



Territory of Guam
Territorian Guam

OFFICE OF THE GOVERNOR
URISINAN I MAGA'LAHI
AGANA, GUAM 96910 U.S.A.

RECEIVED
OFFICE OF THE SPEAKER
DATE: 11/29/93
TIME: 2:25 PM
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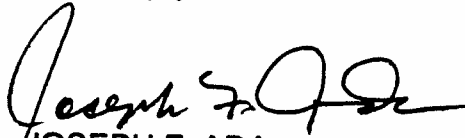
**REFER TO
LEGISLATIVE SECRETARY**

The Honorable Joe T. San Agustin
Speaker, Twenty-Second Guam Legislature
155 Hesler Street
Agana, Guam 96910

Dear Mr. Speaker:

Transmitted herewith is Bill No. 648 which I have signed into law this date as
Public Law 22-43.

Sincerely yours,


JOSEPH F. ADA
Governor of Guam

220421

Attachment


Commonwealth Now!

TWENTY-SECOND GUAM LEGISLATURE
1993 (FIRST) Regular Session


CERTIFICATION OF PASSAGE OF AN ACT TO THE GOVERNOR

This is to certify that Substitute Bill No. 648 (LS), "AN ACT TO ADD A NEW SUBSECTION (c) TO §26406 OF TITLE 11, GUAM CODE ANNOTATED, TO EXEMPT CERTAIN LIQUID FUEL EXPORT SALES FROM THE LIQUID FUEL TAX," was on the 19th day of November, 1993, duly and regularly passed.




JOE T. SAN AGUSTIN
Speaker

Attested:




PILAR C. LUJAN
Senator and Legislative Secretary

This Act was received by the Governor this 24th day of November,
1993, at 10:13 o'clock A.M.



Cheresse J. Duenas
Assistant Staff Officer
Governor's Office

APPROVED:



JOSEPH F. ADA
Governor of Guam

Date: NOV 26 1993

Public Law No. 22-43

**TWENTY-SECOND GUAM LEGISLATURE
1993 (FIRST) Regular Session**

Bill No. 648 (LS)

**As substituted by the
Committee on Rules**

Introduced by:

C. T. C. Gutierrez

V. C. Pangelinan

T. S. Nelson

T. C. Ada

J. P. Aguon

E. P. Arriola

M. Z. Bordallo

H. D. Dierking

P. C. Lujan

D. Parkinson

E. D. Reyes

J. T. San Agustin

F. E. Santos

D. L. G. Shimizu

D. F. Brooks

M. D. A. Manibusan

J. G. Bamba

A. C. Blaz

F. P. Camacho

T. V. C. Tanaka

A. R. Unpingco

**AN ACT TO ADD A NEW SUBSECTION (c) TO §26406
OF TITLE 11, GUAM CODE ANNOTATED, TO EXEMPT
CERTAIN LIQUID FUEL EXPORT SALES FROM THE
LIQUID FUEL TAX.**

1 BE IT ENACTED BY THE PEOPLE OF THE TERRITORY OF GUAM:
2 Section 1. Subsection (c) is added to §26406, Title 11, Guam Code
3 Annotated, to read:

1 “(c) **Storage/export exemption.** Liquid fuel which is imported
2 into Guam by a distributor for the express and exclusive purpose of
3 storage and subsequent consignment and delivery to a point outside
4 of Guam shall not be subject to the liquid fuel tax levied by this
5 Article, but shall be reported by the distributor to the Tax
6 Commissioner in such manner as the Tax Commissioner may
7 require, and shall be stored pursuant to such regulations as the Tax
8 Commissioner adopts. Such regulations shall be adopted within
9 forty-five (45) days of enactment of this subsection. Any such liquid
10 fuel which is sold in Guam and the amount of any shortage of such
11 fuel found by the Tax Commissioner to be excessive shall be subject
12 to the liquid fuel tax and to any penalty imposed by the Tax
13 Commissioner under such regulations for attempting to so evade
14 such tax.”

