EDDIE BAZA CALVO
Governor

RAY TENORIO
Lieutenant Governor

Office of the Governor Of Guam

March 2, 2018

GL# 34-18-1605
Speaker Benjamin J.F. Cruz

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Received By:

The Honorable Therese M. Terljae
Acting Speaker
I Mina'trentai Kuåttro Na Liheslaturan Guåhan
Guam Congress Building
163 Chalan Santo Papa
Hagåtña, Guam 96910

2018 MAR -2 AM 11:31 O.S.

Dear Acting Speaker:

Pursuant to my authority under Section 1423h of the Organic Act of Guam, I am immediately *revoking* the special session on Bill 1(1-5S). Further pursuant to my authority, I am calling *I Liheslaturan Guåhan* into special session on **Friday, March 2, 2018, at 1:00 p.m.** for the sole purpose of considering the attached bill relative to revising the Business Privilege Tax from four percent (4%) to six percent (6%), and to dedicate a portion of the revenue collected to the Guam Memorial Hospital.

With two exceptions, this bill is identical to the engrossed version of Bill 245-34 which was voted upon the Committee of the Whole at the session on February 28, 2018, but which failed to pass. The exceptions are: (1) instead of reverting the BPT rate from 6% back to 4% after 1 year, the increased rate instead sunsets on March 31, 2019; and (2) the bill requires the Special Economic Service work group to meet on a weekly basis in order to collaborate and address the FY2018 revenue shortfall and the FY2019 budget. In my opinion, the public interest requires that the engrossed Bill 245-34 be reconsidered with these two new amendments included.

Senseramente,

EDDIE BAZA CALVO

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

Bill No. _____-34 (COR)

Introduced by:

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

AN ACT TO *AMEND* § 26202 OF ARTICLE 2, CHAPTER 26, DIVISION 2, TITLE 11, GUAM CODE ANNOTATED, AND TO *REPEAL* § 16311 OF ARTICLE 3, CHAPTER 16, TITLE 3, GUAM CODE ANNOTATED, RELATIVE TO REVISING THE BUSINESS PRIVILEGE TAX FROM FOUR TO SIX PERCENT (6%), AND TO DEDICATE THE REVENUE TO BE COLLECTED FROM THE EXPANDED REVENUE STREAM TO THE GUAM MEMORIAL HOSPITAL AUTHORITY (GMHA) FOR ITS OPERATIONS AND MODERNIZATION; THE DEPARTMENT OF EDUCATION TO FUND ITS CAPITAL NEEDS; AND 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, REMOVING THE REFERENDUM ON TAX INCREASES, AND CREATING A GMHA STABLIZATION FUND; *AND REQUIRING WEEKLY SPECIAL ECONOMIC SERVICE MEETINGS*.

BE IT ENACTED BY THE PEOPLE OF GUAM:

Section 1. Legislative Findings and Intent. *I Liheslaturan Guåhan* finds that the 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 four percent (4%) to six percent (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. § 26202 of Article 2, Chapter 26, Division 2, Title 11, Guam Code Annotated, is hereby *amended* to 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 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 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 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 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 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 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 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 six percent (6%) 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 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 to 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 to 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, sightseeing 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 six percent (6%) *shall* be immediately effective and implemented following the enactment of this Act by *I Maga'låhen Guåhan*, and it *shall* remain in effect for one (1) year *until March 31, 2019*, therefrom when at the expiration of such period, 1.25% of the increased rate of six percent (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 Authority.

(b) During the one (1) year period when the effective BPT rate is six percent (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.

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 the Guam Memorial Hospital Authority for its purposes, including, but not limited to, capital investment, operational requirements or reserves;

(b) 0.25% to the Guam 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 from the passage of the Tax Cuts and Jobs Act of 2017.

Section 5. Referendum on Tax Increases Repealed. § 16311 of Article 3, Chapter 16, Title 3, Guam Code Annotated, is hereby *repealed.*

Section 6. GMHA Stabilization Fund, Created. There is hereby created, separate and apart from other funds of the government of Guam, a fund known as the "GMHA Stabilization Fund" (Fund). The Fund *shall not* be commingled with the General Fund, any current funds maintained by the GMHA, or any other fund of the government of Guam. The Fund *shall* be held in an account or accounts at a Guam financial institution or institutions separate and apart from all other accounts and funds of the government of Guam. Those revenues received by or on behalf of the government of Guam resulting from an increase to the business privilege tax that are dedicated to the GMHA *shall* be deposited in the GMHA Stabilization Fund, and *shall* be accounted for and used periodically only for the following purposes:

(a) procurement of supplies, materials, equipment, and services essential to patient care ; and

(b) capital improvement projects.

Section 7. ***Section 7. Weekly meetings of the Special Economic Service.*** *Notwithstanding any other provision of law, the Special Economic Service work group established by Title 2 Guam Code Annotated Section 13108 shall meet no less than once a week to address the FY2018 revenue shortfall and the FY2019 budget.*

Section 8. 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.