

Mr. Franke indicated that personnel who used to be in charge of the water park at the Pacific Islands Club had inquired into the tax, and was informed by previous personnel of the Department of Revenue and Taxation that they were not going to apply the tax. Today, the tax would be applied to the water park. Mr. Franke indicated that no one can operate a business unless they know to whom the taxes apply.

Senator Nelson inquired whether those who had gone down to the Department could resolve this issue. Deputy Director Aguon indicated that the Department is glad to talk to any party about their taxes.

Senator Nelson indicated that the publicity may be more harmful than the tax to be paid.

Chairman Gutierrez inquired of Director Blaz whether the Director could forgive the payment of back taxes to Atlantis and that would not be "special interest", yet the Legislature cannot pass a law such as the proposed on, but that it would be "special interest". Director Blaz indicated that they could administer the law prospectively. Chairman Gutierrez indicated that that would only apply to the Director's memo, and not to a law, and isn't that "special interest" application of a law?

Senator Bamba then remarked that the legislation proposed is not for Atlantis Guam, only that that was the first company that had encountered the new change of policy. Senator Bamba indicated that it is a policy decision on whether to apply this tax to the tourism industry as a whole.

Senator Bamba inquired of Mr. Kloppenburg how much percent of the average tour package cost is due to taxes. Mr. Kloppenburg responded that there are so many brands that that is difficult to answer, other than upwards of Thirty Percent (30%) would go into taxes of some kind or another. The activities are taxed at various levels. Although the hotels have qualifying certificates exempting them from some taxes Through the Guam Economic Development Authority, the tour operators have no such exemption. Mr. Kloppenburg indicated that the increase in cost to the attractions would make it so that the tourist would opt not to go to those attractions, but would go to places where it is more economical.

Senator Bamba would like to develop the information on how much of the tourist cost is due to taxes.

Senator Bamba clarified from the Director that all activities except taxis and buses would be taxed under the present interpretation of the tax provision.

Senator Bamba clarified from Mr. Franke that the bill would help Atlantis Guam, except for the window of exposure because of the retroactive portion. Director Blaz indicated that that is not a problem.

Senator Manibusan clarified from Director Blaz that he had said that the Department had failed to collect the tax. She indicated that she was supportive of the bill at first, but now questioned whether the common taxpayer has the luxury of disputing a tax which is suddenly levied or assessed against an individual, and which was previously not levied or assessed. She brought up the various problems that can come up with a common taxpayer who does not pay their taxes. She indicated that aggressive tax collection is doing the job of the Department. Enforcing the law is doing what the law requires. If the Department admits that it did not do its job, then who is the legislature to clarify the law. Should a special group of people be catered to because of the class of people, or should the courts interpret this matter if the law is clear. Do criminal sanctions apply in this case.

Senator Manibusan points out that the Department does not change its position and does not tell the common taxpayer that there has been a misinterpretation.

Director Blaz pointed out that certain circumstances require certain actions. In this case, where the Department failed also, it would not be appropriate to go into criminal sanctions.

Director Blaz said that there was no reason that the Department did not do its job. It just didn't do its job in collecting this tax.

Senator Manibusan indicated that Atlantis Guam has recourse in court. The bill would not eliminate the need to go to court.

Mr. Franke summarized that for so many years the tax provision was in effect, and the greatest amount of taxes collected was \$250,000. The issue is that it is a policy decision, and what message is sent out now is important. What should be the tax policy for the territory is the issue. Mr. Franke indicated that they are now disputing a tax policy that they don't know what it is.

Discussion ensued that the common taxpayer does not understand what is going on here regarding the tourism industry.

Mr. Sgro interjected comments regarding statutory construction. He pointed out that the word "place" is difficult to define, and gave examples of various events that an Admission Tax could apply. The term is vague.

Senator Arriola then indicated that she felt that a listing of events or occasions should be put out so that the community knows what is taxed and what is not. If the Department is not really going to clarify this, then abolish the whole thing.

Senator Arriola commended the Director regarding the projects that he indicated in his testimony would be funded with extra revenue, namely the civic center and the sports complex.

Senator Arriola pointed out that the gambling ships would be exempted under the present language of the bill, and she is not in favor of that. She expressed that Guam is not able to cope with the problems that can arise from gambling ships.

