a portion of business privilege taxes, for revenue related to the export of qualified agricultural or Guam Product Seal products.

Tax credits against business privilege taxes are permissible. However, under Section 1421(e) of the Organic Act of Guam, income tax liabilities (referred to as the "Guam Territorial Income Tax" or "GTIT") payable to the Government of Guam, and except as manifestly otherwise required, are governed by the Internal Revenue Code of the United States, as amended ("IRC"). The IRC applies to Guam in the same manner that it applies to the rest of the United States in a process commonly referred to as "mirroring." *Sayre & Co. v. Riddell*, 395 F.2d 407 (9th Cir. 1968). The Ninth Circuit Court of Appeals has held that any deviations from the IRC as it applies to Guam is a matter that must be left to Congress, and that the Government of Guam does not have authority to amend or deviate from the GTIT. *Id.*

Thus, to the extent that Bill 205-32 seeks to exempt certain revenues from the application of the GTIT laws as mirrored in the IRC, the bill violates the Organic Act and is impermissible. See also, AG Op. DOA 07-0868; AG Op. DRT 08-0013.

My Administration fully supports local industry, and believes that the intention and goals of Bill 205-32 should be pursued. For this reason, we would be happy to work with *i Liheslatura* in

2013 NOV 27 [Signature]

1010

accomplishing the objectives of Bill 205-32 within parameters permissible by the Organic Act and the laws of Guam,

*Senseramente,*

A handwritten signature in black ink, consisting of several fluid, overlapping strokes that form a stylized representation of the name Eddie Baza Calvo.

EDDIE BAZA CALVO  
Governor of Guam

*I MINA'TRENTAI DOS NA LIHESLATURAN GUÅHAN*  
2013 (FIRST) Regular Session

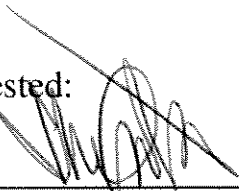
**CERTIFICATION OF PASSAGE OF AN ACT TO I MAGA'LAHEN GUÅHAN**

This is to certify that **Substitute Bill No. 205-32 (COR)**, "AN ACT TO ADD A NEW ARTICLE 6 TO CHAPTER 77, DIVISION 2 OF TITLE 12, GUAM CODE ANNOTATED, RELATIVE TO PROMOTING ECONOMIC DEVELOPMENT BY AUTHORIZING THE ISSUANCE OF TAX CREDITS TO ENTITIES WHO ASSIST WITH THE DEVELOPMENT OF GUAM'S AGRICULTURAL AND "GUAM PRODUCT SEAL" PRODUCTS EXPORT INITIATIVE THROUGH CONTRIBUTIONS TO OFFSET SHIPPING COSTS", was on the 12<sup>th</sup> day of November 2013, duly and regularly passed.



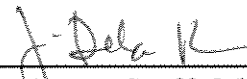
Judith T. Won Pat, Ed.D.  
Speaker

Attested:



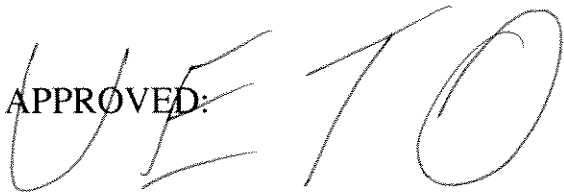
Tina Rose Muña Barnes  
Legislative Secretary

This Act was received by *I Maga'lahen Guåhan* this 15<sup>th</sup> day of Nov.,  
2013, at 11:28 o'clock A.M.



Assistant Staff Officer  
*Maga'lahi's Office*

APPROVED:



EDWARD J.B. CALVO  
*I Maga'lahen Guåhan*

Date: NOV 27 2013

Public Law No. \_\_\_\_\_

**I MINA'TRENTAI DOS NA LIHESLATURAN GUÅHAN**  
**2013 (FIRST) Regular Session**

**Bill No. 205-32 (COR)**

As substituted by the Committee on Health & Human Services, Health Insurance Reform, Economic Development, and Senior Citizens; and amended on the Floor.

Introduced by:

Dennis G. Rodriguez, Jr.  
Brant T. McCreadie  
R. J. Respicio  
Tommy Morrison  
FRANK B. AGUON, JR.  
Michael T. Limtiaco  
Chris M. Dueñas  
Michael F. Q. San Nicolas  
Vicente (ben) C. Pangelinan  
T. C. Ada  
V. Anthony Ada  
B. J.F. Cruz  
T. R. Muña Barnes  
Aline A. Yamashita, Ph.D.  
Judith T. Won Pat, Ed.D.

