



CARL T.C. GUTIERREZ
GOVERNOR OF GUAM

OFFICE OF THE LEGISLATIVE SECRETARY
ACKNOWLEDGMENT RECEIPT
Received By [Signature]
Time 4:30 PM
Date 3/7/02

MAR 07 2002

The Honorable Joanne M. S. Brown
Legislative Secretary
I Mina'Bente Sais na Liheslaturan Guåhan
Twenty-Sixth Guam Legislature
Suite 200
130 Aspinal Street
Hagåtña, Guam 96910

Dear Senator Brown:

Enclosed please find Bill No. 247 (COR) "AN ACT TO ADD CHAPTER 51 AND TO AMEND § 50104 BOTH OF TITLE 11 AND TO ADD §§ 4102(a)(17) AND 4102.1 TO TITLE 4, ALL OF THE GUAM CODE ANNOTATED, RELATIVE TO MAXIMIZING REVENUES FROM THE "INCOME TAX REFUND RESERVE FUND" AND FOR OTHER PURPOSES" which I have signed into law as **Public Law No. 26-74**.

In better economic times, this bill would be a good method of managing funds to pay for tax processing and tax refund payments. These are not good economic times. What this legislation would mean is that approximately \$5 Million in cash would have to be set aside every month. With the short cash flow, this would impact on the payment of vendors, payroll, retirement benefits, and other daily obligations of the government. In fact, if this amount of cash each month has to be idle, further cuts of government payments, and even payroll, will need to be made. While this legislation does not take effect until October 1, 2002, this will leave a window of time to revisit the method of cash management contained in this bill. The end result is that this legislation further erodes flexibility of cash management.

This legislation sets up another fund for the payment of income tax refunds. Currently, money to pay income tax refunds is set aside in the "Income Tax Refund Reserve Fund," and paid from that fund. This legislation creates another fund, the "Income Tax Refund Efficient Payment Trust Fund." This second fund is created by placing, at the end of each month, a percentage collected from Payroll Withholding Taxes and income tax collections, along with, at the end of each quarter, a percentage collected from Self-Employed Payroll Withholding Taxes.

The second fund is supposed to gather interest and investment earnings. These interest and investment earnings are then to be used for hiring temporary income tax returns processors for up to 3 months each tax season. The interest is subject to legislative

0713

Legislative Secretary
B247;PL26-74
March, 2002
Page 2

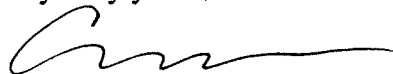
appropriation for this purpose, after a budget for this purpose is submitted to the Legislature.

Finally, when refunds are due to be paid out, money from the second fund, the "Income Tax Refund Efficient Payment Trust Fund", is shifted into the first fund, the "Income Tax Refund Reserve Fund", and then paid out to the taxpayer. The interest and investment earnings do not get shifted to the first fund.

The second fund, or trust fund, and method of hiring seasonal employees to process returns, is effective for next fiscal year, starting October 1, 2002.

The legislation, finally, provides for \$100,000 to be used for extra personnel hired to process the currently due tax returns.

Very truly yours,



Carl T. C. Gutierrez
I Maga'Lahen Guåhan
Governor of Guam

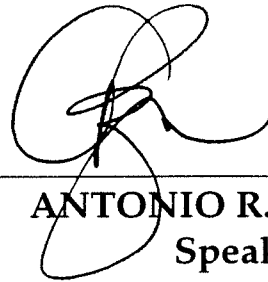
Attachments: original bill for vetoed legislation or
copy of bill for signed or overridden legislation
and legislation enacted without signature

cc: The Honorable Antonio R. Unpingco
Speaker

MINA'BENTE SAIS NA LIHESLATURAN GUÅHAN
2002 (SECOND) Regular Session


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

This is to certify that Bill No. 247 (COR) "AN ACT TO ADD CHAPTER 51 AND TO AMEND § 50104 BOTH OF TITLE 11 AND TO ADD §§ 4102(a)(17) AND 4102.1 TO TITLE 4, ALL OF THE GUAM CODE ANNOTATED, RELATIVE TO MAXIMIZING REVENUES FROM THE 'INCOME TAX REFUND RESERVE FUND' AND FOR OTHER PURPOSES," was on the 28th day of February, 2002, duly and regularly passed.



ANTONIO R. UNPINGCO
Speaker


Attested:



JOANNE M.S. BROWN
Senator and Legislative Secretary

.....

This Act was received by *I Maga'lahaen Guåhan* this 28 day of Feb, 2002,
at 11:50 o'clock 5.M.