Twenty-Second Guam Legislature

155 Hesler Street
Pacific Arcade
Agana, Guam 96910
Telephone: (671) 472-3407 thru 9
Fax: 477-3161



CARL T.C. GUTIERREZ
Senator

Chairman, Committee
on Ways & Means

Vice-Chairman, Committee
on Rules

Vice-Chairman, Committee
on Tourism & Transportation

November 1, 1993

Honorable Speaker Joe T. San Agustin
Speaker, Twenty-Second Guam Legislature
155 Hesler Street
Legislative Temporary Building
Agana, Guam 96910

Dear Mr. Speaker:


The Committee on Ways & Means wishes to report out its findings on **BILL NO. 648**, "AN ACT TO ADD A NEW SUBSECTION (c) TO §26406 OF TITLE 11, GUAM CODE ANNOTATED, RELATIVE TO EXEMPTING CERTAIN LIQUID FUEL EXPORT SALES FROM THE LIQUID FUEL TAX", to the full Legislature with the recommendation to do Pass as Introduced.

The Committee Voting Record is as follows:

TO PASS:	<u>12</u>
NOT TO PASS:	<u>0</u>
ABSTENTIONS:	<u>2</u>
INACTIVE FILE:	<u>0</u>

Copies of the Committee Report and all pertinent documents are attached for your information.

Sincerely,


CARL T. C. GUTIERREZ
Chairman

Attachments

Twenty-Second Guam Legislature
 Committee on Ways & Means
VOTING SHEET

BILL NO.

648

AN ACT TO ADD A NEW SUBSECTION (c) TO §26406 OF TITLE 11, GUAM CODE ANNOTATED, RELATIVE TO EXEMPTING CERTAIN LIQUID FUEL EXPORT SALES FROM THE LIQUID FUEL TAX.

	<u>TO PASS</u>	<u>NOT TO PASS</u>	<u>ABSTAIN</u>	<u>TO PLACE INACTIVE F</u>
<i>12/30/11</i> Senator Carl T. C. GUTIERREZ Chairman	✓			
<i>H. Dierking</i> Senator Herminia D. DIERKING Vice-Chairman	✓			
<i>T. C. ADA</i> Senator Thomas C. ADA Member	✓			
<i>J. P. Agun</i> Senator John P. AGUON Member	✓			
<i>E. Arriola</i> Senator Elizabeth P. ARRIOLA Member	✓			
<i>J. G. Bamba</i> Senator J. George BAMBAN Member	✓ w/ amendments			
<i>A. Blaz</i> Senator Anthony C. BLAZ Member	✓			
<i>P. Lujan</i> Senator Pilar C. LUJAN Member	✓ w/ changes			
<i>M. Manibusan</i> Senator Marilyn D.A. MANIBUSAN Member	✓		✓ hold	
<i>T. Nelson</i> Senator Ted S. NELSON Member	✓			
<i>V. Pangelinan</i> Senator Vicente C. PANGELINAN Member	✓			
<i>D. Shimizu</i> Senator David L.G. SHIMIZU Member				
<i>A. Unpingco</i> Senator Antonio R. UNPINGCO Member				
<i>J. San Agustin</i> Speaker Joe T. SAN AGUSTIN Ex-Officio Member			✓	

Can we afford it?

COMMITTEE ON WAYS AND MEANS COMMITTEE REPORT

BILL NO. 648

AN ACT TO ADD A NEW SUBSECTION (c) TO §26406 OF TITLE 11, GUAM CODE ANNOTATED, RELATIVE TO EXEMPTING CERTAIN LIQUID FUEL EXPORT SALES FROM THE LIQUID FUEL TAX.

