EDDIE BAZA CALVO
Governor

RAY TENORIO
Lieutenant Governor

Office of the Governor Of Guam

GL#34-18-1589
Speaker Benjamin J.F. Cruz

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February 28 2018

The 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:

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 28, 2018, at 7:00 p.m.** for the sole purpose of considering Bill 249-34,, *"An Act to Add a New Chapter 27 to Title 11 of Guam Code Annoated Relative to Establishing a General Sales Tax."* The public interest requires that the government explore all reasonable options for addressing the current financial crisis.

Senseramente,

EDDIE BAZA CALVO

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I Mina'Trentai Kuåttro Na Liheslaturan
BILL STATUS

BILL NO.	SPONSOR	TITLE	DATE INTRODUCED	DATE REFERRED	CMTE REFERRED	PUBLIC HEARING DATE	DATE COMMITTEE REPORT FILED	FISCAL NOTES	NOTES
249-34 (LS)	Fernando Barcinas Esteves	AN ACT TO ADD A NEW CHAPTER 27 TO TITLE 11 OF GUAM CODE ANNOTATED RELATIVE TO ESTABLISHING A GENERAL SALES TAX.	2/28/18 12:25 p.m.						

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

Bill No. 249-34 **(LS)**

Introduced by: Fernando Barcinas Esteves FBE

AN ACT TO *ADD* A NEW CHAPTER 27 TO TITLE 11 OF GUAM CODE ANNOTATED RELATIVE TO ESTABLISHING A GENERAL SALES TAX.

BE IT ENACTED BY THE PEOPLE OF GUAM:

Section 1. A new Chapter 27 is *added* to Title 11, Guam Code Annotated, to read:

"**CHAPTER 27**

GENERAL SALES TAX

§ 27101. Definitions.
§ 27102. Levy.
§ 27103. Exemptions.
§ 27104. Tax in Addition to Other Taxes.
§ 27105. Tax on internet sales.
§ 27106. Administration.
§ 27107. Computation.
§ 27108. Collections.
§ 27109. Returns.
§ 27110. Electronic Filing of Returns, Allowed.
§ 27111. Records.

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§ 27112. Penalties.

§ 27113. Interest.

§ 27114. Criminal Offenses.

§ 27115. Punishment.

§ 27116. Prohibited Advertising.

§ 27117. Excessive and Erroneous Collections or Returns

§ 27118. Bundled Transactions

§ 27101. Definitions.

Whenever used in this Chapter, unless otherwise required by the context:

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

(b) *Tangible personal property* means any corporeal personal property of any nature and *shall* include digital property regardless of whether the purchaser has the right to permanently use the property, or whether the purchaser's right to access or retain the property is not permanent, or whether the purchaser's right of use is conditioned upon continued payment.

(c) *Sales Tax* means and is inclusive of any tax levied under this Chapter.

(d) *Gross Receipts* means the total amount of the sales prices of the retail sales of vendors, valued in money, whether received in money or otherwise.

(e) *Taxpayer* means any person liable for any tax hereunder or who is required to file a return under this Chapter whether such person owes a tax or not.

(f) *Retail* means the sale of tangible personal property, other than by a wholesaler as such within the definition of this Chapter, for consumption or use by the purchaser and not for resale.

(g) *Sale* means any transfer of title or possession, or both, conditional or otherwise, in any manner or by any means whatsoever, of tangible personal property and includes an exchange of properties as well as an exchange of property for money. A transaction whereby the possession of property is transferred but the seller retains title as security for the payment of the sale price on a conditional sale, shall be deemed a sale.

(h) *Nexus-Vendor* means a vendor who has a physical presence within the Territory of Guam, such as property or retail establishments, selling via the internet property to the purchaser in the Territory of Guam.

(i) *Retail Sale* or *Sale at Retail* means the sale in any quantity of quantities of any tangible personal property or service, including any such sales effected via the internet taxable under the terms of this chapter. These terms mean all sales of tangible personal property to any person for any purpose other than those in which the purpose of the purchaser is to resell the property so transferred in the form in which the same is, or is to be, received by him, or to use or incorporate the property so transferred as a material or part of other tangible personal property to be produced for sale by manufacturing, assembling, processing, or refining.

(j) *Retailer* means any person licensed to do business under the provisions of 11 GCA § 72108 inclusive of persons engaged in the

business of making retail sales at auction of tangible personal property owned by the person or others.

