Speaker's Office <speaker@guamlegislature.org>

Fwd: Ref. LEG 18-0554 AG Opinion Memorandum

2 messages

Senator Therese Terlaje <senatorterlajeguam@gmail.com> Tue, Nov 27, 2018 at 2:44 PM
To: speaker@guamlegislature.org

---------- Forwarded message ---------
From: **Pauline I. Untalan** <puntalan@guamag.org>
Date: Tue, Nov 27, 2018 at 2:36 PM
Subject: Ref. LEG 18-0554 AG Opinion Memorandum
To: John P. Camacho <John.Camacho@revtax.guam.gov>
Cc: Senator Therese Terlaje <senatorterlajeguam@gmail.com>, tom@senatorada.org <tom@senatorada.org>, Sandra Miller <sandra.miller@guam.gov>, Dee Chaco <dee.chaco@guam.gov>

Good Afternoon Director Camacho:

Attached is the Opinion Memorandum issued by AG Barrett-Anderson regarding the Implementation of Additional Real Property Tax Levy Pursuant to PL 34-116. If you have any questions, please contact me at any time.

Thank you and have a nice day.

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Respectfully,

Pauline I. Untalan

Special Assistant to the Attorney General of Guam

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34GL-18-2603
NOV 27 2018
Time: 14:36
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2018 NOV 27 PM 3:37

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Begin forwarded message:

From: Senator Therese Terlaje <senatorterlajeguam@gmail.com>
Subject: Fwd: Ref. LEG 18-0554 AG Opinion Memorandum
Date: November 27, 2018 at 2:44:53 PM GMT+10
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Office of the Attorney General of Guam

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November 27, 2018

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OPINION MEMORANDUM **Ref. LEG 18-0554**

To: Director, Department of Revenue and Taxation

From: Attorney General

Subject: **Implementation of Additional Real Property Tax Levy Pursuant to PL 34-116**

This is in response to your request for additional information, dated October 30, 2018, regarding the Opinion of this office, dated October 26, 2018, on the effective date of the real property tax increase mandated by Guam Public Law 34-116.

QUESTION/ANSWER

Whether the additional real property tax will expire on September 30, 2019? The answer is NO.

Whether the additional real property tax is limited to improvements valued at exactly $1 Million? The answer is YES.

DISCUSSION

Whether the additional real property tax will expire on September 30, 2019?

Public Law 34-116:I:3 adds the additional real property tax as an amendment to the Guam Code Annotated at 11 GCA § 24103. The Guam Code Annotated establishes the permanent laws of Guam. 1 GCA § 101(a). Therefore, the additional tax is a permanent law.

We further note that the Legislature did not assign an expiration date to the real property tax increase. The sunset or expiration date of September 30, 2019 in Section 1 of Chapter 1 of P.L. 34-116 applies only to the appropriations made by the act for Fiscal Year 2019. The additional tax is not an appropriation.

Whether the additional real property tax is applicable only to improvements valued at exactly $1 Million?

As added by P.L. 34-116:I:3, 11 GCA § 24103(b) states:

> In addition to the levy in Subsection (a), there is hereby levied on improvements on all land property in Guam with a value of One Million Dollars ($1,000,000) a yearly tax at the rate of seven eighteenths percent (7/18%) of the value thereon.

On its face, Section 24103(b) is applicable only to improvements with a value of exactly $1 Million. If enforced pursuant to this literal language, only improvements valued at exactly $1 Million would be subject to the additional tax, whereas improvements valued even one dollar over $1 Million would not be subject to the additional tax.

Generally, statutes imposing taxes are to be strictly construed against the government and in favor of the taxpayer. *Mobil Petroleum Co. Inc. v. Blas,* 416 F.Supp. 98, 99 (D. Ct. App. D. 1975); *3A Sutherland Statutory Construction* (7th ed. 2010) § 66.1. Moreover, a cardinal rule of statutory construction is to look first to the language of the statute itself and absent clear legislative intent to the contrary, the plain meaning will prevail. *Sumitomo Construction Co. Ltd. v. Gov't of Guam*, 2001 Guam 23, ¶ 17 (citations omitted). In *Sumitomo*, the Guam Supreme Court was considering two statutes to determine if there was an implied repealer; it was not facing a situation where, as here, the statute is missing words that, if read into the law, would fulfill the presumed legislative intent.

In this instance, there is no ambiguity as to the statutory language imposing the additional tax levy "on improvements on all land property in Guam with a value of One Million Dollars[.]" 11 GCA § 24103(b). "When the language of a statute is clear and unambiguous . . . the court may not expand or contract the meaning of a statute by reading into it language to correct supposed omissions or defects. Furthermore, a court should construe a statute to determine the legislature's intent only when the meaning of the statute's language is reasonably susceptible to more than one construction." *Kohl's Dep't Stores, Inc. v. Indiana Dep't of State Revenue*, 822 N.E.2d 297, 300 (Ind.Tax Court 2005) (internal quotation marks and citations omitted).

The Legislature may well have intended the value of the property improvements to be additionally taxed to be One Million Dollars *or more*, but instead passed language that is clear and unambiguous, not susceptible to more than one construction, and can be read and applied strictly, regardless of what may be an unintended outcome.

We note that the General Appropriations Act of 2019 that lapsed into law on August 24, 2018, contained several errors and omissions that the Legislature has acknowledged and attempted to address in several instances.[1] It is not the role of this Office, however, to correct or clarify what may be errors in draftsmanship by adding words to legislation where such words do not exist. Our reluctance to do so is heightened further when tax revenue statutes codified in law are involved. Instead we encourage and support current legislative efforts to make any necessary corrections and clarifications in appropriate legislation that will clearly reflect the Legislature's intent with respect to this new tax.

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[1] *See* Public Law 34-119, An Act to Amend the First Paragraph of Section 12, Chapter XII, Public Law No. 34-116, relative to Correcting a Scrivener's Error Pertaining to the Hiring of Certain Unclassified Employees; *see also* Bill No. 339-34 (LS), An Act to Amend Section 1 of Part 1, Chapter XIII, Public Law 34-116, Relative to Limiting the Prohibition on First-Quarter Hiring to Government of Guam Branches, Departments, Agencies and Instrumentalities Receiving Operational Appropriations in Public Law No. 34-116. (Vetoed Sept. 9, 2018)

CONCLUSION

The additional real property tax contained in P.L. 34-116:I:3 and codified at 11 GCA § 24103 is a permanent law and does not expire on September 30, 2019.

The plain language of Section 24103(b) of Title 11 Guam Code Annotated is clear and unambiguous and makes the additional real property tax applicable only to improvements on all land property in Guam valued at exactly $1 Million.

ELIZABETH BARRETT-ANDERSON
Attorney General

cc: Honorable Eddie Baza Calvo, Governor of Guam
Honorable Therese M. Terlaje, Acting Speaker, 34th Guam Legislature
Honorable Thomas C. Ada, Chairman, Committee on Appropriations and Adjudication