PUBLIC HEARING

The Committee on Ways and Means conducted a public hearing at 9:00 a.m. on Wednesday, September 29, 1993, in the Legislative Public Hearing Room, to gather testimony on Bill No. 648. Senator Carl T.C. Gutierrez, the Chairman of the Committee, conducted the hearing, being joined by Senators Anthony Blaz, Ted Nelson, J. George Bamba, Vicente Pangelinan, Tom Ada, Elizabeth Arriola and David Shimizu.

PURPOSE

Bill 648 was designed to add a new subsection to the Guam Code Annotated to exempt certain liquid fuel export sales from the liquid fuel tax imported into the Territory of Guam by a distributor for the express and exclusive purpose of storage and subsequent consignment and delivery to a point outside of the Territory of Guam.

TESTIMONY

Written testimony opposing the Bill was submitted by E. F. Keiser, President of Mobil Oil Guam Inc. Written testimony in favor of the Bill was submitted by Anthony J. Nicholson, President/General Manager of Shell Guam, Inc. Mr. Victor Cruz, Consultant for Shell Guam, Inc. also appeared and testified on behalf of Shell Guam, Inc. incorporating Mr. Nicholson's written testimony.

Mr. Cruz said that it is vital for an industry such as Shell Guam to support this Bill in order to utilize the storage facility. Prior to Shell purchasing the Guam Oil & Refining Company's (GORCO's) facilities, the terminal and facilities were used to store for the military. The military has now significantly reduced its storage requirements in the Asia-Pacific region and Shell has taken this opportunity to advertise storage facilities to third parties, and will compete against storage in other countries such as the Philippines, Vietnam, Singapore, Japan and Korea. Mr. Cruz reiterated Mr. Nicholson's sentiment that none of these countries have tax impositions on storage contracts and that Guam should follow suit.

Mr. Cruz explained that under the current statute for every one million barrels of product put into storage, a customer needs to temporarily fund up to \$6.3 million. For the \$4.5 million barrels capable of being stored at the GORCO terminal, this amounts to \$28.4 million. While this amount is eventually returned when the product is exported as allowed under the current law, it nevertheless has to be paid and financed until then.

Senator Shimizu was concerned as to the loss of the revenue to the Government of Guam. Mr. Cruz reassured that there was actually no loss of revenue to the government. Guam, Mr. Cruz said, will still receive significant income from port fees of \$.14 per barrel on inward movements and \$.04 per barrel on outward movements; gross receipts tax; income tax on profits; and income tax paid by employees and contractors.

The panel was concerned that no one from the Department of Revenue and Taxation appeared to testify on the Bill. The main concern was the probability of losing revenue.

Senator Shimizu suggested to the Chairman that the Committee write to the Department of Revenue and Taxation requesting for a copy of a ruling in the 1970's regarding what the rationale was for implementing such tax for something that Guam was not selling prior to arbitrarily removing this statute.

Senator Tom Ada asked what kind of an impact would this have locally in terms of additional employment. Mr. Cruz replied that if Shell Guam fully utilized storage capacity to the maximum,

not only would it mean additional employment, but there would also be additional vendors to maintain the storage facilities, the pipelines, and maintenance of the facilities.

FINDINGS

The Committee finds that certain liquid fuel tax imposed on certain liquid fuel export sales is a hindrance to the industry, and while Guam will not suffer any loss of revenue by passing this Bill, it will continue to receive significant income from storage deals such as port fees, gross receipts tax and income taxes.

RECOMMENDATION



The Committee on Ways and Means recommends that Bill 648 be reported to the Full Legislature with the recommendation to DO PASS as Introduced.

TWENTY-SECOND GUAM LEGISLATURE
1993 (FIRST) Regular Session

93 SEP 20 PM 2:

Bill No. 648

Introduced by:


C.T. C. Gutierrez


AN ACT TO ADD A NEW SUBSECTION (c) TO §26406 OF TITLE
11, GUAM CODE ANNOTATED, RELATIVE TO EXEMPTING
CERTAIN LIQUID FUEL EXPORT SALES FROM THE LIQUID FUEL
TAX.

