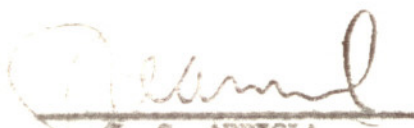


NINTH GUAM LEGISLATURE
1967 (SECOND) Special Session

CERTIFICATION OF PASSAGE OF AN ACT TO THE GOVERNOR

This certifies that Bill No. 192 (2-3), "An Act to add a new Chapter 7 to Title XI, Government Code of Guam, relative to a Use Tax Law", was on the 19th day of April, 1967, duly and regularly passed.


E. C. ARRIOLA
Speaker

ATTESTED:

F. I. HAMLER
Legislative Secretary

This Act was received by the Governor this 21st
day of April, 1967 at 1:16 o'clock p.m.

DE VEE DICKERSON
Secretary of Guam

APPROVED:

/s/ Manuel F. L. Guerrero
MANUEL F. L. GUERRERO
Governor of Guam

MAY 19 1967

5:05 pm

RECEIVED

MAR 7 1986

GUAM TERRITORIAL
LAW LIBRARY

Public Law 9-64

Public Law 9-64
Ninth Guam Legislature
(Bill 192 (2-S))
May 19, 1967

AN ACT

An Act to add a new Chapter 7 to Title XX, Government Code of Guam, relative to a Use Tax Law.

Be it enacted by the People of the Territory of Guam:

Section 1. A new Chapter 7 is hereby added to Title XX of the Government Code of Guam to read as follows:

"CHAPTER 7
Use Tax Law

Section 19600. Definitions, generally. Whenever used in this chapter, unless otherwise required by the context:

1. 'Import' (or any nounal, verbal, adverbial, adjective or other equivalent of the term) includes importation into Guam from any other part of the United States or its possessions or from any foreign country, whether in interstate or foreign commerce, or both.

2. 'Person' includes any individual, firm, copartnership, joint adventure, association, corporation, trust or any group or combination acting as a unit, and the plural as well as the singular number as may be appropriate.

3. 'Property' means tangible personal property, but does not include newspapers or other periodical publications purchased on the subscription plan, issued at stated intervals as

frequently as four times a year.

4. 'Purchaser' means any person purchasing property, but does not include the Government of Guam, or the United States, its wholly owned agencies or instrumentalities, or any person immune from the tax imposed by this chapter under the constitution and laws of the United States.

5. 'Representation' refers to any or all of the following: (a) a seller's being present in Guam, and (b) a seller's having in Guam a salesman, commission agent, manufacturer's representative, broker or other person who is authorized or employed by such seller to assist such seller in selling property for use or consumption in Guam, by procuring orders for such sales, making collections or deliveries or otherwise, and (c) a seller's having in Guam a person upon whom process directed to such seller from the courts of Guam may be served.

6. 'Seller', as used in Sections 19607 and 19609, means any person engaged in the business of selling tangible personal property, where-soever engaged, and any person authorized by a seller to collect the price, but does not include the United States or any of its departments or wholly owned agencies, the Government of Guam, or any person who, under the Constitution and laws of the United States, is immune from the duty, imposed by Section 19609, of collecting the tax.

7. 'Taxpayer' means any person liable for any tax hereunder, and where the taxable use of the property is not to be or is not made by the owner thereof, then both the person making such use and such owner shall be deemed the taxpayers taxable under this chapter, and both shall be jointly and severally liable for such tax.

8. 'Value', means fair and reasonable cash value at the time of accrual of the tax.

9. 'Commissioner' means the Commissioner of Revenue and Taxation, Department of Finance, Government of Guam.

Section 19601. Same; use, consumption, defined. Wherever used in this chapter, unless otherwise required by the context, 'use' or 'consumption' (and any verbal, adjective, adverbial and other equivalent form of any of these terms), herein used interchangeably, means any use, whether such use is of such nature as to cause the property to be appreciably consumed or not, or the keeping of such property for such use or consumption; but shall not include:

(a) the sale or the keeping solely for the sale of such property.

(b) the use or keeping for use of property as material which is or is to be incorporated by the taxpayer into a finished or saleable product, including the container or package in which the product is contained, during the course of its preservation, manufacture or processing, including preparation for market, and which remains or will remain in such finished or saleable product in such form as to be perceptible to the senses, and which finished or saleable product is or is to be sold and not otherwise used by the taxpayer.

