EDDIE BAZA CALVO
Governor

RAY TENORIO
Lieutenant Governor

Office of the Governor Of Guam

OCT 18 2017

GL#34-17-1109
Speaker Benjamin J.F. Cruz

OCT 18 2017
Time: 3:31 [ ] AM [ ] PM File No. 34-1052
Received By:

Honorable Benjamin J.F. Cruz
Speaker
I Mina'trentai Kuåttro Na Liheslaturan Guåhan
Guam Congress Building
163 Chalan Santo Papa
Hagåtña, Guam 96910

Dear Mr. Speaker:

Transmitted herewith is Bill No. 77-34 (COR), **"AN ACT TO *ADD* NEW ARTICLES 7 AND 8 TO CHAPTER 6, TITLE 11, GUAM CODE ANNOTATED, RELATIVE TO DEFINING THE STAMP TAX ON CIGARETTES AND REQUIRING FOR THE PROPER AFFIXING OF STAMPS; AND AUTHORIZING THE DEPARTMENT OF REVENUE AND TAXATION TO PROMULGATE IMPLEMENTING REGULATIONS,"** which lapsed into law on October 14, 2017, as **Public Law 34-55.**

Senseramente,

EDDIE BAZA CALVO

2017 OCT 18 PM 4:28

I MINA'TRENTAI KUÅTTRO NA LIHESLATURAN GUÅHAN
2017 (FIRST) Regular Session

Bill No. 77-34 (COR)
As amended by the Committee on Appropriation
and Adjudication; and further amended on the Floor.

Introduced by: Michael F.Q. San Nicolas
Thomas C. Ada
FRANK B. AGUON, JR.
William M. Castro
B. J.F. Cruz
James V. Espaldon
Fernando Barcinas Esteves
Régine Biscoe Lee
Tommy Morrison
Louise B. Muña
Telena Cruz Nelson
Dennis G. Rodriguez, Jr.
Joe S. San Agustin
Therese M. Terlaje
Mary Camacho Torres

AN ACT TO *ADD* NEW ARTICLES 7 AND 8 TO CHAPTER 6, TITLE 11, GUAM CODE ANNOTATED, RELATIVE TO DEFINING THE STAMP TAX ON CIGARETTES AND REQUIRING FOR THE PROPER AFFIXING OF STAMPS; AND AUTHORIZING THE DEPARTMENT OF REVENUE AND TAXATION TO PROMULGATE IMPLEMENTING REGULATIONS.

BE IT ENACTED BY THE PEOPLE OF GUAM:

Section 1. A new Article 7 is hereby *added* to Chapter 6 of Title 11, Guam Code Annotated, to read:

"ARTICLE 7

CIGARETTE STAMP TAX LAW

§ 6700. Legislative Findings and Intent.
§ 6701. Supplemental Definitions.
§ 6702. Proof of Taxation.
§ 6703. Records to be Kept.
§ 6704. Wholesaler and Retailer Requirements.
§ 6705. Inspection.
§ 6706. Appeals.
§ 6707. Reports.
§ 6708. Investigation.
§ 6709. Rules and Regulations.

§ 6700. Legislative Findings and Intent.

I Liheslaturan Guåhan finds that Public Law 2-43, signed into law by Governor Ford Q. Elvidge on July 22, 1953, established the tobacco tax, which includes the tax on cigarettes.

I Liheslatura finds that the current system of administering the tax on cigarettes relies upon voluntary compliance by the companies which sell cigarettes. While most companies will comply with the law in the course of their business, companies which do not, if not caught, would unfairly benefit.

I Liheslatura, therefore, finds that a system which has good mechanisms of accountability will level the playing field, putting those companies which comply with the law in a more fair competitive position.

I Liheslatura further finds that utilizing cigarette tax stamps will ensure that companies which comply with Guam's tobacco tax will not be unfairly disadvantaged competitively by the very act of compliance.

I Liheslatura finds that Guam is one (1) of only four (4) states and territories which have not authorized the use of tobacco tax stamps.

I Liheslatura finds that the Healthy Futures Fund is a major source of funding for government investments in public health, including support for the Guam Memorial Hospital Authority and the Department of Public Health and Social Services.

