EDDIE BAZA CALVO
Governor

RAY TENORIO
Lieutenant Governor

Office of the Governor Of Guam

GL# 34-18-1532
Speaker Benjamin J.F. Cruz

February 14, 2018

FEB 14 2018
Time: 1:23 [ ] AM [ ] PM File No. 34-15 36
Received By: Ellen

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

2018 FEB 14 PM 1:25

Dear Mr. Speaker:

Pursuant to my authority under Section 1423h of the Organic Act of Guam, I am calling *I Liheslaturan Guåhan* into special session on **Wednesday, February 14, 2018, at 4:00 p.m.** for the sole purpose of considering the enclosed draft bill that will provide financial stability for the Government of Guam and the Guam Memorial Hospital.

As we have discussed, the federal government's passage of the *Tax Cuts and Jobs Act of 2017* [U.S. Pub. L. 115-97] reduces corporate, individual and withholding taxes in its intent to provide economic stimulus. However, there is an **immediate** impact of reduced revenue for the local government. It requires adjustment at the local level.

Additionally, we all agree that the Guam Memorial Hospital is severely underfunded and in desperate need of a dedicated funding source. Critical capital improvement projects are also needed to sustain the Department of Education.

This bill would take place of Bill 230-34, the compromise bill intended to help GMH, as we now hope to address the new challenge we face as well as the health and educational needs of our community with the legislation proposed today.

It is urgent that we take immediate action to protect our island community. By this bill, I am proposing that the BPT rate be temporarily raised from 4% to 6% for the next two years, after which period the rate will automatically be lowered down to 4.75%. Of this, the additional .75% above the regular 4% rate will allocated exclusively to GMH as a dedicated funding source.

I would like to add, in response to concerns raised by some in our community, that the Office of the Attorney General has addressed the question of a required voter referendum on

taxes and noted the Legislature is not bound by P.L. 24-222. Additionally, the January 5, 2018 Opinion Memorandum states:

1. Establishing taxes and fees are essential to the operation of government they are beyond the authority of the Legislature to delegate.
2. As a matter of statutory construction when faced with seemingly inconsistent laws the latter in time prevails.
3. One Legislature cannot bind future Legislatures.

While the AG has noted that it is not necessary, there is "notwithstanding" language included in the draft bill.

I believe that the proposal to raise the BPT rate as set forth in the enclosed bill is a matter of great public interest and that it will have a positive impact on GMH, on the schools, and on our economy. I humbly ask all members of *I Liheslatura* for their support and consideration.

Senseramente,



EDDIE BAZA CALVO

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I MINA'TRENTAI KUÅTTRO NA LIHESLATURAN GUÅHAN
2018 (SECOND) Regular Session

Bill No. _____-34

Introduced by:

_____
By request of *I Maga'Låhen Guåhan*, the Governor of Guam, in accordance with the Organic Act of Guam.

AN ACT TO REVISE THE BUSINESS PRIVILEGE TAX FROM 4% TO 6% BY AMENDING TITLE 11, DIVISION 2, CHAPTER 26, §26202; AND TO DEDICATE THE REVENUE TO BE COLLECTED FROM THE EXPANDED REVENUE STREAM TO (1) THE GUAM MEMORIAL HOSPITAL FOR ITS OPERATIONS AND MODERNIZATION, (2) THE DEPARTMENT OF EDUCATION TO FUND ITS CAPITAL NEEDS AND (3) THE GENERAL FUND OF THE GOVERNMENT OF GUAM TO ADDRESS THE TAX BASE EROSION RESULTING FROM THE PASSAGE OF THE TAX CUTS AND JOBS ACT OF 2017.

BE IT ENACTED BY THE PEOPLE OF GUAM:

Section 1. Legislative Findings and Intent. *I Liheslatura* finds that Guam Memorial Hospital (GMH) is underfunded operationally and is due for extensive capital improvement for its modernization and its viability. *I Liheslatura* further finds that GMH may be properly funded with an annual surplus remaining to pay for the needed capital improvements, whether new or modernized, by increasing the business privilege tax (BPT) from 4% to 6%.

It is further the intent of *I Liheslatura* to address the capital improvement needs of the Department of Education with the increase of the BPT rate as well as

to address the tax base erosion caused by the passage of the Tax Cuts and Jobs Act of 2017 by providing a portion of the BPT increase to the General Fund of the Government of Guam.

