



# 22nd Guam Legislature COMMITTEE ON TOURISM and TRANSPORTATION

## COMMITTEE REPORT

BILL NO. 588: AN ACT TO AMEND 11 GCA §30101 TO ENACT A LOWER HOTEL OCCUPANCY TAX FOR ONE YEAR TO ASSIST THE RECOVERY OF THE VISITOR INDUSTRY, TO IMPLEMENT A GRADUATED TAX THEREAFTER AND TO ALLOW THE GUAM VISITORS BUREAU (GVB) TO UTILIZE UNENCUMBERED AND UNEXPENDED FUNDS, INCLUDING THE AMOUNT OF REDUCTION MANDATED BY PUBLIC LAW 22-08, FOR PROMOTIONAL PURPOSES

### **PUBLIC HEARING:**

August 20, 1993

**VICE SPEAKER JOHN PEREZ AGUON, Chairman**

**SENATOR CARL T.C. GUTIERREZ, Vice Chairman**

**Members:**

**SPEAKER JOE T. SAN AGUSTIN**

**SENATOR ELIZABETH P. ARRIOLA  
SENATOR J. GEORGE BAMBA  
SENATOR MADELEINE Z. BORDALLO  
SENATOR DORIS F. BROOKS  
SENATOR HERMINIA D. DIERKING**

**SENATOR PILAR C. LUJAN  
SENATOR MARILYN D.A. MANIBUSAN  
SENATOR DON PARKINSON  
SENATOR DAVID L.G. SHIMIZU  
SENATOR THOMAS V.C. TANAKA**

**SENATOR ANTONIO R. UNPINGCO**

TWENTY-SECOND GUAM LEGISLATURE  
1993 (FIRST) Regular Session

Bill No. 588

As substituted by the Committee on Ways & Means  
and the Committee on Tourism & Transportation

Introduced by:

J. P. AGUON  
J. T. SAN AGUSTIN  
C. T. C. GUTIERREZ  
J. G. BAMBA

AN ACT TO AMEND 11 GCA §30101 TO TEMPORARILY ENACT A LOWER HOTEL OCCUPANCY TAX TO ASSIST THE RECOVERY OF THE VISITOR INDUSTRY; TO IMPLEMENT A GRADUATED HOTEL OCCUPANCY TAX THEREAFTER; TO REQUIRE THE GUAM VISITORS BUREAU (GVB) TO REPORT ON THE PROGRESS OF THE INDUSTRY; AND TO ALLOW GVB TO UTILIZE UNENCUMBERED AND UNEXPENDED FUNDS, INCLUDING THE AMOUNT OF REDUCTION MANDATED BY PUBLIC LAW 22-08, FOR EMERGENCY PURPOSES.

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

3 Section 1. Legislative Findings and Intent. The Legislature finds  
4 that the massive earthquake of August 8, 1993, has created problems  
5 within Guam's critically important visitor industry, reducing the number of  
6 visitors choosing to come to Guam and also reducing the ability of  
7 industry businesses to survive. The Legislature further finds that the  
8 earthquake follows a series of setbacks suffered by the industry including  
9 the Gulf War, a number of devastating typhoons and recurring power  
10 generation problems. Additionally the Legislature finds that Guam has  
11 been competing with numerous other destinations for visitors who have

1 become very price conscious. Guam's Hotel Occupancy Tax rate, combined  
2 with the high average cost of Guam's hotel rooms, may be having a  
3 negative effect on the overall pricing of Guam as a destination, the higher  
4 rates making Guam less competitive and therefore attracting fewer  
5 visitors.

6 It is therefore the intent of the Legislature to assist the recovery of  
7 Guam's struggling visitor industry through a temporary reduction of the  
8 Hotel Occupancy Tax to make rooms more affordable, to help encourage  
9 visitors to visit Guam and to enable the industry to get back on its feet. It  
10 is additionally the intent of the Legislature to convert the Hotel Occupancy  
11 Tax to a graduated tax to insure that collections meet the minimum amount  
12 necessary to fund the debt service of the Infrastructure Bond, the annual  
13 budget of the Guam Visitors Bureau ("GVB"), the annual budget of the  
14 Guam Community College's Tourism Training Unit and a reasonable  
15 surplus to provide the government the opportunity to pursue visitor  
16 industry related projects. GVB shall be required to submit a report on the  
17 condition of the industry and the effects of the tax reduction so that a  
18 determination can be made by the Legislature regarding possible rescission  
19 of the conversion to a graduated tax.