**AN ACT TO ADD A NEW ARTICLE 6 TO CHAPTER 77, DIVISION 2 OF TITLE 12, GUAM CODE ANNOTATED, RELATIVE TO PROMOTING ECONOMIC DEVELOPMENT BY AUTHORIZING THE ISSUANCE OF TAX CREDITS TO ENTITIES WHO ASSIST WITH THE DEVELOPMENT OF GUAM'S AGRICULTURAL AND "GUAM PRODUCT SEAL" PRODUCTS EXPORT INITIATIVE THROUGH CONTRIBUTIONS TO OFFSET SHIPPING COSTS.**

1 **BE IT ENACTED BY THE PEOPLE OF GUAM:**

2 **Section 1.** A new Article 6 is hereby *added* to Chapter 77 of Division 2,

3 Title 12, Guam Code Annotated, to read:

1 "ARTICLE 6

2 **GUAM EXPORT TAX CREDIT FOR AGRICULTURAL AND "GUAM**  
3 **PRODUCT SEAL" PRODUCTS**

4 § 77600. Legislative Findings and Intent.

5 § 77601. Definitions.

6 § 77602. Tax Credits.

7 § 77603. Maximum Amount of Tax Credits Authorized.

8 § 77604. Calculation of Tax Credit and Participatory Incentive.

9 § 77605. Approval of Contributions and Tax Credits.

10 § 77606. Miscellaneous.

11 § 77607. Equitable Distribution and Timely Issuance.

12 **§ 77600. Legislative Findings and Intent.** Guam has many  
13 impediments when it comes to international business such as customs,  
14 quarantine, immigration and shipping because of its status as an  
15 unincorporated territory of the United States, and because of our remoteness.  
16 That notwithstanding, in the early 1900s, Guam once had an agricultural  
17 industry that was developed to the extent that it supported and satisfied the  
18 requirements of Guam society with a large variety of produce. Further,  
19 production was sufficient to the extent that this local, homegrown, Guam  
20 based industry also supported opportunities in exporting. With the advent of  
21 modernization, restrictions on shipping, competition with imported  
22 processed foods, and other social economic factors, these two economic  
23 activities lost momentum and over time contributed little to nothing to  
24 Guam's economy. It is the intent of *I Liheslaturan Guåhan* that significant  
25 stimulus is required, and should be dedicated, to re-develop Guam's  
26 agricultural export market, as well as the economic development of markets  
27 for local Guam Product Seal exports.

1           It is the consensus of *I Liheslaturan Guåhan* that the issuance of tax  
2 credits to entities who assist with the development of Guam’s export  
3 initiative through contributions that offset shipping costs is a vital incentive  
4 for the creation and sustainability of this new and developing economic  
5 sector. By allowing tax credits for export transshipment, Guam producers  
6 will be able to offset one of the largest costs prohibiting the pursuit of  
7 profitable exportation, expansion into new markets, and the ability to  
8 provide competitive pricing. The tax credits will surely promote export  
9 activity by mitigating one of the key cost components of doing business  
10 abroad, thus providing a competitive edge on product pricing regionally, as  
11 well as in the global marketplace.

12           Currently, there is little to no tax revenue generated from the sale of or  
13 shipping of commodities for export. The tax credits will provide the added  
14 incentive for the renaissance of Guam’s agricultural sector and Guam  
15 Product Seal products by refocusing collaborative efforts and providing new  
16 market opportunities, and a new, broader-based, economic stimulus.

17           With increased opportunities abroad, Guam exports will prove to be  
18 more attractive and lucrative which, in turn, will increase manufacturing  
19 activity, create more jobs and preserve cultural socioeconomic activities.

20           With the award and success of the State Trade and Export Promotions  
21 grant in 2011 and 2012, the Guam Economic Development Authority has  
22 conducted extensive research in the area of exporting and has set the  
23 groundwork to develop this initiative; and has identified that this tax credit is  
24 crucial to the success of this new developing industry. It is the intent of *I*  
25 *Liheslaturan Guåhan* that further economic development efforts are taken to  
26 promote Guam’s local businesses through the export of its Guam Product  
27 Seal and agricultural products.

1           **§ 77601. Definitions.**

2           As used in this Article:

3           (a) *Contributions shall* mean and can be made either as the  
4           sponsorship of shipping costs, applying preferred shipping rates, or  
5           the discount provided by transshipment companies solely for shipping  
6           charges related to the exportation of agricultural products and/or  
7           produce, and certified Guam Product Seal products.

8           (b) *Export shall* mean, for the purposes of this Article, the  
9           business activity where an item or service produced on Guam is  
10          purchased by foreign dollars.

11          (c) *Shipping costs shall* mean the normal, posted and actual  
12          cost of shipping freight, as would normally occur when conducted  
13          without sponsorship, preferred shipping rates and/or discounts. This  
14          *does not* include fees and taxes that are *not* retained by the company  
15          or third party charges.