(c) temporary use of property, not of a perishable or quickly consumable nature, where such property is imported into Guam for temporary use (not sale) therein by the person importing the same and is not intended to be, and is not, kept permanently in Guam (as for example without limiting the generality of the foregoing language): (1) in the case of a contractor im-

porting permanent equipment for the performance of a construction contract, with intent to remove, and who does remove, such equipment out of Guam upon completing the contract; (2) in the case of moving picture films imported for use in theaters in Guam with intent or under contract to transport the same out of Guam after completion of such use; (3) in the case of a transient visitor importing an automobile or other belongings into Guam to be used by him while therein but which are to be and are removed upon his departure from Guam.

(d) use by the taxpayer of property acquired by him solely by way of gift.

(e) use which is limited to the receipt of articles and the return thereof, to the person from whom acquired, immediately or within a reasonable time either after temporary trial or without such trial.

(f) use of goods imported into Guam by the owner of a vessel or vessels engaged in interstate or foreign commerce and held for and used only as ship stores for such vessels.

(g) the use or keeping for use, of materials or commodities which are to be incorporated by a contractor into the finished work or project required by the contract and which will remain in such finished work or project in such form as to be perceptible to the senses.

(h) the use or keeping for use of household goods, personal effects and private automobiles imported into Guam for non-business use by a person who (1) acquired them in another state, territory, district or country, (2) at the time of such acquisition was a bona fide resident of another state, territory, district or country, (3) acquired the property for use outside Guam,

and (4) made actual and substantial use thereof outside Guam; provided, that, as to an article acquired less than three months prior to the time of its importation into Guam it shall be presumed, until and unless clearly proved to the contrary, that it was acquired for use in Guam and that its use outside Guam was not actual and substantial.

Section 19602. Levy of tax. There is hereby levied, and shall be paid and collected, in the manner, at the times, and by the persons, hereinafter provided an excise tax upon the use or consumption of all property (as hereinabove defined) in Guam.

Section 19603. Rate of tax. The rate of the tax hereby imposed shall be four per cent.

Section 19604. Persons taxable; computation of tax; payable when. Every person who imports into Guam, or acquires in Guam from any other person not taxable under Chapter 6, Title XX in respect of the transaction by which the former acquired the same, any property for his use or consumption, shall be subject to a tax in respect of such use or consumption at the rate in this chapter provided, measured by the value of such property, which tax shall be payable:

(a) In the case of property imported in foreign commerce, at the time such property loses its character as an import and its immunity as such from taxation by the Government of Guam;

(b) In the case of property imported in interstate commerce, at the time such property comes to rest in Guam and ceases to have its character as an article in interstate commerce; and

(c) In the case of property acquired otherwise than through importation into Guam by the taxpayer in foreign or interstate commerce, at the time of such acquisition;

(d) In the event that the tax may not legally be levied in respect of the property concerned at the time and under the circumstances provided in paragraphs (a), (b) or (c) of this section, then the tax shall be levied and become payable at the commencement by the taxpayer of any use or consumption of the property which is taxable by the Government of Guam.

The value of property at the time the tax first becomes payable in respect thereof, shall be the value used for the computation of the tax.

Section 19605. Exemptions. The tax imposed by this chapter shall not apply to:

(a) Any property, or to any use or consumption of such property, which cannot be legally so taxed under the Constitution or laws of the United States, but only so long as, and only to the extent to which, the Government of Guam is without power to impose such tax; and

(b) Any person in respect of property acquired in or imported into Guam by him prior to July 1, 1967;

(c) Any use or consumption of personal property the transfer of which property to, or the acquisition of which by, the person so using or consuming the same has actually been or actually is taxed or exempted under Chapter 6, Title XX.

(d) When a tax has been imposed under this Chapter it shall not again be imposed upon or in respect of the same property under this chapter;

but nothing in this chapter shall be construed to exempt any property or its use or consumption from taxation under any other law.

Section 19606. Tax in addition to other taxes. The tax imposed by this chapter shall be in addition to any other taxes imposed by any other laws of Guam, except as otherwise specifically provided herein; provided, that if it be finally held by any court of competent jurisdiction, that the tax imposed by this chapter may not legally be imposed in addition to any other tax or taxes imposed by any other law or laws with respect to the same property or the use or consumption thereof, then this chapter shall be deemed not to apply to such property and the use or consumption thereof under such specific circumstances, but such other laws shall be given full effect with respect to such property, use and consumption.

Section 19607. Returns. On or before the twentieth day of each calendar month, any taxpayer who has become liable to the payment of a tax under this chapter during the preceding calendar month in respect of any property or the use or consumption thereof, shall file a return with the commissioner, setting forth a description of the property and the character and quantity thereof in sufficient detail to identify it or otherwise in such reasonable detail as the commissioner by regulation shall require, and the value thereof. Such return shall be accompanied by a remittance in full of the tax, computed at the rate specified in Section 19603 upon the value so returned. Any tax remaining unpaid after the twentieth day following the end of the calendar month during which the same first became payable shall become delinquent; provided, that a receipt from a seller required or authorized to collect the tax, given to a taxpayer in accordance with the provisions of Section 19609,

shall be sufficient to relieve such taxpayer from further liability for the tax to which such receipt may refer, or for the return thereof.