20 **Section 2.** 11 GCA §30101 is amended to read:

21 **"§30101. Imposition.**

22 An excise tax is hereby levied and imposed which shall be  
23 assessed and collected monthly, against transient occupants of a  
24 room or rooms in a hotel, lodging house, or similar facility located in  
25 Guam according to the following schedule:

26 ~~[(a) from October 1, 1987 through March 31, 1988 at the rate~~  
27 ~~of ten percent (10%) of the rental price charged or paid for such~~

1 accommodations;

2 ~~(b) from April 1, 1988 through March 31, 1989 the greater of~~  
3 ~~ten percent (10%) of the rental price charged or paid or nine dollars~~  
4 ~~(\$9.00) per occupancy per day, such that if the room or rooms are~~  
5 ~~rented more than once within a twenty four (24) hour period, each~~  
6 ~~time of occupancy shall be subject to the tax for such~~  
7 ~~accommodation; and]~~

8 (a) From the effective date of this act and for a period of  
9 eighteen (18) months thereafter, the rate shall be ten percent (10%)  
10 of the rental price charged or paid per occupancy per day;

11 (b) Immediately following the provisions of §30101 (a) and  
12 thereafter the rate shall be ten percent (10%) of the rental price  
13 charged or paid per occupancy per day on rooms rented at a rate of  
14 Ninety Dollars (\$90) per day or less, and thirteen percent (13%) of  
15 the rental price charged or paid per occupancy per day on rooms  
16 rented at a rate of greater than Ninety Dollars (\$90) per day.

17 ~~[(c) from April 1, 1989, and thereafter the rate of thirteen~~  
18 ~~percent (13%) of the rental price charged or paid per occupancy per~~  
19 ~~day, such that] For subsections (a) and (b), if the room or rooms are~~  
20 ~~rented more than once within a twenty-four (24) hour period, each~~  
21 ~~time of occupancy shall be subject to the tax for such~~  
22 ~~accommodations.~~

23 This tax applies and is collectible when the sale is made,  
24 regardless of the time when the price is paid or delivered. It shall be  
25 paid by the consumer to the operator or owner of the hotel or  
26 rooming house facility."

27 **Section 3. GVB Report on Financial Impact of Tax Reduction. The**

1 GVB shall submit a report to the Governor, the Speaker of the Guam  
2 Legislature and to the Chairpersons of the Committees on Ways & Means  
3 and Tourism & Transportation, a report of the financial impact of the  
4 provisions of Section 2 (a) of this act, including a report on the effect  
5 Section 2 (a) has had on the visitor industry. Such report shall be  
6 submitted no later than Ninety (90) days prior to the expiration of the  
7 provisions of GCA §30101 (a) as contained in this act.

8 **Section 4. Emergency Funds.** Notwithstanding any other provision  
9 of law, the Board of Directors of the GVB may utilize as they deem  
10 necessary for emergency purposes such unencumbered and unexpended  
11 funds from their Fiscal Year 1993 Budget Appropriation, including the sum  
12 reduced through the provisions of Section 1 (b) of Public Law 22-08.

### COMMITTEE REPORT

The Committee on Tourism and Transportation and Committee on Ways and Means held a joint public hearing on August 20, 1993 at 10 a. m. in the Legislative Public Hearing Room to receive testimonies on Bills 588 and 589.

BILL 588 AN ACT TO AMEND 11 GCA §30101 TO ENACT A LOWER HOTEL OCCUPANCY TAX FOR ONE YEAR TO ASSIST THE RECOVERY OF THE VISITOR INDUSTRY, TO IMPLEMENT A GRADUATED TAX THEREAFTER AND TO ALLOW THE GUAM VISITORS BUREAU (GVB) TO UTILIZE UNENCUMBERED AND UNEXPENDED FUNDS, INCLUDING THE AMOUNT OF REDUCTION MANDATED BY PUBLIC LAW 22-08, FOR PROMOTIONAL PURPOSES.