16          (d) *Discounted shipping cost shall* mean the normal, posted  
17          and actual cost of shipping freight, minus the sponsored, preferred  
18          shipping rate, or discounted price charged for qualified freight as  
19          provided pursuant to this Article.

20          (e) The applicable *tax credit value shall* mean the difference  
21          between the shipping cost and the discounted shipping cost actually  
22          charged for the export of qualified products.

23          (f) *Transshipment shall* mean the shipment of goods to  
24          another destination via air or ocean, and *shall* include, when  
25          applicable, to change the means of transport during the journey (for  
26          example from road transport to air transport), known as trans-loading,

1 and/or to combine or consolidate small shipments into a large  
2 shipment (consolidation).

3 (g) *Agricultural produce and/or products shall* mean, but *not*  
4 be limited to, plant produce and products (packaged, canned and/or  
5 otherwise preserved as necessary), as well as live seedlings, plants and  
6 trees manufactured or grown on Guam. The meaning *shall* also  
7 include meat products (packaged, canned and/or otherwise preserved  
8 as necessary), as well as living livestock, and aquaculture products  
9 (packaged, canned and/or preserved as necessary), and living aquatic  
10 species.

11 (h) *Guam Product Seal products shall* mean those domestic  
12 products made on Guam, as provided pursuant to Chapter 50, Article  
13 2, of this Title.

14 (i) *The Authority or GEDA shall* mean the Guam Economic  
15 Development Authority.

16 (j) *Contributors shall* mean Guam sole proprietorships,  
17 partnerships, limited liability companies, and corporations licensed to  
18 do business on Guam that make qualifying contributions as set forth  
19 in §77601(a).

20 (k) *Business privilege tax shall* mean the business privilege  
21 tax imposed by §26201 of Article 2, Chapter 26 of Title 11, Guam  
22 Code Annotated.

23 **§ 77602. Tax Credits.**

24 (a) Guam sole proprietorships, partnerships, limited liability  
25 companies and corporations conducting business in the areas of air  
26 cargo, ocean shipping or transshipment, which shall be duly licensed  
27 to conduct business on Guam, *shall* be entitled to tax credits against



1 any income tax liabilities, and a portion of the business privilege taxes  
2 levied against the contributor for those revenue portions of the  
3 business activity related *solely* to exporting qualified freight (§77601  
4 (g) and (h)) from Guam. All tax credits referred to in this Article  
5 *shall* mean tax credits applied against income tax and business  
6 privilege tax liabilities incurred for the tax year the contribution was  
7 made, and as further provided pursuant to this Section.

8 (b) Effective Date and Applicability of Tax Credits. The  
9 provisions of this Act *shall* take effect on the first day of the  
10 succeeding month after enactment into law. Offsets on taxable  
11 amounts *shall* be effective beginning in Tax Year 2013, and annually  
12 thereafter.

13 (c) Qualifying Exports. The issuance of tax credits for  
14 contributions made pursuant to this Article *shall only* be applicable to  
15 the categories of products defined pursuant to §77601(g) and (h).

16 **§ 77603. Maximum Tax Credits and Participatory Incentive.**

17 The tax credits authorized *shall* include utilization for income tax and/or  
18 business privilege tax liabilities, as further provided:

19 (a) Income Tax Credit. The aggregate maximum amount of  
20 tax credits authorized for utilization for income tax liability offsets  
21 *shall not exceed* Five Hundred Thousand Dollars (\$500,000) per year,  
22 which *shall* be limited to Fifty Thousand Dollars (\$50,000) per  
23 exporting vendor of products, as defined by §77601(g) and (h) of this  
24 Article, per year. The utilization of tax credits in excess of this  
25 amount, for future tax years, *must* be reviewed by the Authority's  
26 Compliance Division, and approved by the Department of Revenue  
27 and Taxation.

1 (1) As an incentive to promote participation utilizing  
2 income tax credit offsets, the additional amount of twenty  
3 percent (20%) *shall* be added to the base tax credit value, which  
4 *shall* then be the amount of the tax credit to be issued.

5 (2) The added twenty percent (20%) incentive *shall*  
6 *not* apply to the calculation and issuance of business privilege  
7 tax credits.

8 (b) Business Privilege Tax Credit. The maximum amount of  
9 tax credits authorized for utilization for tax-offsets for each  
10 contributor *shall not* exceed Two Hundred Fifty Thousand Dollars  
11 (\$250,000) per tax year. As an added incentive to promote  
12 participation at the onset, an additional amount of up to, but *not to*  
13 *exceed*, One Hundred Thousand Dollars (\$100,000) *shall* be added,  
14 annually, to the tax credit value cap. The application of the added  
15 incentive *shall* expire December 31, 2015, and, thereafter, the  
16 maximum amount of the tax credit authorized to be issued *shall not*  
17 *exceed* Two Hundred Fifty Thousand Dollars (\$250,000) per tax year.  
18 The additional incentive *shall* be applied on an increasing,  
19 proportionately graduated basis commensurate with the amount of the  
20 contribution.