I Liheslatura further finds that the tobacco tax is the largest source of funding for the Healthy Futures Fund. In Fiscal Year 2016, approximately eighty-one percent (81%) of Healthy Futures Fund revenue came from the tobacco tax.

It is, therefore, the intent of *I Liheslaturan Guahan* to establish a cigarette tax stamp system to improve collections of the tobacco tax and promote fairness for businesses which comply with Guam's laws, by the establishment of new Articles 7 and 8 of this Chapter.

§ 6701. Supplemental Definitions.

Unless the context otherwise requires, the definitions set forth herein and in 11 GCA § 6101 *shall* govern the construction and interpretation of this Article.

(a) *Attorney General* means the Guam Attorney General or Assistant Attorneys General.

(b) *Business location* or *place of business* means the entire premises occupied by a retail tobacco permit applicant or an entity required to hold a retail tobacco permit under this Chapter; and *shall* include, but is not limited to, any store, stand, outlet, vehicle, cart, location, vending machine, or structure from which cigarettes or tobacco products are sold or distributed to a consumer.

(c) *Cigarette* means any rolled product for smoking made wholly or in part of tobacco, irrespective of size and shape and whether or not the tobacco is flavored, adulterated, or mixed with any other ingredient, the wrapper or cover of which is made of paper or any other substance or material except tobacco.

(d) *Cigarette package* means a sealed package of cigarettes originating from the manufacturer and bearing the health warning required by law.

(e) *Consumer* means a person who acquires or possesses a cigarette or a tobacco product for personal consumption and not for resale or distribution.

(f) *Department* means the Department of Revenue and Taxation.

(g) *Distribute*, *distributes*, or *distribution* means to sell, transfer, give, or to leave, deliver to another, or exchange with another, or to offer or agree to do the same.

(h) *Entity* means one (1) or more individuals, a company, a corporation, a partnership, an association, or any other type of legal entity.

(i) *Falsely alter* means to change a stamp in any manner so that the altered stamp falsely appears or purports to have a value or validity that is not authorized or consented to by the Department.

(j) *Falsely make* means to print, manufacture, or make what purports to be a stamp without the authority or consent of the Department.

(k) *Falsely reuse* means to affix a stamp that was previously affixed to a package of cigarettes, to another package of cigarettes.

(l) *License* means a license granted by Guam law that authorizes the holder to engage in the business of a wholesaler or retailer of cigarettes or tobacco products in Guam.

(m) *Licensee* means the holder of a license as a wholesaler or retailer granted under this Chapter.

(n) *Persons* means one (1) or more people, a company, a corporation, a partnership, or an association.

(o) *Possession* means knowingly having direct physical control at a given time, or knowingly having the power and the intention at a given time, to exercise dominion or control, either directly or through another entity.

(p) *Retailer* means an entity that engages in the practice of selling cigarettes or tobacco products to consumers, and includes the owner of a cigarette or tobacco product vending machine.

(q) *Retail price* means the ordinary, customary, or usual price paid by the consumer for the articles taxed.

(r) *Retail sale* or *tobacco retailing* means the practice of selling cigarettes or tobacco products to consumers, and includes the sale of cigarettes or tobacco through a vending machine.

(s) *Sale* includes every act of selling, and includes any sale or act of selling that originates from any order that is placed or submitted by means of a telephonic or other method of voice transmission, the mail, or any other delivery service, or the internet or other online service.

(t) *Ship* or *causes to be shipped* means to send by any means of transportation.

(u) *Stamp* means a stamp printed, manufactured, or made by authority of the Department, as provided in this Chapter, that is issued, sold, or circulated by the Department, and by the use of which the tax levied under this Chapter is paid.

(v) *Wholesaler* means any duly Guam licensed person who imports or causes to be imported into Guam any FDA approved or compliant cigarette products which are or will be offered for sale or used for any commercial purpose; any purchaser of warehouse receipts for such cigarettes stored in a warehouse in Guam who causes such cigarettes to be removed from such

warehouse; and also any person who produces, manufactures, compounds, mixes or rolls any such cigarette products within Guam for sale.

§ 6702. Proof of Taxation.