Mr. Franke summarized that the federal government took 48 years to repeal their law because it was unworkable. Guam is a little wiser, because it has only taken us 33 years. Mr. Franke recommended that Guam follow the result taken by the federal government, and that Guam look to the Tax Code Commission for a solution.

Deputy Director Aguon indicated that in their Department tax laws are enforced by revenue agents. He indicated that the Department is going to show initiative in regard to the tax laws, and if there needs to be clarification of tax laws, it should be done now.

Senator Pangelinan then stated that if the point of the bill is to exempt the tourism business from paying the tax, and that the local people continue to pay the tax, then he recommends that the tax be eliminated altogether, so that there is no ambiguity.

Chairman Gutierrez indicated that \$247,000 was collected, now about \$200,000.

Chairman Gutierrez stated that probably the logical thing to do is to do away with the tax.

COMMITTEE ACTION

The Committee on Ways and Means, after consideration of the testimony offered at the public hearing, decided that the revenues collected so far from the Admission Tax were only in the neighborhood of \$250,000 on an annual basis, and that the definitions in the law are so vague that the law is difficult to apply to various new businesses on island which were not contemplated at the time of the passage of the original law.

The Guam Tax Code Commission is tasked with deriving an appropriate income tax for Guam and with examining the effects of various taxes on the revenues. A different tax may be imposed which is easier to administer and interpret, and more beneficial to the territory, at a later time. The Committee decided that the best course of action is to repeal the Admission Tax at this time, rather than amend it by inserting definitions or any other type of change in the provisions.

COMMITTEE RECOMMENDATION

The Committee on Ways and Means wishes to report out **Bill 302** to the full legislature to do pass, as **Substituted**.

Bill No. 302

Introduced by:

Aguon

C.T.C. Gutierrez
J.P. Aquon

AN ACT TO REPEAL AND REENACT §§22301 AND 22302 OF TITLE 11, GUAM CODE ANNOTATED, TO CLARIFY THE ORIGINAL INTENT OF THE IMPOSITION OF THE ADMISSION TAX, FIRST ENACTED IN SECTION 19201 OF THE GOVERNMENT CODE.

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

2 Section 1. (a) The first sentence of §22301 of Title 11, Guam Code
3 Annotated, is deleted and rendered of no further effect, and the following
4 new first sentence is §22301 of Title 11 substituted therefor:

5 "Commencing on the effective date of this Chapter, there is hereby
6 imposed a tax of one cent (\$.01) for each ten cents (\$.10) or major
7 fraction thereof of the amount paid for admission to a place where
8 amusement or entertainment is provided, including admission by
9 season ticket or subscription."

10 (b) §22302 of Title 11, Guam Code Annotated, is deleted and rendered of
11 no further effect, and the following new §22302 of Title 11 substituted
12 therefor:

13 "§22302. Definitions. As used in this Article:

14 (a) 'place' is defined as:

15 (1) any fixed and stationary building, amphitheater, stadium,
16 arena, or similar structure, whether permanent or temporary,
17 or

18 (2) real property

J.P. Aquon

1 (b) 'An amount paid for admission to a place where amusement or
2 entertainment is provided' includes charges incurred for the right or
3 privilege to have access to a place to observe

4 (1) either an event or a performance within the premises, or

5 (2) scenic beauty located within the premises.

6 'An amount paid for admission to a place where amusement or
7 entertainment is provided" does not include any charges incurred for
8 the experience of participating in or actively engaging in any form of
9 amusement or recreation."

10



DEPARTMENT OF

REVENUE & TAXATION

GOVERNMENT OF GUAM

JOSEPH F. ADA
Governor

FRANK F. BLAS
Lieutenant Governor

JOAQUIN G. BLAZ, Director • V.M. CONCEPCION, Deputy Director

MAR 04 1993

Honorable Carl T.C. Gutierrez
Chairman, Committee on Ways & Means
155 Hesler Street
Pacific Arcade
Agana, Guam 96910

Dear Senator Gutierrez:

I thank you for the opportunity to testify on Bill No. 302, an Act which seeks to clarify the original intent of the imposition of the Admission Tax.