BILL 589 AN ACT TO REPEAL AND REENACT SUBSECTION (c) OF 11 GUAM CODE ANNOTATED (GCA) SUBSECTION 30101.

Present at the hearing were Senators John P. Aguon, Tourism Committee Chairman, Herminia D. Dierking, Acting Chairperson, Ways and Means, J. George Bamba, David L. G. Shimizu, Pilar C. Lujan, Vicente C. Pangelinan, Madeleine Z. Bordallo, Doris F. Brooks, Thomas V. C. Tanaka, Elizabeth P. Arriola and Marilyn D. A. Manibusan.

Signing in to testify in support of the bills were Peter P. Ada, III, Board Chairman, GVB, Kenneth Carriveau/Manfred Pieper, President/Chairman, Guam Hotel and Restaurant Association, Bruce Kloppenburg, Vice President, Japan-Guam Travel Association, and Eloise Baza/Frank Campillo, President/Vice Chairman, Guam Chamber of Commerce.

Opposing the bills in their present form was the Department of Revenue and Taxation although it favors the intent of both bills - to assist the industry during the recovery period from the great earthquake.

Revenue and Tax supports the provision in Bill 588 allowing GVB to use unencumbered and unexpended funds, including the amount of reduction mandated by Public Law 22-08, for promotional purposes.

The Guam Visitors Bureau recommended a comprehensive bill incorporating a 10% across-the-board hotel occupancy tax, to be effective immediately, with a minimum five-year implementation period. Also, the Bureau supports the authorization to utilize unencumbered and unexpended funds, including the amount of reduction mandated by Public Law 22-08 for promotional purposes. The Bureau informed the Committees that members of the industry felt that the graduated tax rates envisioned in Bill 588 would prove to be administratively complex, cumbersome and costly, particularly

for those tour operators who sell packages four months in advance. Board Chairman Ada said that the Bureau believes that the reduction of the hotel occupancy tax should not be intended as a temporary, quick-fix solution in order to counter the negative effects of the earthquake, rather, it should be a long term solution and directive in support of the tourism industry, and in furtherance of the commitment to promote Guam as an attractive and affordable destination.

Bruce Kloppenburg, representing Japan-Guam Travel Association, echoed the sentiments of the Guam Visitors Bureau and also recommended the immediate and permanent reduction of the hotel occupancy tax to 10%. He also said that J. G. T. A. supports and encourages any legislation that will assist the Guam Visitors Bureau to complete their mission as mandated by law.

The Guam Chamber of Commerce and the Guam Hotel and Restaurant Association similarly recommended the immediate and permanent reduction of the hotel occupancy tax from 13% to 10%. The Chamber believes that the 10% tax will improve Guam's image as a more cost-competitive tourist destination and the reduced rate places Guam in line with all her competitors. On the other hand, GHRA said that the tax rate reduction will undoubtedly help hotels in their recovery from the devastation of the August 8 earthquake.

Ken Carriveau, GHRA President, pointed out that the combined rate of 13% occupancy tax and the 4% gross receipt raises Guam's total rate to 17%, second to New York City's total rate of 19.25%, the highest hotel room tax rate in the nation. He said that GHRA encouraged the Legislature to reduce the occupancy tax to 10% for a combined rate of 14% which will make Guam competitive with other destinations in the continental United States.

Reminding Peter Ada, GVB Board Chairman, of the twelve million dollar FY93 GVB budget, Senator Aguon asked: "Where will you get your budget if we reduce the hotel occupancy tax to 10% for five years? Ada said that they'll look at the growth pattern and as soon as they get more inventory going, they'll work the volume, and that will make up for the 3% reduction in the occupancy tax.