(a) The payment of taxes levied by § 26602 and § 26603(a) of Chapter 26, Title 11, Guam Code Annotated, *shall* be demonstrated by the purchase of tax stamps in Guam, which *shall* be affixed to each cigarette package. Nothing herein shall be construed as to levy any additional taxes on the sale of cigarettes, unless expressly stated by law.

(b) Payment for the purchasing of stamps to be affixed to a cigarette package *shall* be reported each month and payable *no later than* the twentieth (20th) day of the month following the month in which the stamps were purchased from the Department.

(c) The Department is responsible for and *shall* effectuate the printing, distribution, and sale of tax stamps.

(d) Any taxpayer under this Section may delay the payment of taxes in accordance with the provisions under 11 GCA § 26601(c) relative to cigarettes held and sold out of a bonded warehouse.

§ 6703. Records to Be Kept.

(a) Each wholesaler *shall* keep a record of:

(1) every sale or use of cigarettes and tobacco products by the wholesaler;

(2) the number and wholesale price of cigarettes;

(3) the taxes payable on tobacco products sold, possessed, or used, if any; and

(4) the amounts of stamps purchased and used, in a form as the Department may prescribe. The records *shall* be offered for inspection and examination at any time upon demand by the Department or the Attorney

General, and *shall* be preserved for a period of five (5) years; except, that the Department and the Attorney General, in writing, *shall* both consent to their destruction within the five (5)-year period, or either the Department or the Attorney General may require that they be kept longer. The Department, by rule, may require the wholesaler to keep such other records as it may deem necessary for the proper enforcement of this Chapter.

(b) If any wholesaler fails to keep records from which a proper determination of the taxes due under this Chapter may be made, the Department may fix the amount of the taxes for any period from the best information obtainable by it and assess the taxes as provided in this Chapter.

§ 6704. Wholesaler and Retailer Requirements.

(a) All wholesalers or distributors are required to pay the appropriate tax for each cigarette in its inventory, except as provided under 11 GCA § 26601(c) for inventory held in a warehouse under bond. Even though wholesalers are required to affix the stamps to cigarette packages prior to shipping to retail outlets, every cigarette retailer is responsible for inspecting their shipments upon receipt to ensure cigarette stamps have been properly affixed. Unstamped cigarette packages should be removed from inventory and set aside for return to the cigarette supplier.

(b) Any cigarette retailer that fails to properly inspect and timely return any unstamped cigarette packages to the cigarette supplier within seven (7) days *shall* assume liability for any unstamped cigarette packages and be subject to penalties under 11 GCA § 6810.

§ 6705. Inspection.

(a) The Department and/or the Attorney General may examine all records, including tax returns and reports required to be kept or filed under this Chapter, and books, papers, and records of any person engaged in the business of wholesaling or dealing cigarettes and tobacco products, to verify the accuracy of the payment of the

taxes imposed by this Chapter. Every person in possession of any books, papers, and records, and the person's agents and employees, are directed and required to give to the Department and the Attorney General the means, facilities, and opportunities for the examinations.

(b) The Department and/or the Attorney General may inspect the operations, premises, and storage areas of any entity engaged in the sale of cigarettes, or the contents of a specific vending machine, during regular business hours. This inspection *shall* include inspection of all statements, books, papers, and records in whatever format, including electronic format, pertaining to the acquisition, possession, transportation, sale, or use of packages of cigarettes and tobacco products other than cigarettes, to verify the accuracy of the payment of taxes imposed by this Chapter, and of the contents of cartons and shipping or storage containers to ascertain that all individual packages of cigarettes have an affixed stamp of proper denomination as required by this Chapter. This inspection may also verify that all stamps were produced under the authority of the Department. Every entity in possession of any books, papers, and records, and the entity's agents and employees, are directed and required to give the Department and/or the Attorney General the means, facilities, and opportunities for the examinations. For the purposes of this Chapter, "entity" means one (1) or more individuals, a company, a corporation, a partnership, an association, or any other type of legal entity.

(c) If the Department or the Attorney General has reasonable cause to believe and does believe that cigarettes, stamps, or counterfeit stamps are being acquired, possessed, transported, kept, sold, or offered for sale in violation of this Chapter, the Department or the Attorney General may investigate or search the vehicle or premises in which the cigarettes, stamps, or counterfeit stamps are believed to be located. If cigarettes, stamps, or counterfeit stamps are found in a vehicle, premises, or vending machine in violation of this Chapter, the cigarettes,

vending machine, vehicle, stamps, counterfeit stamps, or other tangible personal property containing those cigarettes, stamps, or counterfeit stamps and any books and records in possession of the entity in control or possession of the cigarettes, stamps, or counterfeit stamps may be seized by the Department or the Attorney General and are subject to forfeiture.