(k) *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 the Guam Power Authority, or the Guam Water Works Authority, or the Port Authority of Guam, or the Guam Department of Education, or any person immune from the tax imposed by this Chapter under the Constitution and laws of the United States.

(l) *Seller* means any person engaged in the business of selling tangible personal property, wheresoever engaged, and any person authorized by a seller to collect the price, but does not include the government of Guam, or the United States, its wholly owned agencies or instrumentalities, or the Guam Power Authority, or the Guam Water Works Authority, or the Port Authority of Guam, or the Guam Department of Education, or any person immune from the tax imposed by this Chapter under the Constitution and laws of the United States.

(m) *Wholesale* means the sale of tangible personal property by a person doing a regularly organized wholesale business, known to the trade as such, and licensed to do business as such, to a person for the purpose of resale.

(n) *Retail Establishment* means any premises in which the business of selling tangible personal property is conducted or in or from which any retail sales are made.

(o) *Value* means fair and reasonable cash value at the time of accrual of the tax.

(p) *Drug* means a compound, substance or preparation, and any component of a compound, substance or preparation, other than food and food ingredients, dietary supplements or alcoholic beverages that is:

1. recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, and supplement to any of them; or
2. intended for use in diagnosis, cure, mitigation, treatment, or prevention of disease; or
3. intended to affect the structure of any function of the body.

Drug shall also include insulin and medical oxygen whether or not sold on prescription.

(q) *Prescription* means an order, formula or recipe issued in any form of oral, written, electronic, or other means of transmission by a duly licensed practitioner authorized by the laws of Guam.

(r) *Candy* means food products with a sugar or confection base, including breath fresheners, gum, mints, and health foods which consist primarily of sugars.

(s) *Baby products* includes, but is not limited to:

1. Baby bottles and nipples
2. Breast pumps
3. Diapers (cloth and disposable)
4. Diaper liners
5. Infant syringes
6. Pacifiers
7. Nursing bra pads
8. Teething rings

9. Clothing (from Preemie to 5T)

(t) *Food products* includes, but is not limited to:

1. Cereals and cereal products;
2. Rice;
3. Flour and Flour products;
4. Milk and milk products; including ice cream;
5. Cheese and cheese products;
6. Oleomargarine and butter;
7. Meat and meat products;
8. Fish and fish products
9. Eggs and egg products;
10. Vegetables and vegetable products;
11. Fruit and fruit products;
12. Herbs and spices;
13. Salt and soy products;
14. Vinegar and condiments;
15. Sugar and sugar products; excluding candy
16. Coffee and coffee substitutes;
17. Tea;
18. Ice, when not used for refrigeration;
19. Water, when used for household consumption.

§ 27102. Levy.

There is hereby levied a sales tax on tangible personal property and insurance premiums, at a rate of two percent (2%). Except as provided in § 27103 of this Chapter, retailers *shall* add the tax imposed on retail sales and sales at retail, or the average equivalent thereof, to the sale price or charge, showing such tax as a

separate and distinct item, and when added such tax *shall* constitute part of such price or charge and *shall* be a debt from the consumer or user to the retailer until paid.

§ 27103. Exemptions.

(a) Food or drink, which is delivered and sold without profit by a nonprofit volunteer organization to persons who are confined to their homes due to age, illness, disability, or infirmity; provided that such sales *shall not* be exempt unless such organization has received a certificate of exemption from the Department as a semipublic institution.

(b) Sales of "eligible foods," as defined in 7 CFR 271.2 pursuant to the federal Food Stamp Act of 1977 (7 U.S.C. § 2011 *et seq.*) ("Stamp Act"), and purchased with food stamps issued pursuant to the Stamp Act.

(c) Food products. The sale of food products for human consumption as defined in this Chapter is exempt from the sales tax unless the food products are prepared for human consumption in which case the sales tax herein shall be applied at retail sale.

(d) A meal provided free of charge or at a reduced rate to an employee during work hours by a food service establishment or hotel licensed by the Territory of Guam for the convenience of the employer is not considered transferred for consideration.

(e) Casual sales. The tax *shall not* apply to casual sales made by a person not regularly engaged in the business of selling tangible personal property, but does not apply to the sale of motor vehicles, boats, trailers, or other equipment that require registration with the Department.

(f) Notwithstanding any other provision of law, the amount of the trade-in allowance of a private passenger automobile when given in trade towards

the purchase of a new or used private passenger automobile is excluded from taxation.