I regret that the issue of the tax is before the legislature today. I have settled tax disputes in-house or in court in the past and shall continue to do so in the future. I believe that in this matter we must allow the legal process to take its course.

If the retroactive application of the tax is striking fear into the optional tour industry, let me allay those fears by saying that those in the industry who approach the Department with a plan for the prospective application need not fear assessments of admission taxes. I shall be happy to meet with any representatives of the industry to settle the matter in a manner that will not harm the industry.

While I have not seen the committee report on the original act, I suspect the intent of the act was to raise revenue for our local government. Some have argued that the original drafters could not have meant to tax mobile entertainment facilities as these facilities did not exist at the time of the passage of the act. If this be true, then it follows that they could not have meant to exempt this particular industry from the application of the tax either. Furthermore, the drafters of our gross receipts law could not have envisioned the sale of personal computers, yet the tax is paid on these sales as well as many other business transactions the original drafters could not have envisioned. Do we now exempt businesses simply because their advent was unforeseen? Of course not. The taxes should apply.

While the intent of your legislation is to clarify the law, should it pass in its present form, it would be treated as an amendment to the present statute and shall apply prospectively.

There is also an apparent public misunderstanding upon whom the admissions tax is imposed. The admissions tax is imposed on the person seeking to be admitted, and not on the entity granting the admission. The entity granting the admission has the obligation only to collect the tax and pay it over to the Government of Guam. Therefore, the tax is not a direct burden on the entity granting the admission. Any indirect or residual burden on the entity granting the admission as a result of the imposition of the tax is obviously not a concern of the bill because the bill does not seek to repeal the admissions tax nor does it seek to reduce the tax rate.

Our review of Bill No. 302 shows that it would severely weaken the existing statute. As you well know, the Department of Revenue and Taxation took the initiative in asserting the tax and applying the tax upon certain so called mobile entertainment facilities. We took an aggressive posture in applying the Admission Tax, not because of sagging revenues as some in our community believe but because we felt strongly that the tax does apply to these facilities.

As your tax enforcement arm we were compelled to act as we did. Aggressive tax enforcement is in the best interest of the people of Guam and is indeed our job. We take pride in the work we do. We take strong exception to being labeled as arrogant simply because we take our role as tax enforcers seriously.

Whether this bill becomes law in its present form or not, I assure you that the Department of Revenue and Taxation shall maintain an aggressive posture in collecting the tax for the people.

We understand that the tourism industry drives our local economy. We understand and appreciate the fact that government salaries are at their present level in large part because of tourism. We understand that the People of Guam want to continue to enjoy the sweet fruits of this industry. We understand that our government should nurture and protect this vital industry whenever it can. But let us all understand that when the industry first came to Guam, our People exposed themselves to the inevitable changes the industry would bring with it. Now as partners in progress, our island and all who live and visit here must shoulder the burden of progress. We must all pay our fair share.

Our government has extended rebate certificates to many in the tourism industry as an inducement to locate here. Corporate rebates amount to millions annually. Guam proved to be a good risk for most of the investors who put their money into Guam's future.

Tourism has proven to be good for Guam as Guam has proven to be beneficial for those in tourism. Now our futures are inextricably linked. We cannot afford the view that the industry is not a part of our community. As members of our community they must contribute to society just as all of us do. I believe they have and we together will continue to do so. Would you have us believe that tourism is inviolate? Should we turn our attention away whenever a question of tax obligations is put forth? I do not believe that you want to convey that message to us.

Average collections by the Department of Revenue and Taxation of admission taxes were about \$200 thousand for fiscal years 1990 to 1992. We expect this amount to increase to as much as \$4 million annually should our position be maintained. I do not believe that this increase would be an onerous burden upon the local optional tour industry. In fact, I do not see it as an onerous burden as other entertainment businesses have been paying over the tax to the government for years.

The claim that the admission tax will adversely affect tourism and eventually destroy the industry is bogus. The average anticipated admission tax revenues should our position prevail is estimated at Three to four million dollars annually. The anticipated number of visitors is approximately 700,000 based upon a review of data from the 1991 Guam Annual Economic Review. This equates to an admission tax of only \$5.43 per visitor. It is difficult to perceive then how this tax could in any way negatively impact tourism. Moreover, it is not an unreasonable presumption that the imposition of an admissions tax which averages just over 5 dollars per person would not have a deleterious impact on a tourist's decision to visit Guam.