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

2 Section 1. A new Subsection (c) is added to §26406 of Title 11, Guar
3 Code Annotated, to read:

4 "(c) Storage/Export exemption. Liquid fuel which is imported int
5 Guam by a distributor for the express and exclusive purpose of storage and
6 subsequent consignment and delivery to a point outside of the territory o
7 Guam shall not be subject to the liquid fuel tax levied by this Article, bu
8 shall be reported by the distributor to the Tax Commissioner in such
9 manner as the Commissioner may require, and shall be stored pursuant to
10 such regulations as the Commissioner may adopt."



Shell Guam, Inc.

Your Reference:

A Guam Corporation

Our Reference:

C:\WP5.1\GM\BILL-648

Capitol Plaza, Suite 102
120 Father Duenas Ave.
Agana, Guam 96910

Date:

September 28, 1993

Telex No. (721) 6709 Shell GM
Facsimile No. (671) 477-4353

Telephone (671) 477-4348-52

**The Honorable Carl T.C. Guiterrez
Chairman, Committee on Ways & Means
Senator, Twenty-First Guam Legislature
155 Hessler St.
Pacific Arcade
Agana, Guam 96910**

Dear Mr. Chairman,

re: **BILL NO. 648**

Shell Guam, Inc. thanks you for the opportunity to present our views and position on Bill No. 648 which Shell Guam strongly supports.

Shell Guam believes that Bill 648 which "Exempts certain liquid fuel export sales from the liquid fuel tax" imported into Guam for the express and exclusive purpose of storage will have a positive impact on Guam and the economy and should be supported.

As background to our views we offer the following information:

- With the closure of the old GORCO refinery the associated terminal was converted for use as a storage facility and contracts for storage of military fuel were entered into. These contracts enabled the continued viable operation of the terminal.
- Since the Gulf War the military have been reviewing their storage needs and as a result have significantly reduced storage in the Asia-Pacific area. Guam felt the full brunt of these changes with all storage contracts cancelled.
- If the terminal is to remain open it will now be necessary for us to attract third party storage contracts to Guam. As such, Guam needs to compete against storage in Subic Bay, Vietnam, Singapore, Japan and Korea. In comparison with these areas Guam suffers on three counts:



1. Distance from the main oil shipping channels between Middle East, Singapore and Japan/Korea
2. The Jones Act
3. Tax regimes (none of the other countries has tax imposition on storage contracts)

Whilst it is not possible to change item 1, and item 2 is only applicable for cargoes coming in from the West Coast of USA, item 3 is very significant and is under Guam's control.

- Under the current law for every 1 million barrels of product put into storage a customer needs to temporarily fund up to \$6.3 million dollars. For the 4.5 million barrels capable of being held at the terminal this amounts to \$28.4 million. Whilst this sum is returned when the product is exported as allowed under the current law, it nevertheless has to be paid and financed until then.
- Guam will still receive significant income from such storage deals in the form of the following:
 - Port fees of 14 cents per barrel on inward movements and 4 cents per barrel on outward movements.
 - Gross Receipts Tax
 - Income tax paid on Shell Guam profits
 - Income Tax paid by Shell employees and contractors who between them receive some \$2 million per year as a result of the terminal being open.

For the reasons set out above we urge the Committee of Ways and Means to pass and report out of committee at the earliest and recommend the passage of Bill 648 at the next Legislative session.

Should you require us to provide further information we would be happy to do so.

Kind regards,
for SHELL GUAM, INC.


ANTHONY J. NICHOLSON
President/General Manager

TESTIMONY OF MOBIL OIL GUAM INC.

