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GUAM
ECONOMIC DEVELOPMENT AUTHORITY
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Deputy Administrator
Sigundo Na Administradot

GL# 34-18-1470

January 26, 2018

Speaker Benjamin J.F. Cruz

Speaker Benjamin J.F. Cruz
I Mina'trentai Kuåtro na Liheslaturan Guåhan
Guam Congress Building
Hagåtña, Guam 96910

JAN 30 2018
Time: 2:30 [ ] AM [ ] PM File #: 34-1464
Received By:

RE: **Bill No. 230-34 (COR): Request for Information**

2018 JAN 30 PM 12:42

Hafa Adai Speaker Cruz!

I am writing in response to your letter dated January 19, 2018 as it relates to the bond covenants tied to the Business Privilege Tax (BPT) as you consider a recommendation for implementation of a sales tax. I further understand this information is needed for the upcoming Public Hearing on Bill No. 230-34 (COR) scheduled by the Committee on Appropriations and Adjudication, scheduled for January 29, 2018. See below responses to your specific inquiries, reflecting my conversations with bond counsel:

1. Do the existing bond covenants relative to the government of Guam's Business Privilege Tax permit the permanent repeal and replacement of the existing BPT with an equivalent sales tax?

The existing indenture relating to the "BPT Bonds" secured by the BPT would prevent the permanent repeal and replacement of the entire existing BPT with an equivalent sales tax while any of the BPT Bonds are deemed to be outstanding under the BPT Indenture. Specifically, the BPT Indenture provides that "[a]s long as any Bonds remain Outstanding, the Government *shall not reduce the rate of levy and collection of the pledged business privilege tax below three percent (3%),* nor shall the Government reduce the services, products or activities to which the pledged business privilege tax applies, nor shall the Government upwardly adjust any exception or exclusion to, *or otherwise impair, the pledged business privilege tax*." (emphasis added)

If the Government were to legally defease or otherwise payoff the existing BPT Bonds with non-BPT Government bonds it would then be permitted, from a BPT Indenture standpoint, to permanently replace any portion of the BPT (including the pledged 3%) with an equivalent sales tax.

We note that the BPT bonds could be paid off at any time by escrowing them to their respective call dates, however, we would have to use taxable bonds if done prior calendar year 2025.

2. Do the existing bond covenants relative to the government of Guam's Business Privilege Tax permit the levy of a sales tax in addition to the existing BPT?

There is nothing in the BPT bond Indenture that would expressly prevent the levy of a sales tax in addition to the existing BPT so long as the covenant referenced in the response to Question 1 above was not violated.

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3. What are the potential legal or financial implications relative to the government of Guam's bond ratings and/or contractual obligations if a sales tax replaces the existing BPT statute?

As set forth above, from a BPT Indenture standpoint, the BPT cannot be replaced by a sales tax while any BPT Bonds are outstanding, subject to the discussion above under Question 1. An action to replace the entire BPT with an equivalent sales tax would violate the BPT Indenture, the Government's core contractual obligation relating to the Bonds.

4. What are the potential legal or financial implications if a sales tax is levied in addition to the BPT?
As set forth above, from a BPT Indenture standpoint, there is nothing in the BPT Indenture that would expressly prevent the levy of a sales tax in addition to the existing BPT so long as the covenant referenced in the response to Question 1 above was not violated.

Should a sales tax be implemented, with or without the elimination of the BPT, any financial implications for GovGuam and any potential new bond (backed by sales tax or some combination of sales tax and any remaining BPT) would be evaluated by rating agencies, investors and any other outside parties based upon the specifics of the revenues expected to be generated (relative to a proven track record of collections).

Please review and let me know if you need more information.

Si Yu'os Ma'ase,

Jay Rojas
Administrator

cc: Office of the Governor of Guam