Senator Aguon said: "My office made an extensive research, we have considered, and if you notice in my opening remark, we have to be very cautious, in as much as I will drive to where it will take us to help the industry, I am willing to get there, but we have to look at our vital expenditures of what we need in terms of getting the

industry right on target. My feelings at this point in time, because I've noticed your budget, year after year it has increased tremendously, in many instances doubled and almost to the extent of maybe tripple, I am looking at this to have the capability and work force to achieve the objectives that we are mandated to do.

"I am asking you where are you going to get your budget because you are asking me to help you keep it at 10%, but then if you come before this body with your budget request, asking money for this and that, I don't know how I am going to help you. Your budget is 12 million dollars right now, and if you look at the 1.6 million to continue to develop the skills we need for our young people to be part of the visitor industry and to work and be appreciated, and we have that very efficient and very effective program that is now going on, and we don't have to import workers from all over the world if we can get them to be part of the industry, and that's 1.6 million. We have a requirement of law, an obligation, as I indicated earlier, 2.5 million dollars that must be paid whether we like it or not. This is what I mean when I say we have to be cautious, I am willing to do my job, but to arbitrarily say leave at that without the consideration of looking at the figures is something that I am going to be very worried about. So we got to be very careful when you say 10% and leave it at that."

Turning to Ken Carriveau, President of the Guam Hotel and Restaurant Association, Senator Aguon inquired how can the hotel guarantee that the prices will be down? We have shared the concerns, as reflected in the testimonies, that we have to be competitive. In order to be competitive pricewise, we have to keep the price down, how can you guarantee us that the price will stay down. Senator Aguon said: "When I inserted that provision in my bill, it is an incentive that if you want to benefit from this tax reduction, then reduce your price so that all the travelers will know that Guam is at a level that everybody can afford and still appreciate the beauty and the hospitality of our people."

When Carriveau said that in some cases they can't assure low prices, Senator Aguon asked, then, where is the incentive? Carriveau said that the incentive is the competition between hotels, that they have decreased their average price over the past seven months and the competition will remain there.

Senator Aguon said that he noticed the trend through the years that when there are a lot of visitors all the price are up so the



competition is not needed because all the rooms are filled and visitors still come. "The key here", Senator Aguon said, "is I want to create an incentive for people to reduce their price. I remembered several years ago when we reduced the wholesale tax with the understanding that the price is going to go down to benefit the consumers. We went ahead and passed that law but there is no indication at all that the prices went down. That's why we are recording these proceedings so we can reflect back even ten years from now, why we are doing these things."

Carriveau said that he cannot guarantee that the prices will continue to decrease, he was only pointing out the decrease in the past seven months. Senator Aguon said: "I hope you understand where I am coming from in providing policy direction for this territory." Carriveau said: "But I was also pointing out that it would be a policy direction, in short, the Territory of Guam would be telling investors, 'do not put up four-and-five-star hotels, put up one-and-two-star hotels, because that would be the only class of facility,'" ... Senator Aguon interrupted saying: "I disagree because I've traveled to many five-star hotels and believe me their price in some situation will go down, depending on the market conditions." Carriveau said: "You won't get a \$500 a day room for \$90, that's impossible, they would close."

Senator Aguon said: "I hope you understand where I'm coming from, because we talk price competitiveness, how do you get price competitiveness, you got to have a price lower than other destinations, that's the only logical way that I can see it." Carriveau said that you also have to have competition among the hotels here on island so that in the long run he is encouraging the Territory of Guam to establish a policy which will allow competition at all levels of classes of service from one-star to the five-star category. "That's why we take the lead from people like yourself, members of the industry provide the leadership and we take the guidance from their leadership."

Senator Herminia Dierking, acting chairperson of Ways and Means inquired if the 13% occupancy tax goes to Revenue and Tax for the infrastructure so that Parks and Recreation can clean up the beaches and the bathrooms, or is it being held by GVB as part of their budget only and not being used to improve Guam's image, the attractions, to entice visitors? For instance, she alluded that maybe GVB could use some of that tax money to put up paved walks at the

Latte Stone Park, where many tour operators take their tourists, so that the tourists will not get their shoes muddy.