Section 2. The entire § 26202 is hereby *amended* and shall read as follows:

"**§ 26202.** Rates. The following rates shall apply in computing, assessing and collecting the business privilege tax:

(a) Tax on the business of selling tangible personal property. Upon every person engaging or continuing within Guam in the business of selling any tangible property whatsoever (not including however, bonds or other evidence of indebtedness or stocks), there shall be a tax equivalent to ~~four percent (4%)~~ six percent (6%) of gross proceeds of sales; except that on the gross proceeds of the operation of poker machines, there shall be a tax equivalent to eight percent (8%) on the gross proceeds of each machine, as determined by subtracting the winnings, pay-outs and malfunction refunds from total receipts of each machine.

(1) Provided, that gross proceeds of export sales of tangible property in foreign commerce shall not constitute a part of the measure of the tax imposed. Although not constituting a part of the measure of the tax imposed, all such sales shall be reported in the manner provided for the reporting of the tax imposed by § 26202(a).

(2) Provided, that any person engaging or continuing in business as a retailer and a wholesaler shall pay the tax required solely on the gross proceeds of sales of the retail business, and his books must be kept so as to show separately the gross proceeds of sale of each business.

(3) Provided, that a manufacturer or producer engaging in the business of selling his manufactured products at retail in Guam shall be required to make returns of the gross proceeds of such retail sales and pay the tax imposed by this Chapter for the privilege of engaging in the business of selling such products at retail in Guam; and

(4) Provided, that a manufacturer or producer, other than a manufacturer of alcoholic beverages, engaging in the business of selling his products to manufacturers, wholesalers, or licensed retailers, or persons actually selling the products to the United States Government, shall not be required to pay the tax imposed in this Act for the privilege of selling such products at wholesale. Nor shall any such manufacturer or producer, other than a manufacturer of alcoholic beverages, be required to pay the tax imposed in this Act for the privilege of selling products for delivery to the purchaser outside of Guam. The point of delivery for a purchaser outside of Guam may be on Guam, if the product's ultimate destination or consumption is outside of Guam.

(b)

(1) [Repealed.]

(2) [Repealed.]

(3) Tax upon boxing. The tax levied and assessed under Subsections (b)(1) and (b)(2) (repealed) of this Section shall not apply to boxing for which a tax equivalent to twelve percent (12%) of the gross income of such boxing business is hereby levied and assessed.

(c) Tax on service business. Upon every person engaging or

continuing within Guam, in any service business or calling not otherwise specifically taxed under this Section, [there shall be] a tax equivalent to ~~four percent (4%)~~ six percent (6%) of the gross income of such business.

(d) Professions. Upon every person engaging or continuing within Guam in the practice of a profession, excluding those expounding the religious doctrines of any church, there shall be a tax equivalent to ~~four percent (4%)~~ six percent (6%) of the gross income of such practice

(e) Tax on Contractors. There shall be levied, assessed and collected a tax rate of ~~four percent (4%)~~ six percent (6%) measured against the gross income of any contractor; provided, that there shall be deducted from the gross income of the taxpayer so much thereof as has been included in the gross income earned from another taxpayer who is a contractor as defined in § 26101(b) and who has already paid the tax levied under this Subsection for goods and services that include the deductible gross income of the taxpayer who is a contractor; provided, that any person claiming a deduction under this Subsection shall be required to show in the person's return either the name and the contractor's license number issued by the Guam Contractors License Board, or the Guam business license number, or the registration number for a professional engineer, architect or land surveyor, or the Certificate of Authorization (COA) number for a business authorized to provide engineering, architecture or land surveying services by the Guam Board of Registration for Professional Engineers, Architects, and Land Surveyors of the person paying the tax on the amount deducted by the person.

(f) Tax on banks, banking institutions, small lenders and

building and loan associations. Upon every person engaging or continuing within Guam in the business of operating any bank, banking institutions, building and loan association, small lending business, or lending institutions, there shall be a tax equivalent to ~~four percent (4%)~~ six percent (6%) of the net income received from business.

~~(~~1) Net Income. For the purpose of this Section, net income shall mean the gross income of such taxpayer received from all sources less the following deductions therefrom:

(A) Salaries or bonuses paid and other compensation from personal services.

(B) Interest or discount paid.

(C) Rents paid.

(D) Ordinary operating expenses such as supplies, utility services, insurance premiums other than for life insurance, provided that any deductible insurance expense shall be allowable only to the extent that such a premium is applicable to the tax period against which it is claimed.

(E) Loans or obligations charged off the books of the bank as losses unless charged against reserves then in existence. (F) Losses other than loan losses, such as those occasioned by fire or other casualty, theft, embezzlement, and the like, but only to the extent not covered by insurance proceeds collected.