(g) Federal exemptions. Sales of tangible personal property or services which the Territory of Guam is prohibited from taxing under the Constitution or laws of the United States.

(h) Sales of tangible personal property used to develop property which the Territory of Guam is under contract to purchase through a long-term financing contract only if a Certificate of Exemption is provided by the Department containing at a minimum the contract license of the exempted, the contract or purchase order identification number. The Department of Revenue and Taxation *shall* make available to the publicly on their website all exemptions claimed under this Section.

(i) Sales and use of any tangible personal property to be incorporated into or used or otherwise consumed in the demolition or construction relative to capital improvement projects of the Territory, only if a Certificate of Exemption is provided by the Department containing at a minimum the contract license of the exempted contract or purchase order identification number. The Department of Revenue and Taxation *shall* make available to the publicly on their website all exemptions claimed under this Section.

(j) Real property transactions where the sale value is assessed is under five hundred thousand dollars ($500,000).

(k) The sale, use or other consumption of drugs, as defined in this Chapter, that are sold on prescriptions are exempt from a sales tax. In addition, the sales, storage, use or other consumption of medical oxygen and insulin; whether or not sold on prescription; and human blood are also exempt

from sales tax, but remains subject to taxation under § 27105 of this Chapter.

(l) Syringes and needles only by prescription. Sales of and the use or other consumption of materials, including materials used in packaging, which become an ingredient or component part of medicine only by prescription, as defined by federal or local law are exempt from sales tax, but remains subject to taxation under § 27105 of this Chapter.

(m) Personal tangible property sold by wholesalers as defined in § 72107 of this Chapter, 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 records must be kept so as to show separately the gross proceeds of sale of each business.

(n) Baby products. The sale, use or other consumption of baby products as defined herein are not subject to taxation under § 27102 of this Chapter, but remains subject to taxation under § 27105 of this Chapter.

§ 27104. 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.

§ 27105. Sales Tax on Internet Sales.

Notwithstanding any other provision of law, tangible personal property otherwise taxable under this Chapter, whereby the retail sale was transacted via the internet and the use or consumption is not intended for use in business activities or otherwise exempt herein are assessed a sales tax of six percent (6%) and are not subject to any other taxation provided for in Title 11, GCA.

§ 27106. Administration.

The Department of Revenue and Taxation *shall* be responsible for the administration of this Chapter.

(a) The tax year *shall* be the calendar year, except that a taxpayer may use an annual accounting period when written permission is obtained from the Tax Commissioner.

(b) Tax liability subject to assessment, collection and enforcement. The tax liability specified in this Chapter is subject to assessment, collection and enforcement by the Tax Commissioner in the manner provided in Chapters 1, 15, and 32 of Title 11, GCA.

§ 27107. Computation.

When the sale price involves a fraction of a dollar, the tax computation must be carried to the 3rd decimal place, then rounded down to the next whole cent whenever the 3rd decimal place is one, 2, 3 or 4 and rounded up to the next whole cent whenever the 3rd decimal place is 5, 6, 7, 8 or 9.

§ 27108. Collections.

Taxes collected constitute a debt to the Territory of Guam.

(a) Except as otherwise provided in this Chapter, the tax *shall* be collected by the retailer from the purchaser.

(b) The tax *shall* be displayed separately from the sales price, the price advertised in the premises, the marked price, or other price on the sales receipt or other proof of sales.

(c) The taxes collected under this Chapter *shall* be deemed to be held in trust by the retailer for and on account of the Territory of Guam.

(d) The taxes collected under this Chapter *shall* be remitted to the Treasurer of Guam in accordance with provisions in § 27109(a) of this Chapter.

§ 27109. Returns.

(a) Monthly Returns for Sales Tax. Each taxpayer against whom a tax is levied under the provisions of of this Chapter, whether such taxpayer owes taxes or not, *shall* make and file monthly returns of taxes with the Tax Commissioner. Taxpayers *shall* file monthly Sales Tax returns summarizing the tax due. The monthly return *shall* be filed, and any tax then due *shall* be paid no later than the twentieth (20th) day of the following month at authorized banks, financial institutions or at designated offices of the government of Guam.