Section 19608. Reports by importers and others. For the purpose of enabling the commissioner to determine whether or not the provisions of this chapter are being complied with and to prevent evasion of the tax hereby imposed, every person who imports any property into Guam or who acquired property in Guam from any other person not taxable under Chapter 6, Title XX, in respect of the transaction by which the former acquired the same (whether or not he then is, or can then legally be, taxed in respect of such property or the use or consumption thereof under this chapter) shall make a report to the commissioner, setting forth, in such reasonable detail as the commissioner by regulation may prescribe, the description, quantity, character and value thereof, and such information as may be reasonably necessary to determine the taxability or non-taxability of the person making such report in respect of the property covered thereby.

Section 19609. Collection of tax by seller; penalty. (a) Every seller having in Guam, regularly or intermittently, any property, tangible or intangible, any place of business, or any representation (and irrespective of his having or not having qualified to do business in Guam), shall if such seller makes sales of property for use or consumption in Guam (whether or not such sales are made in Guam), collect from the purchaser the tax imposed by this chapter on the use or consumption of the property so sold by him. Such collection shall be made within twenty days after the accrual of the tax or within such other period as shall be fixed by the commissioner upon the application of the seller, and such seller shall give to the purchaser a receipt

therefor in the manner and form prescribed by the commissioner.

(b) The commissioner, in his discretion, upon application therefor and under terms and conditions prescribed by him, may relieve any seller of the duty of collecting and paying over the tax imposed by this chapter, if he is satisfied that the tax can be effectively collected by other means. Exemption from the duty of collecting the tax may be cancelled at any time when the commissioner finds that the tax cannot be effectively collected by other means. The commissioner likewise may terminate the duty and authority of any seller to collect and pay over the tax imposed by this chapter if he shall find, as to such seller, that the tax cannot be effectively collected by such means.

(c) The commissioner, in his discretion, upon application therefor and under terms and conditions prescribed by him, may authorize the collection of the tax imposed by this chapter by a seller not otherwise required to collect the tax. The seller, when so authorized, shall have the duty of collecting and paying over the tax in the same manner and subject to the same requirements as set out in subsection (a). Such authority may be cancelled at any time, when, in the judgment of the commissioner, the tax can more effectively be collected by other means.

(d) In case any seller required or authorized to collect the tax under this chapter fails to collect the same, or having collected the tax fails to pay over the same as provided by this chapter, he shall nevertheless be personally liable to the Government of Guam for the amount of such tax, but it shall be a defense to such liability that the indebtedness for the price is a worthless account actually charged off for in-

come tax purposes, if and to the extent that the collections of the price do not equal the tax.

(e) Every seller required or authorized to collect the tax shall make returns and payment of the tax at the same time and in the same manner as is provided with respect to taxpayers by Section 19607. All provisions of this chapter with respect to returns, reports, records, payments, penalties and interest, appeals, investigations and audits, assessments, tax collection procedure, criminal offenses and the general administrative powers and duties of the commissioner, shall apply to such sellers the same as to taxpayers.

(f) The tax collected pursuant to this section shall be held in trust for the Government of Guam and for payment to the commissioner in the manner and at the time required by this chapter. Any person collecting such tax who shall appropriate or convert the same to his own use or to any use other than the payment of the tax as herein provided, and who shall fail to pay over the amount of tax so collected at the time required by this chapter, shall be deemed guilty of an embezzlement of property of the Government of Guam and shall be fined more than five times the amount of money so embezzled or imprisoned at hard labor not more than ten years, and any failure by the person so collecting the tax to pay the same over within the time provided by this chapter, after demand therefor, shall be taken and held to be prima facie evidence of the embezzlement.

Section 19610. Other provisions of Chapter 6 applicable. In respect of (a) the examination of books and records and of taxpayers and other persons, (b) the procedure and powers upon failure or refusal by a taxpayer to make a return

or a proper return, and (c) the general administration of this chapter, the commissioner shall have all the rights and powers conferred upon him by Chapter 6, Title XX, with respect to taxes thereby or thereunder imposed; and, without restriction upon the aforesaid rights and powers all hearings and appeals shall be in conformity with the provisions of Chapter 6, Title XX."

Section 2. This Act is an urgency measure.

Approved May 19, 1967.