Assistant Staff Officer
Maga'lahaen's Office

APPROVED:



CARL T. C. GUTIERREZ
I Maga'lahaen Guåhan

Date: 3-7-02

Public Law No. 26-74

MINA'BENTE SAIS NA LIHESLATURAN GUÅHAN
2002 (SECOND) Regular Session

Bill No. 247 (COR)

As amended by the Author and
amended on the Floor.

Introduced by:

V. C. Pangelinan

K. S. Moylan

A. R. Unpingco

J. F. Ada

T. C. Ada

F. B. Aguon, Jr.

J. M.S. Brown

E. B. Calvo

F. P. Camacho

M. C. Charfauros

Mark Forbes

L. F. Kasperbauer

L. A. Leon Guerrero

A. L.G. Santos

J. T. Won Pat

**AN ACT TO *ADD* CHAPTER 51 AND TO *AMEND* §
50104 BOTH OF TITLE 11 AND TO *ADD* §§ 4102(a)(17)
AND 4102.1 TO TITLE 4, ALL OF THE GUAM CODE
ANNOTATED, RELATIVE TO MAXIMIZING
REVENUES FROM THE "INCOME TAX REFUND
RESERVE FUND" AND FOR OTHER PURPOSES.**

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

2 **Section 1. Legislative Findings and Intent.** *I Liheslaturan Guåhan*
3 finds that each year, the Department of Revenue and Taxation ("DRT") finds
4 itself in a difficult situation, trying to find ways to promptly process Guam's
5 taxpayers' income tax returns and timely pay the refunds due. Each year,

1 DRT cites shortage of staff as the reason for delays in processing the income
2 tax returns. *However*, through legislative hearings and discussions, the
3 Director of DRT testified that *if* such staff shortages were filled, another cause
4 of delay would be the lack of office equipment, such as computers.

5 Such problems in the delay of processing the income tax returns have
6 greatly burdened Guam's taxpayers financially, as they patiently wait for
7 their income tax returns so critical to making ends meet.

8 Therefore, it is the intent of *I Liheslaturan Guåhan* to develop a program
9 to provide the resources to DRT to promptly process income tax returns, and
10 to issue the refunds to Guam taxpayers.

11 **Section 2.** Chapter 51 is hereby *added* to Division 2 of Title 11 of the
12 Guam Code Annotated to read as follows:

13 **"Chapter 51.**

14 **Income Tax Refund Efficient Payment Trust Fund Act of 2002.**

15	Section 51101.	Creation of the Income Tax
16		Return Efficiency Trust Fund.
17	Section 51102.	Deposit of Funds.
18	Section 51103.	Expenditures from the
19		Trust Fund.
20	Section 51104.	Contracts.
21	Section 51105.	Prohibitions Against
22		Encumbrances.
23	Section 51106.	Reports.
24	Section 51107.	No Transfer Authority.

1 **Section 51108. Effective Date.**

2 **Section 51101. Creation of the Income Tax Refund Efficient**
3 **Payment Trust Fund.**

4 (a) There is hereby created, separate and apart from all
5 other funds of the government of Guam, a trust fund known as
6 the Income Tax Refund Efficient Payment Trust Fund ('Trust
7 Fund'). The Trust Fund shall *not* be commingled with the General
8 Fund or any other funds of the government of Guam, and it shall
9 be maintained in a separate bank account, administered by the
10 Tax Commissioner. The Trust Fund's interest and investment
11 earnings shall be subject to legislative appropriation and shall be
12 expended *exclusively* for the purposes set forth under § 51103 of
13 this Act.

14 (b) The deposits made to the Trust Fund pursuant to §
15 51102 shall be invested or reinvested into interest bearing
16 instruments, United States treasury notes, investment grade and
17 insured corporate notes, and other like instruments which are
18 readily convertible to cash needed to pay income tax refunds.

19 **Section 51102. Deposit of Funds.**

20 (a) The Director of the Department of Administration
21 ('DOA') shall directly deposit within ten (10) days at the end of
22 each month to the Trust Fund a percentage of the Payroll
23 Withholding Taxes collections for the month equal to its
24 percentage of the budgeted forecasted amount set aside for

1 income tax refunds, earned income tax credits and child tax
2 credits adopted in that fiscal year's budget, so that at the end of
3 the calendar year, the total amount set aside for income tax
4 refunds, earned income tax credits and child tax credits shall have
5 been deposited into the Trust Fund. The funds deposited in the
6 Trust Fund by the Director of DOA shall *automatically* be
7 transferred to the Income Tax Reserve Fund once the Tax
8 Commissioner is ready to make the necessary payments pursuant
9 to § 50105 of Chapter 50, Division 2 of Title 11 of the Guam Code
10 Annotated. The interest and investment earnings shall remain
11 within the Trust Fund.