Bruce Kloppenburg, GVB Board member, said they agreed with Senator Dierking's concerns and they can provide her a list of improvements they will like to have but they are not in charge of the Parks and they are not in charge of where the money goes.

Senator Dierking asked Tony Aguon, Deputy Director of Revenue and Tax, if some extra money other than the GVB FY '93 twelve million dollar budget could perhaps be used somewhere along the way to pave the Latte Stone Park?

Aguon told the Senator that that's the money collected from the hotel occupancy taxes and where it goes depends on the GVB budget and the other legal requirements of the Tourist Attraction Fund.

Tony Aguon said: "The Government of Guam should share the responsibility to promote tourism on the island, not just GVB. You see litter on the roads and dirty restrooms, where is the money going to come from to clean that up, where are the people. We need the revenues. The different agencies, just like the hotels and restaurants, need the revenue to provide the services to this island into a condition so we can sell it. By reducing the tax at this time, where are we going to get the money, we're strap now."

Addressing the Deputy Director of Revenue and Tax, Senator Bamba said: "As far as the tax now being collected, what is the legal requirement as to where it is suppose to be collected, who collects it, who is to pay and where does it go? Aguon told him that the owner of the hotel is suppose to collect it from the transient visitor. Senator Bamba: "If that's not being done how is the government know that it's actually collecting revenue that it is suppose to be collecting?" Aguon said that from an examination previously done, they determine that the hotels are receiving in most part the revenues, the sales price and the tax from wholesalers. Bamba: "How would Revenue and Tax know that it's collecting the accurate amount of taxes?" Aguon said that they look through the audit trail but one of their problems has been Revenue and Tax ability to examine off-islands records. He said that they initiate a few meetings with the national tax administration of Japan to see what they could do about reviewing some of the Japanese corporate records as far as their activity with the hotels and restaurants on Guam and Revenue and Tax were told that they were not privilege to that under any situation other than under a treaty situation. Senator

said as far as determining whether or not the government is getting the actual revenues that it is suppose to get, can that be determine here through the hotels? Aguon said that can be determined here because they see the records of the payments to the hotels from the wholesalers and the hotels pay the tax in to Revenue and Tax.

Senator Bamba asked if there are any five-star hotels charging less than a hundred dollars per room to tour wholesalers on a volume discount. Ken Carriveau, GHRA President, said that he does not have access to the actual rates that hotels negotiate with tour agencies, all he has is aggregate information, the average revenue per room over a month period. He said based upon the decreasing revenue per room he will assume that the amount negotiated between the hotel and the tour agent is lessening. Senator Bamba said: "Since the revenues per room are dropping, is it safe to assume that the wholesale rates are significantly less than hotel rates?" Carriveau responded in the positive. Bruce Kloppenburg confirmed that they are significantly lower but each company is different and that's proprietary information.

Kloppenburg said that small companies cannot compete with large companies which bring in more visitors, such as PMT. He said that JGTA will have to spend millions of dollars to get the word out to the consumers assuming the bill is passed. He explained that they still have to charge the 13% in the meantime.

Concerned that Guam has no control of the tour cost packaged in Japan, as implied in the testimonies, and that, in a sense doesn't really matter because it doesn't benefit Guam even if the hotel occupancy is reduced to 10%, Senator Pilar Lujan directed her questions to Peter Ada, GVB Board Chairman. First, she wanted to know if this situation is true, and secondly, she asked: "Does the same situation apply to other areas from which tourists are coming?"

Senator Lujan's third question was in reference to the proposal by JGTA and GHRA that the reduced occupancy tax of 10% be made permanent. She said: "If the 10% is made permanent, I don't think the Committee, the Legislature, can commit future Legislatures. She asked, how can we revisit if you put it at 10% permanently?"

Peter Ada said: "First, the 10%, everyone here looks at it for the long term period. What we are saying is that, we are taking a step back to move two steps forward. We might hurt in our budget, JGTA members are going to go through some expense to spread the word, and as far as the hotels are concerned, this is how they can

give prices for long term. So people need to look long term in order to do their business correctly and properly."