§ 6706. Appeals.

Any person aggrieved by any assessment of the taxes imposed by this Chapter may appeal from the assessment in the manner and within the time, and in all other respects as provided for by current tax protest procedures.

§ 6707. Reports.

On or before the twentieth (20th) day of each month, every wholesaler *shall* file with the Department a report showing the cigarettes and tobacco products sold, possessed, or used by the wholesaler during the preceding calendar month, and of the taxes chargeable against the taxpayer in accordance with this Chapter. Such reports are public records as defined by 5 GCA § 10102(d). The form of the report *shall* be prescribed by the Department and *shall* include:

(a) a separate statement of the cigarettes imported into and sold within Guam;

(b) the amount of stamps purchased and used; and

(c) any other information that the Department may deem necessary for the proper administration of this Chapter.

§ 6708. Investigation.

(a) Any agent duly authorized by the Department to conduct any inquiry, investigation, or hearing hereunder, *shall* have power to administer oaths and take testimony under oath relative to the matter of inquiry or investigation. At any hearing ordered by the Director, the Director or the Director's agent authorized to conduct the hearing, may subpoena witnesses and require the production of books, papers,

and documents pertinent to the inquiry. No witness under the subpoena authorized to be issued by this Section shall be excused from testifying or from producing books or papers on the ground that such testimony or the production of such books or other documentary evidence would tend to incriminate the witness, or subject the witness to penalty or forfeiture; but no person shall be prosecuted, punished, or subjected to any penalty or forfeiture for or on account of any act, transaction, matter, or thing concerning which the person *shall*, under oath, have testified or produced documentary evidence.

(b) If any person disobeys such process or, having appeared in obedience thereto, refuses to answer any pertinent question put to the person by any duly authorized agent of the Department, or to produce any books and papers pursuant thereto, the duly authorized agent may apply to the Guam Superior Court setting forth such disobedience to process or refusal to answer, and the court or the judge *shall* cite such person to appear before the court or the judge to answer such question or to produce such books and papers and, upon the person's refusal to do so, *shall* commit such person to jail until the person *shall* testify, but not for a longer period than sixty (60) days. Notwithstanding the serving of the term of such commitment by any person, the Director may proceed in all respects with such inquiry and examination as if the witness had not previously been called upon to testify.

§ 6709. Rules and Regulations.

The administration of this Chapter is vested in the Department, and it may prescribe and enforce rules and regulations for the enforcement and administration of this Chapter."

Section 2. A new Article 8 is hereby *added* to Chapter 6 of Title 11, Guam Code Annotated, to read:

"ARTICLE 8

STAMPING OF CIGARETTES

§ 6800. Payment of Tax Through the Use of Stamps.
§ 6801. Affixation; Required Prior to Distribution; Method and Manner.
§ 6802. Department to Furnish: Stamps, Their Designs, Specifications, and Denominations.
§ 6803. Purchase of Stamps.
§ 6804. Price.
§ 6805. Unused Stamps; Cancellation of Stamps.
§ 6806. Transfer of Stamps.
§ 6807. Unlicensed Possession or Use of Stamps.
§ 6808. Counterfeiting Stamps.
§ 6809. Sale or Purchase of Cigarette Packages Without Stamps; Fines and Penalties.
§ 6810. Vending of Unstamped Cigarettes.
§ 6811. Exemptions.
§ 6812. Forfeiture.
§ 6813. Deceptive Trade Practices.
§ 6814. Public Enforcement.
§ 6815. Private Enforcement.

§ 6800. Payment of Tax Through the Use of Stamps.

The tax imposed under this Chapter upon the sale or use of cigarettes *shall* be paid by licensees through the use of stamps.

§ 6801. Affixiation; Required Prior to Distribution; Method and Manner.

(a) A licensee or the authorized agent or designee of a licensee *shall* affix a stamp to the bottom of each individual package of cigarettes prior to distribution.

