



Office of Sen. Barnes  
RECEIVED

September 23, 2016

The Honorable Tina Muña Barnes  
Senator, 33<sup>rd</sup> Guam Legislature  
155 Hesler Place  
Hagatna, Guam 96910

RE: P.L. 33-66

Dear Senator Barnes,

a 9/23/16 3:50p  
INITIALS 33-16-204  
Office of the Speaker  
Judith T. Won Pat, F.D.D  
Date: 9/23/16  
Time: 4:50 PM  
Received By: [Signature]

*Hafa Adai.* Recently you asked the Guam Visitors Bureau (GVB) for details concerning GVB contracts, which might be affected by Public Law 33-166. This law is an attempt by the Legislature to capture from non-resident government contractors the equivalent of the 4% Business Privilege tax on gross receipts paid by all entities residing and doing business on Guam. This law requires government agencies to withhold 4% of the total value of a government of Guam contract and pay that amount over to the Treasurer of Guam and the General Fund. See *Public Law 33-166 at §2, ¶(b)*. Additionally, the law states, "[t]his section shall apply as a mandatory requirement of a government of Guam contract being awarded to provide professional services required by any government of Guam agency, to include all government agencies." *Id.*

As you know, the Bureau is not an instrumentality of the government of Guam. This is the opinion of the United States District Court for Guam, the Court of Appeals for the Ninth Circuit and the Guam Supreme Court. See, for example, *Bordallo v. Reyes*, "[t]he district court thus concluded that because the Legislature had expressly designated four public corporations as instrumentalities of the government, it did not intend the same characterization to apply to other public corporations, not so designated. Consequently, the Bureau was not a governmental entity since it had not been expressly designated as such. We agree with the district court that the Bureau was not an instrumentality of the government." *Id.*, 763 F.2d 1098, *emphasis added* (9<sup>th</sup> Cir., 1985). "It is clear, then, that the Governor lacked independent authority to create the Guam Visitors Bureau as a governmental instrumentality. It was against this backdrop that the District Court concluded that the Bureau was a non-profit organization, as originally set forth by the Guam legislature in section 38003 of the government code, and was not a public entity. We conclude that the District Court's construction of Guam law is tenable and sound and cannot be held manifestly erroneous. Accordingly, we hold that Laguana was not a public employee entitled to protection from patronage dismissals." *Laguana v. GVB*, 725 F.2d 519 (9<sup>th</sup> Cir., 1984). The Guam Supreme Court follows these precepts. See *GEDA and GVB v. Island Equipment Co.*, 1998 Guam 7, *emphases added* (Guam, 1998), "From the reasoning of *Laguana* and *Bordallo*, GEDA, as well, should be treated as a public corporation, but not an instrumentality of the government. Neither GEDA nor GVB is an instrumentality of the government exercising governmental functions." With this in mind, and noting that Public Law 33-166 applies to government of Guam

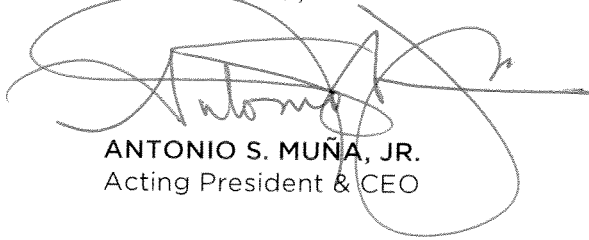
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contracts, it is GVB's opinion that the 4% assessment fee called for in this new law does not apply to the GVB. I would note however that all contractor's doing business with the GVB are required to pay any applicable tax. This would of course include the Business Privilege tax when required.

*Senseramente',*

A handwritten signature in black ink, appearing to read 'Antonio S. Muña, Jr.', is written over a horizontal line. The signature is stylized and somewhat cursive.

**ANTONIO S. MUÑA, JR.**  
Acting President & CEO