We do not wonder why you choose language in the bill that would tend to weaken rather than strengthen this statute. Of course we must maintain and nurture tourism. However, I call upon all those who would testify today on Bill 302 to join me in asking this legislature to strengthen the law. I ask this as I firmly believe that the Admission Tax need not be an onerous burden upon the industry. One wonders, however why the language of the act is exclusionary, exempting a particular segment of our population from the tax. It could just as easily have been inclusionary. I don't believe that the tourism industry is an unassailable segment of our

community. I believe that they wish to be and are contributing members of our community.

There are several facilities that need funding that the Admission Tax may be earmarked. Our island needs a recreational sports complex and a Fine Arts facility for many reasons which I shall not go into now. By strengthening the law we may very well have both of these facilities in a short time.

There is no doubt that the Government of Guam needs revenues just as the tourism industry needs assistance at this time. May I suggest a compromise? I have never felt that tour bus operations should be subject to the Admission Tax. I feel so as these operations provide basic transportation and not amusement per se. However the statute may be misinterpreted to apply to the tour bus operations. If any changes are to be made to the present statute, perhaps this would be the appropriate change. I also feel that the rate may be reduced uniformly to all activities covered by the tax. However I feel also that Subsection (c) of Section 22303 Guam Code Annotated must be repealed.

In order to strengthen the Admission Tax statute, I offer the following language:

Section 22301. IMPOSITION

Commencing on the effective date of this Act, there is hereby imposed a tax of one cent (\$.01) for each twenty cents (\$.20) or fraction thereof of the amount paid for admission to any place, including admission by season ticket or subscription. The tax imposed by this Section shall be paid by the person paying for such admission.

Section 22302. Definitions. As used in this Article:

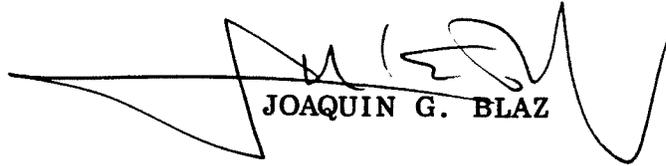
- (a) A place is defined as any fixed or mobile area enclosed or otherwise.
- (b) An amount paid for admission shall include charges for the right or privilege to enter any place where entertainment or amusement is provided by the person charging admission but shall not apply to bus or taxi operations wherein transportation is the primary service or use provided by such operations.

It has been reported that many in the tourism industry are concerned over the application of the Admission Tax to their operations. While we have extended an invitation to them to discuss the matter with us, only a few have actually done so. The fear of huge tax bills created by the recent sensationalism may

have caused this. I want all of them to know that I am a reasonable man who at times can be persuaded to come to reasonable terms. My invitation still stands.

I hope you incorporate my language into Bill No. 302 as I am strongly against the bill in its present form.

Sincerely,



JOAQUIN G. BLAZ

JGTA

JAPAN GUAM TRAVEL ASSOCIATION

March 04, 1993

SENATOR CARL T.C. GUITERREZ
CHAIRMAN, COMMITTEE ON WAYS AND MEANS
22ND GUAM LEGISLATURE
155 HESLER PLACE
AGANA, GUAM 96910

Dear Mr. Chairman;

The following testimony is submitted to provide this committee with an accurate assessment of the state of Japanese Tourism on Guam.

Last year the Japan Guam Travel Association (JGTA) membership was responsible for the arrival of approximately 590,454 visitors to Guam from Japan.

This year we can expect a decrease of about 110,454 visitors from our membership companies, bringing our estimated arrivals for 1993 to 480,000 visitors.

During the months of January and February of this year, our visitor arrivals decreased 20% despite the cooperation of the Airlines and Hotels, who discounted their fares 50%. We offered a Special \$320.00 two (2) night, three (3) day package to Guam for the months of January, February, and March of this year and we are still down 20%. Without that Special Price we predict we would have had closer to 40% fewer visitors from the previous year arrivals.