(G) Transfers from earnings to reserve for bad debts or other contingencies provided for.

(H) Miscellaneous direct expenses such as legal, advertising,

auditing, and the like.

(I) Loss on property sold and depreciation on property owned.

(2) A person liable for the payment of taxes levied under this Section shall be required to file an annual return and shall not be required to file monthly returns. The tax year shall be calendar year except that the taxpayer may use his annual accounting period when prior permission is obtained from the Tax Commissioner. The annual return under this Subsection shall be filed not later than ninety (90) days following the close of the taxpayer's tax year.

(g) Dealing in foreign currency. Upon every person engaging or continuing within Guam in the business of purchasing and selling foreign money, there shall be a tax equivalent to ~~four percent (4%)~~ six percent (6%) of the gross profit of such business represented by the difference between the cost and selling price of the foreign currency measured in United States dollars.

(h) Tax on other business. Upon every person engaging or continuing within Guam in any business, trade, activity, occupation or calling not specifically included in any other provision of this Article, there shall likewise be a tax equivalent to ~~four percent (4%)~~ six percent (6%) of the gross income of such business. This Section shall apply to the gross income of persons taxable under other provisions of this Chapter but which gross income is not derived from the exercise or privilege taxable thereunder.

(i) Insurers. Upon every person engaged or continuing within Guam in the business of an insurer, there shall be a tax at the rate of

four percent (4%) of gross income received as premium for the writing of insurance, less returned premiums and less all commissions attributable to the sale and purchase of an insurance policy or policies of the insurer paid by said insurer to agents of the same, and ~~four percent (4%)~~ six percent (6%) of any other gross income earned or derived on Guam.

(j) Tour Agencies. Upon every person engaging or continuing within Guam in the business of a tour agency or travel agency, where tourism-related services are furnished to consumers by independent vendors through arrangements made by a travel agency, or tour packager, and the gross income is divided between the provider of the services on the one hand and the travel agency or tour packager on the other hand, a tax equivalent of ~~four percent (4%)~~ six percent (6%) shall be imposed on each person with respect to such person's respective portion of the proceeds, and no more.

Where transient accommodations are furnished through arrangements made by a travel agency or tour packager, the gross income is divided between the provider of the transient accommodations on the one hand and the travel agency, or tour packager, on the other hand, a tax equivalent of ~~four percent (4%)~~ six percent (6%) shall be imposed on each person with respect to such person's respective portion of the proceeds, and no more.

(1) As used in this Subsection tourism-related services shall mean dinner cruises, transportation included in a tour package, sight seeing tours, dinner shows, extravaganzas, cultural and educational facilities, and other services rendered directly to the customer or tourist.

(2) As used in this Subsection 'transient accommodations' shall mean hotel, lodging facility, or similar facility located on Guam and subject to the provisions of 11 GCA § 30101.

Section 3. Effective date of increased BPT rate; Sunset provision.

(a) The increased BPT rate of 6% *shall* be ***immediately effective and implemented*** following the enactment of this Act by *I Maga'lahen Guahan*, and it shall remain in effect for two (2) years therefrom when at the expiration of such period, 1.25 % of the increased rate of 6% representing the allocation made in Section 4 herein to the Department of Education and the General Fund shall automatically be deemed *repealed* and the BPT rate shall decrease and revert to 4.75% without any further legislative action necessary. Of the reverted 4.75% rate, 0.75% shall continue to be allocated to the Guam Memorial Hospital.

(b) During the two (2) year period when the effective BPT rate is 6%, *I Liheslatura* and the Executive Branch shall collaborate to explore and identify any and all potential government revenue streams, financing sources or grants to address the tax base erosion, including but not limited to federal government assistance or private financial lending sources.

Section 4. Use and appropriation of revenue.

The increased revenues derived from the increase of the BPT described in this Act shall be allocated accordingly:

(a) 0.75% to Guam Memorial Hospital Authority for its purposes, including but not limited to, capital investment, operational requirements or reserves.

(b) 0.25% to the Department of Education for its capital improvement needs, and

(c) 1.00% to the General Fund of the Government of Guam to address the erosion of the tax base resulting for the passage of the Tax Cuts and Jobs Act of 2017.

Section 5. Approval of Voters not Required. Notwithstanding §§ 16311 and 16312 of Title 3, Guam Code Annotated, the increase of the BPT rate authorized by this Act shall not be required to be subject to the approval of, or placed before, the voters of Guam.

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