TWENTY-SECOND GUAM LEGISLATURE

1993 (FIRST) REGULAR SESSION

BILL NO. 648

**AN ACT TO ADD A NEW SUBSECTION (c) TO § 26406
OF TITLE 11, GUAM CODE ANNOTATED, RELATIVE
TO EXEMPTING CERTAIN LIQUID FUEL EXPORT
SALES FROM THE LIQUID FUEL TAX**

Mobil Oil Guam Inc. is pleased to have this opportunity to comment on Bill No. 648. Mobil opposes this legislation. Mobil Oil Guam has substantial business operations in Guam, and in fact, is the first petroleum supplier in Guam.

We believe that Bill No. 648 is not in the best interests of the Government of the Territory of Guam. As a responsible corporate citizen, Mobil Oil Guam believes that the Government of Guam is entitled under the present taxation and fiscal system to use the amounts collected for excise taxes on liquid fuels until drawback claims are processed, approved and disbursed to taxpayers.

Mobil Oil Guam opposes Bill No. 648 for the following reasons:

First. The proposed bill reduces the financial benefit to the Government of Guam without any diminution of benefits being provided by the Government of Guam.

Second. The proposed bill does not materially reduce the administrative and regulatory burden on the taxpayer or the Guam Department of Revenue and Taxation.

The Government of Guam imposes an excise tax on the import of liquid fuels

pursuant to Section 26402 of Title 11, Guam Code Annotated. A drawback of this tax is permitted under Section 26404 for any liquid fuel which is exported outside of the Territory of Guam. The effect of the present statutory scheme is to effectively exempt from taxation liquid fuels which are imported, but then exported outside of Guam. The Government of Guam benefits from taxation of liquid fuels which are imported, but then exported outside of Guam, due to the time value of money for taxes paid until the drawback is applied.

Mobil Oil Guam recognizes that Bill No. 648 would produce a benefit resulting from lower working capital because of the proposed tax exemption; i.e., interest expense savings. However, it is also clear that the Government of Guam provides benefits to taxpayers in that imported/exported liquid fuels are stored in Guam and have a transitory nexus or location in Guam. Thus, the Government of Guam is providing benefits in terms of traditional government functions such as fire, police and other incidental government protections. The Government of Guam is entitled to some remuneration for the benefits it provides to those who operate within Guam's jurisdiction.


At this time when the health of Guam's economy and the Guam governmental budget shortfalls are everyone's concern, we believe that the small financial burden imposed upon a taxpayer under the current taxing scheme has a supportable connection to the benefits being provided. Thus, to remove such financial benefits without a reduction of benefits provided by the government, would further reduce the resources available to the Government of Guam to carry out its governmental functions. Therefore, we believe Bill No. 648 is not in the best interests of the Government of Guam.

As a responsible corporate citizen, Mobil Oil Guam recognizes that the continued vibrance and viability of the Government of Guam has an indirect benefit not only to Mobil Oil Guam, but to all other citizens and potential businesses. We believe that the Government of Guam is entitled under the taxation and fiscal system to use the amounts collected for the excise taxes until the drawback claims are processed, approved and disbursed to the taxpayer.

Mobil Oil Guam also believes that the proposed bill will not materially reduce the administrative and regulatory burden imposed on taxpayers and government officials. It is recognized that there will need to be a certification process, regulated by the Department of Revenue and Taxation, which will parallel the current reporting process. Taxpayers will be required to maintain the same records to demonstrate the import/export of liquid fuels, so there is no benefit from the proposed bill in terms of recordkeeping or bureaucracy. In fact, the proposed bill, if enacted, would require new regulations to be drafted and implemented which would impose additional burden on governmental agencies.

Based on the foregoing, Mobil Oil Guam Inc. opposes Bill No. 648 and recommends that the legislature not approve the same.

MOBIL OIL GUAM INC.


for E. F. KEISER, President

Bill No. 648(LS)

Introduced by:


C.T. C. Gutierrez

AN ACT TO ADD A NEW SUBSECTION (c) TO §26406 OF TITLE
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9 manner as the Commissioner may require, and shall be stored pursuant to
10 such regulations as the Commissioner may adopt."