We believe your economist will substantiate these figures when they complete their assessments of the collection of revenues from the 13% Hotel Occupancies Tax, 4% Gross Receipt Tax, and Quarterly Estimated Income Tax. The loss of just one (1) visitor to Guam from Japan represents the loss of anywhere from \$500.00 to \$1,100.00 to the economy of Guam. Multiply that times 110,454 visitors!

JGTA

JAPAN GUAM TRAVEL ASSOCIATION

This decrease in visitors arrivals is a direct result of two things. The state of the Japanese Economy and Increased Competition.

Everyone is familiar with the current economic woes of Japan and even though our economy is expected to rebound during the second half of 1993, that positive impact will not be felt for another six months in the travel trade.

Even more damaging may be the aggressive attitudes of other markets, especially Hawaii. With Hawaii's downturn in visitor arrivals from the U.S. Mainland, they have turned towards Japan with a vengeance. Visitor arrivals to Hawaii from Japan are up 20%. This is primarily due to two (2) factors, Hawaii is campaigning very heavily in Japan and it now cost 30% less to travel to Hawaii from Japan today than it did a year ago.

We cannot even begin to discuss all of the long term effects of reduced visitors to Guam, however, we can emphasize that industry wide lay-offs will be felt almost immediately. As you know, it is the Japanese custom not to lay employee's off but to hold on to them as long as possible. Unfortunately in todays economic environment that luxury is no longer always possible. Some of our Overseas Branch Offices have already begun both, laying off local help and recalling Japanese personnel back to Japan to reduce cost. These offices are located primarily on what is known as the long haul routes, which are currently suffering the most. It is inevitable that this will begin to occur on Guam unless visitor arrivals stabilize at current levels.

We work very hard to sell Guam. Customers don't come running to us to sign up to get here. We go after them, along with every other destination in the world. Guam sells for two reasons. Proximately to Japan and a Inexpensive Destination. We and Guam can not afford to lose that reputation, we must continue to be mindful of what got us here.

To that end, we respectfully request that you consider any legislation that will minimize or prevent any further

JGTA

JAPAN GUAM TRAVEL ASSOCIATION

taxation of tourism related activities. In fact, it is our opinion that a reduction of the 13% Hotel Occupancy Tax to 10% would go a long way towards all of our goals to continually increase Guam visitors from Japan.

Thank you for this opportunity to present our views on increased Tourism Taxation

Sincerely,



HIDEO KOBAYASHI

President

JAPAN GUAM TRAVEL ASSOCIATION



ATLANTIS GUAM, INC.

AQUA WORLD MARINA, PITI

Mailing: P.O. Box 10598 Tamuning, Guam 96931

Tel: (671) 477-6534 • RSV: (671) 477-4166 • FAX: (671) 477-4171

"The Underwater Adventure of a Lifetime"

ATLANTIS GUAM, INC.

WRITTEN TESTIMONY IN RE BILL 302

AMENDMENT OF DEFINITION OF ADMISSION TAX LAW (11 GCA, CH. 22, ARTICLE 3, §22301 & §22302)

ISSUE

By P.L. 6-44, the Legislature in 1961 adopted a law requiring a ten percent (10%) admissions tax to be paid by the consumer for admission into any place. The Department of Revenue and Taxation (hereinafter "Rev/Tax") never promulgated rules and regulations for the application of this law and, for some thirty (30) years, consistently applied the law to a limited number of activities. In 1992, Rev/Tax expanded its interpretation of the application of the admissions tax law on an *ad hoc* basis without benefit of the development of rules and regulations and has attempted to apply its new interpretation retroactively.

Such arbitrary and capricious action by Rev/Tax has caused uncertainty throughout the business community (and even on the part of Rev/Tax itself as evidenced by the numerous conflicting interviews and media releases) as to what certain tax laws of the territory of Guam are, how they are to be applied, and what businesses are subject to the tax. Despite Rev/Tax's contradictory public position as to the applicability of the admissions tax law, it has yet to promulgate a definitive set of guidelines which clearly explain how this "broad. interpretation" is to be applied and the authority for such an expansive application.