21 (1) The added One Hundred Thousand Dollars  
22 (\$100,000) incentive *shall not* apply to the calculation and  
23 issuance of income tax credits.

24 **§ 77604. Calculation of Tax Credit.** The tax credit value in  
25 §77601(e) *shall* be the basis from which the tax credit to be issued is  
26 calculated for a qualified contribution. The applied credit amount will be a  
27 dollar for dollar match of the contribution to the corresponding tax credit.

1 (a) The Authority, in conjunction with the Department of  
2 Revenue and Taxation, *shall* annually determine the maximum  
3 amount of business privilege tax credits which may be authorized for  
4 utilization for tax liability offsets, as provided pursuant to this Article.

5 (b) The Authority *shall* submit annually, to *I Maga'laha*  
6 *Guåhan* and the Speaker of *I Liheslaturan Guåhan*, the determination  
7 by the Authority and the Department as to the aggregate sum of  
8 available business privilege tax credits determined to be available as  
9 BPT offsets for contributions.

10 **§ 77605. Approval of Contributions and Tax Credits.** The  
11 GEDA Business Development Division, or its designee, *shall* be responsible  
12 for providing to the Department of Revenue and Taxation an approved list of  
13 agricultural producers and eligible Guam Product Seal holders. The  
14 Department of Revenue and Taxation *shall* review requested tax credits, and  
15 *shall* subsequently authorize the tax credits for requests found to be  
16 compliant with this Article.

17 **§ 77606. Miscellaneous.**

18 (a) The tax credits authorized by this Article *shall* be subject  
19 to the following conditions:

20 (1) Approved tax credits can be applied in amounts,  
21 which *shall not exceed* Two Hundred Fifty Thousand Dollars  
22 (\$250,000) in a single tax year, *except* during the initial  
23 incentivized period up to December 31, 2015.

24 (2) To be eligible for the tax credits authorized by this  
25 Article, contributors must be licensed to do business on Guam.

1                   (3) Agricultural producers and Guam Product Seal  
2 holders must register at the Guam Economic Development  
3 Authority, and must be in full compliance with the programs.

4                   (4) Any credit against the business privilege tax, as  
5 authorized herein, *shall only* apply to the unpledged portion of  
6 the business privilege tax (currently one percentage point of the  
7 current four percent business privilege tax rate). The credit  
8 *shall not* apply to the first three percentage points of the  
9 business privilege tax, so as *not* to violate the government's  
10 covenants to bondholders of the Government of Guam Business  
11 Privilege Tax Bonds, Series 2011A, Series 2012B and Series  
12 2013C authorized through P.L. 31-76, P.L. 31-196 and P.L. 31-  
13 276.

14                   (b) This Article *shall not* be applicable to any product,  
15 *except* as *solely* identified pursuant to Subsections (g) and (h) of  
16 §77601 of this Article. Any imported product shipped to and landed  
17 on Guam *shall not* qualify as a Guam product for subsequent export  
18 which qualifies for a tax offset. This exclusion *shall* be applicable to  
19 all entities licensed to do business on Guam, and *shall* preclude them  
20 from trying to qualify any imported product as a Guam product  
21 pursuant to this Article, which is *solely* intended for legitimate Guam  
22 products; and further, *shall* also prohibit, at a minimum, the  
23 registering and/or re-registering, packaging and/or repackaging,  
24 labeling and/or relabeling, branding, and/or by any other means trying  
25 to identify any imported product as a Guam product, so as to  
26 circumvent the spirit and intent of this Article.

1           **§ 77607. Equitable Distribution and Timely Issuance.** The  
2 Authority, in consultation with the Department of Revenue and Taxation,  
3 *shall* develop an equitable and timely process pursuant to which:

4           (a) the availability and equitable distribution of the tax  
5 credits are provided for, and ensures maximum participatory access  
6 for all Guam product exporters seeking contributors; and

7           (b) the issuance of the tax credits authorized is expedited to  
8 the extent practicable.”

9           **Section 2. Sunset Provision.** This Act *shall* remain in effect for a term of  
10 ten (10) years, at the expiration of which period, this Act *shall* automatically be  
11 deemed repealed. Upon expiration, any outstanding tax credit balances due  
12 contributors *shall* remain valid and enforceable for utilization to offset tax  
13 liabilities for an additional period until exhausted.

14           **Section 3. Severability.** *If* any provision of this Act or its application to  
15 any person or circumstances is found to be invalid contrary to law, such invalidity  
16 *shall not* affect other provisions or applications of this Act which can be given  
17 effect without the invalid provisions or applications, and to this end the provisions  
18 of this Act are severable.

19           **Section 4. Effective Date.** This Act *shall* become effective upon  
20 enactment.