(b) Annual information return. Any person subject to taxes levied and whom has claimed exemptions provided in this chapter, *shall* be required to file annually, not later than ninety (90) days following the close of such person's tax year, any information return setting forth therein the nature of such business, the tax exemption given by the Tax Commissioner, the gross income of such business any other information required in the rules and regulations promulgated by the Tax Commissioner.

(c) The Tax Commissioner *shall* compile and provide to *I Liheslatura* by September 1st per annum, the aggregate of gross receipts and claimed exemptions reported by any taxpayer subject to this Chapter or whom would otherwise be subject without exemptions provided in § 27103 of this Chapter.

(d) The Department of Revenue and Taxation *shall* create and provide a standard form for filing monthly returns of Sales Tax authorized by 11 GCA Chapter 27 and at a minimum provide for the reporting of gross receipts, taxable gross receipts, non-taxable gross receipts, and exemptions within this Chapter.

§ 27110. Electronic Filing of Returns, Allowed.

The Department of Revenue and Taxation *shall* provide for the electronic filing of monthly returns by taxpayers against whom a tax is levied by the provisions of this Chapter, commencing with returns submitted after the month of January 2019; provided, however, that such provision *shall not* prohibit taxpayers under this Chapter from opting to file non-electronic returns.

§ 27111. Records.

(a) Each retailer licensed under the Department taxable under this Chapter *shall* keep adequate and complete records of the business entity showing:

1. The gross receipts from the sales of tangible personal property, including both taxable and nontaxable items;
2. All deductions allowed by law and claimed in filing returns; and
3. Total purchase price of all tangible personal property and the total purchase price of all such property or services purchased for use or consumption in the territory.

(b) The records, but not limited to, *shall* include the normal books of accounts ordinarily maintained by the average prudent business person engaged in the activity in question, together with all bills, receipts, invoices, cash register tapes, all data collected or stored by means of electronic or magnetic media, or other documents of original entry supporting the entries in the books of account as well as all schedules or working papers used in connection with the preparation of tax returns.

(c) Magnetic and electronic media records, used as reproductions of general books of account, such as cash books, journals, voucher registers, ledgers, sale invoices, purchase invoices, credit memoranda, and other like methods of recording, are acceptable in lieu of original records.

(d) Records based on any of the above media *shall* be maintained for a period of at least three (3) years.

(e) Failure to maintain such records will be considered evidence of negligence or intent to evade taxation, and will result in the imposition of appropriate penalties as provided by statute.

§ 27112. Penalties.

The following penalties are hereby levied and *shall* be assessed and collected by the Tax Commissioner:

(a) Late payment. In case of failure to pay the amount shown as tax on any return required under this Chapter on or before the date prescribed for payment of such tax, unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there *shall* be imposed in addition to other penalties provided herein, a specific penalty to be added to the tax in the amount of five percent (5%) of the amount of such tax if the failure is not more than thirty (30) days, with the additional five percent (5%) for each additional thirty (30) days, or fraction thereof, not

to exceed twentyfive percent (25%) in the aggregate. Provided, that the minimum penalty shall be the lesser of the amount of tax due or Twenty-five Dollars ($25.00).

(b) False and fraudulent returns. If any part of any deficiency is due to fraud with intent to evade the tax, or any portion thereof, fifty percent (50%) of the total amount of such deficiency, in addition to the penalties provided in subsection (a) above, *shall* be assessed and added to the deficiency assessment.

(c) Failure to Supply Identifying Number. Every person required to file returns or pay taxes, as prescribed under this Chapter, *shall* include his taxpayer identification on such return, statement or other document. If any person fails to comply with such requirement, such person *shall*, unless it is shown that such failure is due to reasonable cause and not to willful neglect, pay a penalty of Fifty Dollars ($50.00) for each failure.

§ 27113. Interest.

If any tax or penalty imposed by this Chapter is not paid on or before the date prescribed for such payment, in addition to such tax and penalties, interest on the unpaid balance of the tax and penalties at an annual rate established under this Section, *shall* be collected for the period from its due date until the date it is paid.

(a) Determination of Rate of Interest. The annual rate established under this Section *shall* be such adjusted rate as established by the Tax Commissioner.

(b) Establishment of Adjusted Rate. If the adjusted prime rate charged by banks, rounded to the nearest full percent, during the six-month period ending September 30 of any calendar year, or during the six-month period ending on March 31 of any calendar year, differs from the interest

rate in effect under this Section on either such date, respectively, then the Tax Commissioner *shall* establish, within fifteen (15) days after the close of the applicable six-month period, an adjusted rate of interest equal to such adjusted prime rate.