(b) No individual package of cigarettes may be sold or offered for sale to the general public unless affixed with the stamp required under this Section.

(c) No cigarette package may be placed or stored in a vending machine unless affixed with the stamp required under Subsection (a) of this Section.

(d) The Department may adopt rules regarding the method and manner of affixing stamps to a cigarette package.

(e) For the purpose of allowing compensation for the costs necessarily incurred in affixing the proper tax stamps to each package of cigarettes prior to distribution, each licensee or authorized agent or a designee of a licensee purchasing stamps from the Department may purchase the stamps at a reduction of fourtenths of one percent (0.4%) of the denominated value of each stamp purchased. The reduction *shall* be the only discount allowed to purchasers from the Department. If a purchaser does not comply with all of the provisions of Guam law, the licensee *shall* pay the full denominated value of the stamps purchased until the licensee has complied.

§ 6802. Department to Furnish: Stamps, Their Designs, Specifications, and Denominations.

The Department *shall* furnish stamps for sale to licensees. Stamps *shall* be of such designs and specifications, and the Department may prescribe denominations as it sees fit.

§ 6803. Purchase of Stamps.

A licensee may enter or apply to the Department to purchase stamps beginning one hundred eighty (180) days from the date of enactment of this Act. A licensee may authorize a designee to purchase stamps. Such authorization *shall* be in writing and *shall* continue until written notice revoking the designation is provided to the Department.

§ 6804. Price.

(a) Stamps *shall* be sold at their denominated values as provided for herein.

(b) Payment for the stamps *shall* be made *no later than* the twentieth (20th) day of the month following the month in which the stamps were purchased from the Department.

(c) Any taxpayer under this Section may delay the payment of taxes in accordance with the provisions under 11 GCA § 26601(c) relative to cigarettes held and sold out of a bonded warehouse. Payment for the stamps for cigarettes held and sold out of a bonded warehouse *shall* be made *no later than* the twentieth (20th) day of the month following the month in which the stamps and associated cigarettes were issued and sold out of the bonded warehouse.

§ 6805. Unused Stamps; Cancellation of Stamps.

The Department *shall* adopt rules for a refund or credit to a licensee in the amount of the denominated values of any unused stamps. The Department may provide by rule for the cancellation of stamps.

§ 6806. Transfer of Stamps.

Unused stamps *shall not* be sold, exchanged, or in any manner negotiated or transferred by a licensee to another person. Any person who violates this Section *shall* be subject to a fine of not less than Five Hundred Dollars ($500) and not more than One Thousand Dollars ($1,000) for each violation.

§ 6807. Unlicensed Possession or Use of Stamps.

A person who is not licensed under this Chapter and who knowingly possesses or uses a stamp *shall* be guilty of a third (3rd) degree felony.

§ 6808. Counterfeiting Stamps.

A person *shall* be guilty of a third (3rd) degree felony if the person:

(a) intentionally or knowingly makes, alters, or reuses a stamp; or

(b) knowingly possesses or distributes a stamp that has been falsely made, unauthorized, altered, or reused.

§ 6809. Sale or Purchase of Cigarette Packages Without Stamps; Fines and Penalties.

(a) A person *shall* be guilty of a third (3rd) degree felony if the person:

(1) is not a licensee, and knowingly possesses, keeps, stores, acquires, or transports three thousand (3,000) or more cigarettes that do not have stamps affixed to the cigarette packages as required by this Article; or

(2) knowingly sells one thousand (1,000) or more cigarettes that do not have stamps affixed to the cigarette packages as required by this Article.

(b) A person *shall* be guilty of a misdemeanor if the person:

(1) is not a licensee, and knowingly possesses, keeps, stores, acquires, or transports one thousand (1,000) or more cigarettes that do not have stamps affixed to the cigarette packages as required by this Article; or

(2) knowingly sells less than one thousand (1,000) cigarettes that do not have stamps affixed to the cigarette packages as required by this Article.

(c) In addition to any other authorized disposition, a person found in violation of:

(1) Subsection (a) is subject to a fine in an amount not to exceed Fifty Thousand Dollars ($50,000); and

(2) Subsection (b) is subject to a fine in an amount not to exceed Twenty-five Thousand Dollars ($25,000).