12 (b) The Director of DOA shall directly deposit within ten
13 (10) days at the end of each quarter to the Trust Fund a percentage
14 of the Self-Employed Payroll Withholding Taxes collections for the
15 quarter equal to its percentage of the budgeted forecasted amount
16 set aside for income tax refunds, earned income tax credits and
17 child tax credits adopted in that fiscal year's budget, so that at the
18 end of the calendar year, the total amount set aside for income tax
19 refunds, earned income tax credits and child tax credits shall have
20 been deposited into the Trust Fund. The funds deposited into the
21 Trust Fund by the Director of DOA shall *automatically* be
22 transferred to the Income Tax Reserve Fund, once the Tax
23 Commissioner is ready to make the necessary payments pursuant
24 to § 50105 of Chapter 50, Division 2 of Title 11 of the Guam Code

1 Annotated. The interest and investment earnings shall remain
2 within the Trust Fund.

3 (c) The Director of DOA shall directly deposit within ten
4 (10) days at the end of each month to the Trust Fund a percentage
5 of income tax collections for the month equal to its percentage of
6 the budgeted forecasted amount set aside for income tax refunds,
7 earned income tax credits and child tax credits adopted in that
8 fiscal year's budget, so that at the end of the calendar year, the
9 total amount set aside for income tax refunds, earned income tax
10 credits and child tax credits shall have been deposited into the
11 Trust Fund. The funds deposited into the Trust Fund by the
12 Director of DOA shall *automatically* be transferred to the Income
13 Tax Reserve Fund, once the Tax Commissioner is ready to make
14 the necessary payments pursuant to § 50105 of Chapter 50,
15 Division 2 of Title 11 of the Guam Code Annotated. The interest
16 and investment earnings shall remain within the Trust Fund.

17 **Section 51103. Expenditures from the Trust Fund.** In order
18 for *I Liheslaturan Guåhan* to make the proper legislative appropriation
19 pursuant to § 51101(a) of this Act, the Tax Commissioner shall submit to
20 *I Liheslaturan Guåhan* on the 15th day of January each year a detailed
21 budget request of itemized cost of allowable expenditure, for an
22 appropriation from the earnings of the Trust Fund. All interest and
23 investment earnings from the Trust Fund pursuant to § 51101(b) of this
24 Act shall be *exclusively* expended for the following purposes:

1 (a) Notwithstanding other provisions of law, the Department of
2 Revenue and Taxation is hereby authorized to either enter into contracts
3 with *temporary* income tax returns processors ('processors'), or to hire
4 seasonal employees, as deemed necessary by the Tax Commissioner
5 anytime during the period of filing dates established by the Internal
6 Revenue Service for a period of *not more than* three (3) months to process
7 income tax returns.

8 (1) The Department of Revenue and Taxation shall
9 prioritize the processing of income tax returns according to their
10 filing date.

11 (2) The Department of Revenue and Taxation shall submit
12 to *I Liheslaturan Guåhan* a monthly report on the status of the
13 income tax processing, which shall include the following:

14 (i) number of income tax returns processed;

15 (ii) number of income tax refunds issued and the
16 total dollar amount;

17 (iii) number of income tax returns waiting to be
18 processed;

19 (iv) expected date of completion for the processing of
20 income tax returns pending; *and*

21 (v) any other pertinent information.

22 (b) proper training of employees hired pursuant to Subsection
23 (a) of this Section.

24 (c) computers and other equipments necessary to quickly
25 process the income tax returns.

1 **Section 51104. Contracts.** *If the Department of Revenue and*
2 *Taxation chooses to enter into contracts with temporary income tax*
3 *returns processors, the Department of Revenue and Taxation shall*
4 *promulgate rules and regulations governing the contract. The*
5 *processors under contracts shall be deemed independent contractors*
6 *and not employees of the government of Guam, nor shall they be*
7 *entitled to any benefits otherwise available to government of Guam*
8 *employees, including, but not limited to, sick leave, annual leave,*
9 *retirement, worker's compensation, group life insurance, group medical*
10 *insurance, or periodic or other step increases in wages.*

11 **Section 51105. Prohibitions Against Encumbrances.** Any and
12 all expenditures from the Trust Fund shall be for the payment outlined
13 in § 51103, and for no other purpose. The Trust Fund shall *not* be
14 subject to or permit *I Maga'lahren Guåhan* to pledge the Trust Fund for
15 payments or repayments of any government of Guam general fund
16 obligations or obligations of any autonomous agency, public
17 corporation or government instrumentality.