(c) Effective date of Adjustment. Any adjusted rate of interest established under Subsection (b) of this Section *shall* be effective on January 1 of the succeeding year in the case of an adjustment attributable to the six-month period ending on September 30 and on July 1 of the same year in the case of an adjustment attributable to the six-month period ending on March 31.

(d) Definition of Prime Rate. For purposes of this Section, the term adjusted prime rate charged by banks means the average predominant prime rate quoted by commercial banks to large business, as determined by the Board of Governors of the Federal Reserve System.

§ 27114. Criminal Offenses.

It *shall* be unlawful for any person:

(a) To refuse or fail to make any return provided to be made in this Chapter;

(b) To make any false or fraudulent return or false statement in any return, with intent to defraud the government of Guam or to evade the payment of any tax, or any portion thereof, imposed by this Chapter;

(c) To aid or abet another in any attempt to evade the payment of any tax, or any portion thereof, imposed by this Chapter.

§ 27115. Punishment.

Any person violating any of the provisions of this Chapter *shall* be guilty of a misdemeanor. On conviction thereof by a court of competent jurisdiction, any license issued for the operation of such business *shall* be suspended upon such

conviction for at least the period of any imprisonment imposed therefor plus six (6) months, and if no imprisonment is ordered, for a period of at least six (6) months.

§ 27116. Prohibited Advertising.

It *shall* be unlawful for any taxpayer under this Chapter to advertise, or hold out to the public in any manner, directly or indirectly, that any tax levied herein is not considered as an element of the purchase price. Any person found guilty by a court of competent jurisdiction of violating this Section *shall* be guilty of a violation punishable by fine of not more than Fifty Dollars ($50.00) for each separate offense.

§ 27117. Excessive and Erroneous Collections or Returns.

(a) If any return is erroneous in any respect, the Tax Commissioner *shall* assess the proper amount and so notify the taxpayer in writing. If such corrected assessment is less than the tax remitted by the taxpayer, the tax Commissioner *shall* direct the Treasurer of Guam to make such refund. If the corrected assessment is more than that computed by the taxpayer in his return, the taxpayer *shall* have thirty (30) days from receipt of the Tax Commissioner's notice, or until the expiration of the time granted by the law levying such tax, whichever is greater, in which to pay such additional assessment before it becomes delinquent.

(b) Whenever the tax collected by a retailer for any period exceeds that provided by law, whether the excess is attributable to the collection of tax on exempt or nontaxable transactions or erroneous computation, the total amount collected, excluding only that portion of the excess that has been returned or credited to the purchaser from whom it was collected, constitutes a tax liability of the retailer that must be reported

and paid at the time and in the manner provided by § 27108 of this Chapter.

(c) Any such amount refunded to a purchaser which has been paid by or collected from a retailer *shall* be refunded by the Tax Commissioner to the retailer only upon submission of proof to the satisfaction of the Tax Commissioner that the amount has been returned or credited to the purchaser from whom it was originally collected. In such cases, interest *shall* be paid by the Tax Commissioner only upon proof that interest was included in the repayment by the retailer to that person or persons.

§ 27118. Bundled Transactions.

If an establishment has taxable and nontaxable sales, it must comply with the recordkeeping requirements in § 27111 of this Chapter. If a vendor's records do not substantiate nontaxable sales, all sales will be considered taxable.

(a) For the purposes of this section "bundled transaction" means the retail sale of two (2) or more products, except real property where;

1. The products are otherwise distinct of identifiable; and
2. The products are sold for one (1) nonitemized price;

(b) "Distinct and identifiable products" do not include:

1. Packaging such as containers, boxes, sacks, bags, bottles, wrapping material, labels, tags, or instruction guides that accompany the retail sale of products and are incidental or immaterial to the retail sale thereof.
2. A product provided free of charge with the required purchase of another product

(c) When several purchases are made together and at the same time, the tax may be computed on each item individually or on the total amount of the several items, as the retailed may elect, except that the purchases taxed, and tax exempt must be separately totaled."

Section 2. Approval of Voters Not Required. In compliance with 48 U.S.C. 1423a, the imposition of the taxation authorized by this Act *shall not* be subject to the approval of, or placed before, the voters of Guam.

Section 3. Effective Date. This Act *shall* be effective no later than thirty (30) days upon enactment.

Section 4. 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.