§ 6810. Vending of Unstamped Cigarettes.

(a) Any person who knowingly places for sale in a cigarette vending machine any cigarettes not contained in cigarette packages to which are affixed stamps as required by this Article *shall* be guilty of a third (3rd) degree felony.

(b) In addition to any other authorized disposition, a person found in violation of Subsection (a) may be fined in an amount not to exceed Fifty Thousand Dollars ($50,000).

§ 6811. Exemptions.

(a) No cigarette tax stamp *shall* be required to be paid upon cigarettes that are sold for personal use at sales outlets operated under the regulations of the armed services of the United States; provided, that it *shall* be unlawful for any person, including members of the armed services of the United States, to purchase such tax-exempt cigarettes for purposes of resale. Any person who intentionally, knowingly, or recklessly resells, or offers for resale, tax-exempt cigarettes purchased at sales outlets operated under the regulations of the armed services of the United States *shall* be guilty of a violation of this Article, and punishable as provided in § 6809 or § 6810 of this Article. For the purposes of this Section, "person" means one (1) or more people, a company, a corporation, a partnership, or any combination of individuals.

(b) No cigarette tax stamp *shall* be required to be paid upon cigarettes that are sold outside of Guam, including cigarettes sold for export outside of Guam and cigarettes sold through duty free outlets located at the A.B. Won Pat International Airport Guam which are intended to be transported outside of Guam by outgoing travelers; provided, that it *shall* be unlawful for any person to purchase such tax-exempt cigarettes for purposes of resale on Guam.

(c) Unless otherwise exempt from taxes by this Chapter, it *shall* be presumed that all cigarettes are subject to the tax imposed by this Chapter, unless the contrary is established, and the burden of proof that they are not taxable *shall* be upon the person having possession of them.

§ 6812. Forfeiture.

Any cigarette, package of cigarettes, carton of cigarettes, or container of cigarettes unlawfully possessed, kept, stored, acquired, transported, sold, imported, offered, received, or distributed in violation of this Chapter may be seized and confiscated by any order of the Attorney General, and ordered forfeited.

§ 6813. Deceptive Trade Practices.

Any violation of this Chapter *shall* constitute an unfair method of competition, and unfair and deceptive acts or practices in the conduct of any trade or commerce under 5 GCA § 32101 *et seq.*, and *shall* be subject to a civil penalty as provided in Guam law. Each package of cigarettes sold in violation of this Chapter *shall* constitute a separate violation.

§ 6814. Public Enforcement.

(a) Public enforcement of this Article is under the jurisdiction of the Attorney General. The Attorney General may seek assistance in the enforcement of this Article from other law enforcement agencies. This includes:

(1) any peace officer as defined by 8 GCA § 5.55; and

(2) a Citizen Assisted Police Enforcement (CAPE) volunteer as provided pursuant to 10 GCA § 77302.

(b) The Attorney General and the Guam Police Department may seize and confiscate any cigarette, package of cigarettes, or carton of cigarettes that is possessed, kept, stored, retained, held, owned, received, transported, imported, or caused to be imported, acquired, distributed, sold, or offered for sale in violation of this Article.

(c) Any cigarette, package of cigarettes, or carton of cigarettes unlawfully possessed, kept, stored, received, held, owned, acquired, retained, transported, imported, or caused to be imported, distributed, sold, or offered for sale, in violation of this Article, *shall* be forfeited as contraband and may be seized through any legal process available to the Attorney General. Any cigarette, package of cigarettes, or carton of cigarettes forfeited as provided in this Section *shall* be ordered destroyed.

(d) Notwithstanding the existence of other remedies at law, the Attorney General may apply for a temporary or permanent injunction restraining any person

from violating or continuing to violate this Article. The injunction *shall* be issued without bond.

§ 6815. Private Enforcement.

(a) A person may bring a civil action for violation of this Article on behalf of the person and the government of Guam to enforce the fines contained herein. The action *shall only* be dismissed if the court and the Attorney General give written consent to dismissal and the reasons for the dismissal.

(1) A copy of the complaint and written disclosure of substantially all material evidence and information *shall* be served on the government of Guam pursuant to the Guam Rules of Civil Procedure. The complaint *shall* be filed in camera, *shall* remain under seal for sixty (60) days, and *shall not* be served on the named defendant until ordered by the Superior Court. The government may elect to intervene and prosecute the action within sixty (60) days after service of the complaint.