Ada said that he has no answer to the second question because he does not know how package tours are done in other areas.

In answer to the first question, Ada said: "I think what you're driving at, and what Mr. Kloppenburg has brought up is what control do we have to see that if we drop 3% here, the consumer price packages will drop accordingly. That's something that needs to be specific in the bill and maybe through the Revenue and Taxation administering it, I don't know. But I think that's what you're driving at because I am assuming your question is, if we drop it down to 10%, how do we know it is going to get pass on, is just profit for the hotel or profit for ...."

Senator Lujan reiterated: "If it is packaged from anywhere else, where the tourists are coming from, and they're including the hotel, how can you be assured that cost is going to go down when they're packaging it elsewhere, even if we have the 10% occupancy?"

Senator David Shimizu preface his remarks, saying: "I will support policies that will enhance tourism and that the benefits derived from tourism not only impacts favorably on the hotel and restaurant industry, the chamber of commerce, the GVB budget, the tour operators, but most important, and equally important is the people of Guam, the municipal level. The bottom line is bringing in more tourists.

"If we reduce the cost of business here, how does that correlate with increasing visitors arrival, if you don't correspondingly reduce and make Guam more attractive, because the cost of doing business other than the 3% is still there?"

In his response, Peter Ada said: "We're looking to be more competitive in the global market with the outbound travel of the Japan market. Every one is after that market because Japan says they're going to send 12 million people out of town and we have to remain competitive. Every one is selling the same sun, ocean and beaches and there's better service in Asia as we all know. What we need to do is be price competitive, we got to show them that we have resorts, you can run away and play for a while, and hopefully they'll spend some extra money to keep people employed and it's a commitment of both the government and the industry."

Senator Shimizu said: "If we reduce 3%, we become an inexpensive market locally. In the international basis, does that affect buying into the package deal coming to visit Guam?"

Ada told Senator Shimizu that the net result is bodies coming to Guam. He said: "That's the net result whether it becomes part of the reduction of the actual price out, or it becomes an extra cost to the wholesaler because of extra promotional fund to promote Guam because it is a profitable area, then I think you are going to have an immediate net result of bodies coming to Guam. Again, that means spending on the island, it means job ....", at which point Senator Shimizu said: "I know the scenario, that does not answer my question, would Guam's price go down as a tourist destination? I will support only if it can show that it will enhance our visitor industry here."

Senator Aguon requested that Mr. Peiper provide the committee with a listing of all the benefits, as he had mentioned, that's going to enhance the hotel so that it will be very clear in my justification before the full body that there will be immediate benefits as a result of this reduction.

Senator Vicente Pangelinan, addressing Manfred Pieper said: "When you reduce your room rate by 3%, you correspondingly reduced your gross revenues, of course; therefore you reduce your profits because this 3% savings will be passed on to the consumer. Do you think you will make up that loss by volume?"

Pieper said that that's what they are hoping for. "Assuming any outside factors which can interfere as in the past, right now the Japanese economy is on the way up, with all the measures that we can undertake here to make it happen to entice people to come to Guam and be more competitive compared to other destination will help us to bring again a new focus on to Guam.

There being no further witness, the Chairman declared the hearing concluded.

## RECOMMENDATION

The Committee on Ways & Means and the Committee on Tourism & Transportation held a Mark-Up meeting at 10 a. m., August 25, 1993, on Bills 588 and 589 in the Legislative Public Hearing Room.

Present at the meeting were Senators John P. Aguon, Herminia D. Dierking, David L. G. Shimizu, Don Parkinson, Antonio R. Unpingco, Pilar C. Lujan and Ted S. Nelson.

It was recommended that the reduction of the hotel occupancy tax from 13% to 10% be extended from one year to a year and a half beginning on the effective date of the act. It was further recommended that GVB submit a report, to the Governor, Speaker and Chairpersons of Ways & Means and Tourism & Transportation, on the condition of the industry and the effect of the 10% rate no later than 90 days prior to the expiration of the 10% across-the-board rate.

The Committees recommended passage of the bill as substituted.