18 **Section 51106. Reports.** The Tax Commissioner and the
19 Director of the Department of Administration shall report to *I*
20 *Maga'lahren Guåhan* and *I Liheslaturan Guåhan* every deposit and the
21 current balance of the Trust Fund within fifteen (15) days of every
22 deposit made to the Trust Fund.

1 **Section 51107. No Transfer Authority.** The money placed
2 in the Trust Fund is *not* subject to any transfer authority of *I Maga'lahen*
3 *Guåhan*.

4 **Section 51108. Effective Date.** The provisions of the Income
5 Tax Refund Efficient Payment Trust Fund Act of 2002 shall be effective
6 on October 1, 2002."

7 **Section 3.** Section 50104 of Chapter 50, Division 2 of Title 11 of the
8 Guam Code Annotated is hereby *amended* to read as follows:

9 **"Section 50104. Revenues Reserved for Income Tax Refunds,**
10 **Earned Income Tax Credits and Child Tax Credits.**

11 (a) In accordance with the formula provided for in § 50103
12 of this Chapter, the Director of Administration shall set aside all
13 money reserved for income tax refunds, earned income tax credits
14 and child tax credits from income tax receipts."

15 **Section 4.** Section 4102(a)(17) is hereby *added* to Article 1, Chapter 4 of
16 Title 4 of the Guam Code Annotated to read as follows:

17 "(17) persons employed on a seasonal basis."

18 **Section 5.** Section 4102.1 is hereby *added* to Article 1, Chapter 4 of Title
19 4 of the Guam Code Annotated to read as follows:

20 **"Section 4102.1. Seasonal Employment.**

21 (a) **Appropriate Use.** Seasonal employment
22 allows an agency to develop an experienced cadre of employees
23 under career appointment to perform work which recurs

1 predictably year-to-year, with work expected to last *no more than*
2 three (3) months.

3 **(b) Length of Season.** Agencies determine the length
4 of the season, *unless* prescribed by law, subject to the condition
5 that it be clearly tied to nature of the work. The season must be
6 defined as closely as practicable so that an employee will have a
7 reasonable clear idea of how much work that person can expect
8 during the year.

9 **(c) Employment Agreement.** An employment agreement
10 must be executed between the agency and the seasonal employee
11 *prior* to the employee's entering on duty. At a minimum, the
12 agreement must inform the employee:

13 (1) that the employee is subject to periodic release
14 and recall as a condition of employment;

15 (2) the minimum and maximum period the
16 employee can expect to work;

17 (3) the basis on which release and recall procedures
18 will be effected; *and*

19 (4) that there shall be no benefits to which the
20 employee will be entitled while in a non-pay status.

21 **(d) Release and Recall Procedures.** A seasonal employee
22 is released to non-pay status at the end of a season and recalled to
23 duty the next season. Release and recall procedures must be
24 established in advance and uniformly applied. They may be

1 based upon performance, seniority, veterans' reference, other
2 appropriate indices, or a combination of factors. *If* an agency
3 intends to have an employee work less than the minimum amount
4 of time specified in the employment agreement, the agency may
5 develop a new employment agreement to reflect changing
6 circumstances.

7 (e) **Unclassified Service.** It is impracticable for seasonal
8 employees to be under the classified service, as seasonal
9 employment is *not* required on a permanent day-to-day basis.
10 Seasonal employees are only utilized for a short period each year,
11 performing work that is expected to last *no more than three* (3)
12 months. Therefore, seasonal employees shall be under the
13 unclassified service. In addition, seasonal employees shall *not* be
14 entitled to any benefits otherwise available to other government of
15 Guam employees, including, but *not* limited to, sick leave, annual
16 leave, retirement, worker's compensation, group life insurance,
17 group medical insurance, or periodic or other step increases in
18 wages."

19 **Section 6.** Notwithstanding any other law, the Department of Revenue
20 and Taxation is hereby authorized to extend the employment of the
21 individuals hired pursuant to Public Law Number 26-50, and to pay overtime
22 hours for current employees until the appropriation made in § 7 of this Act is
23 fully expended, in order to process outstanding income tax returns.

1 **Section 7.** There is hereby appropriated the sum of One Hundred
2 Thousand Dollars (\$100,000.00) from the General Fund to the Department of
3 Revenue and Taxation to be used for the funding pursuant to Section 6 of this
4 Act.

5 **Section 8. Severability.** *If* any provision of this Law or its
6 application to any person or circumstance is found to be invalid or contrary to
7 law, such invalidity shall *not* affect other provisions or applications of this
8 Law which can be given effect without the invalid provisions or application,
9 and to this end the provisions of this Law are severable.