(2) The government is entitled to a one (1)-time extension of thirty (30) days to evaluate the complaint filed.

(b) If the government elects to intervene and proceed with the action, it *shall* have primary responsibility for prosecuting the action and *shall not* be bound by an act of the person bringing the action unless there is an exception enumerated in this law.

(1) Upon the government's assumption of the complaint, the person who filed the complaint has no further participation, except as described herein, and the government may:

(A) dismiss the action notwithstanding the objection of the person bringing the complaint as long as the person bringing the complaint has an opportunity to respond in writing;

(B) settle the action notwithstanding the objection of the person bringing the complaint as long as the Guam Superior Court finds the settlement to be fair, adequate and reasonable;

(C) pursue its claim through an alternate remedy available to the government in including any administrative proceeding to determine a civil money penalty. If any such alternate remedy is pursued in another proceeding, the person initiating the action *shall* have the same rights in such proceeding as such person would have had if the action had continued under this Section;

(D) if the government proceeds with an action brought by a person under this law, such person *shall* receive at least fifteen percent (15%) but no more than twenty-five percent (25%) of the proceeds of the action or settlement of the claim plus their reasonable costs and attorney fees incurred in filing the complaint;

(E) if the government does not proceed with an action, the person bringing the action or settling the claim *shall* receive an amount which the Guam Superior Court decides is reasonable for collecting the civil penalty and damages. The amount *shall not* be less than twenty-five percent (25%) and not more than thirty percent (30%) of the proceeds of the action or settlement. Such person *shall* also in addition receive an award for their reasonable costs, fees, and attorney fees; or

(F) if the government does not proceed with the action and the person bringing the action does not prevail on the claim, the defendant is entitled to its reasonable attorney fees if the court finds in its discretion that the action was clearly frivolous, vexatious, or brought for purposes of harassment.

(c) All civil penalties and fines awarded by the court in excess of the reasonable amount awarded by the court to any private individual(s) who bring a private enforcement action of this law *shall* be deposited in the Healthy Futures Fund."

Section 3. Funding. The sum of Two Hundred Thousand Dollars ($200,000) is appropriated from the unappropriated Healthy Futures Fund revenues in Fiscal Year 2017 to the Office of the Attorney General for the initial funding for the sole purpose of enforcement of this Act. This appropriation *shall not* lapse and *shall* continue until fully expended.

Section 4. Implementation and Effective Date. *No later than* ninety (90) days following the enactment of this Act, the Director of Revenue and Taxation *shall* submit an implementation plan for Sections 1 and 2 of this Act to *I Maga'låhen Guåhan* and the Speaker of *I Liheslaturan Guåhan*, with an effective date for the provisions of this Act of not more than one (1) year from the enactment of this Act, except as otherwise provided herein.

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

I MINA'TRENTAI KUÅTTRO NA LIHESLATURAN GUÅHAN
2017 (FIRST) Regular Session

CERTIFICATION OF PASSAGE OF AN ACT TO *I MAGA'LÅHEN GUÅHAN*

This is to certify that **Bill No. 77-34 (COR), "AN ACT TO *ADD* NEW ARTICLES 7 AND 8 TO CHAPTER 6, TITLE 11, GUAM CODE ANNOTATED, RELATIVE TO DEFINING THE STAMP TAX ON CIGARETTES AND REQUIRING FOR THE PROPER AFFIXING OF STAMPS; AND AUTHORIZING THE DEPARTMENT OF REVENUE AND TAXATION TO PROMULGATE IMPLEMENTING REGULATIONS,"** was on the 29th day of September 2017, duly and regularly passed.

Benjamin J.F. Cruz
Speaker

Attested:

Dennis G. Rodriguez, Jr.
Acting Legislative Secretary

This Act was received by *I Maga'låhen Guåhan* this 2nd day of Oct, 2017, at 4:40 o'clock P.M.

Assistant Staff Officer
Maga'låhi's Office

APPROVED:

EDWARD J.B. CALVO
I Maga'låhen Guåhan

Date: OCT 14 2017

Public Law No. 34-55