This necessitates action by the Legislature to clarify and define these tax laws and how they are to be applied. This will promote the efficient and prompt collection of valid taxes as well as guaranty that all taxpayers will be given adequate notice of their tax obligations. The ability of Rev/Tax to proclaim by fiat a new and expanded application of the tax laws, after some 30 years of consistent application, and then seek retroactive application, is a fundamental assault on our system of government that mandates due process and equal protection of the law in the application of and collection of taxes.



DISCUSSION

In 1917, the federal government adopted a wartime excise tax of ten percent (10%), and based its application upon the act of being admitted to any place. In 1949, the U.S. Supreme Court in Wilmette Park District v. Campbell, 338 U.S. 411, 94 L.Ed 205, 211, adopted a liberal construction of "place", rejecting the argument that the policy of the tax was to reach only entertainments or entertainment events.

Congress repealed the admission tax laws in 1965 because of very difficult problems in determining precisely under what conditions the tax would apply, notwithstanding the broad application of Wilmette Park District, supra, and specific Federal Treasury Tax regulations and rulings of the Internal Revenue Service.

In 1961, (P.L. 6-44), the Legislature adopted §22301 and §22302, which are virtually identical to the federal statutes. Unlike the federal government, the Department of Revenue and Taxation (hereinafter "Rev/Tax") has never implemented regulations, issued rulings, or adopted federal treasury rulings defining the application of the law. Rather, in September of 1992, Rev/Tax had a revenue agent draft a "legal opinion" that the admissions tax applies to Atlantis Guam, Inc. (See copy attached as Exhibit "A"). A cursory reading of this "legal opinion" indicates that no legal authorities were cited nor apparently relied upon and that it is based upon the writer's interpretation of what is and is not implied by the law.

Based upon this "legal opinion" Rev/Tax found that Atlantis Guam was in violation of the admissions tax law and applied the September 1992 "legal opinion" retro-actively for three years, resulting in a figure in excess of \$6,000,000.00 for back taxes, interest and penalties. In December of 1992, Rev/Tax issued a Notice of Assessment to Atlantis Guam.

Since the December assessment, Rev/Tax has taken a pro-active public stance in the defense of its position in various elements of the media, as well as the most unusual step of issuing a press release to "All Media". A review of the publicity campaign of Rev/Tax as follows, indicates that the position of Rev/Tax is built upon an ever shifting foundation of sand which mandates the need for legislative intervention:

1. September 1992 "legal opinion": Substitute the words "bus", "taxi", "rental car", "dive boat", "dinner cruise

boat", "jet ski" etc. for submarine and the word "operates" for submerges and the words " a view of the flora and fauna of Guam" for underwater view of marine life. We now have the application of the admissions tax law, based upon the September 1992 "legal opinion", extended to virtually every means of transportation and water related activity extant in Guam--**RETROACTIVELY!**

2. Does it also apply to hotel rooms? **YES/NO.** In Wilmette, supra, the U.S. Supreme Court held that the simple act of admission was all that is required to subject one to the application of the tax and that there is no requirement that it applies only to entertainment or entertainment events.

YES: On Sunday January 17, 1993, Deputy Tax Commissioner Tony Aguon was quoted in the PDN as follows: "A boat to us is no different than a hotel room or a theater...It's a place and people charge other people to enter. The law applies anytime somebody charges another person for the privilege of entering a place."

NO: On Thursday, January 21, 1993, the PDN reported that: "Aguon said the admission tax applies only when one is going to be entertained, and should not affect hotel rooms--which are already assessed a 13 percent occupancy tax--or restaurants he said." (Note: The hotel occupancy tax law does not exempt hotels from the admissions tax law nor does the admissions tax law exempt hotels from the admissions tax law).

3. On or about February 23, 1993, Rev/Tax issued a press release to "All Media" supporting it's opinion that the admissions tax has a broad application. (See copy attached as Exhibit "B"). This press release in itself indicates the need for legislative action to clarify the scope and intent of the application of the admissions tax law, as follows:

a). On page 2 of the release, the first sentence of the 3rd paragraph from the bottom states:

"The admissions tax **as presently applied** by the Department of Revenue and Taxation **would** generate an estimated three to four million dollars annually. (emphasis added).

This on its face is an admission by Rev/Tax that heretofore they have not interpreted the application of the admissions tax as they now desire to do. Yet, their only authority seems to be the "legal opinion" of a revenue agent in September of 1992.