Guam Legislature Clerks <clerks@guamlegislature.org>

Messages and Communications

1 message

Speaker's Office <speaker@guamlegislature.org> Tue, Dec 29, 2020 at 7:25 PM
To: Clerks Office <clerks@guamlegislature.org>
Cc: Rennae Meno <rennae@guamlegislature.org>

12/29/20	6:11 PM	12/29/20	Bill No. 415-35 (COR), signed into law as Public Law No. 35-125.	Office of the Governor of Guam	35GL-20-2552
12/29/20	6:11 PM	12/29/20	Bill No. 353-35 (COR), signed into law as Public Law No. 35-126.	Office of the Governor of Guam	35GL-20-2553
12/29/20	6:11 PM	12/29/20	Bill No. 396-35 (COR), signed into law as Public Law No. 35-127.	Office of the Governor of Guam	35GL-20-2554
12/29/20	6:11 PM	12/29/20	Bill No. 302-35 (COR), signed into law as Public Law No. 35-128.	Office of the Governor of Guam	35GL-20-2555
12/29/20	6:11 PM	12/29/20	Bill No. 368-35 (LS), signed into law as Public Law No. 35-129.	Office of the Governor of Guam	35GL-20-2556
12/29/20	6:11 PM	12/29/20	Bill No. 373-35 (COR), signed into law as Public Law No. 35-130.	Office of the Governor of Guam	35GL-20-2557
12/29/20	6:11 PM	12/29/20	Bill No. 417-35 (COR), signed into law as Public Law No. 35-131.	Office of the Governor of Guam	35GL-20-2558
12/29/20	6:11 PM	12/29/20	Substitute Bill No. 56-35 (COR), signed into law as Public Law No. 35-132.	Office of the Governor of Guam	35GL-20-2559
12/29/20	6:11 PM	12/29/20	Substitute Bill No. 62-35 (COR), signed into law as Public Law No. 35-133.	Office of the Governor of Guam	35GL-20-2560
12/29/20	6:11 PM	12/29/20	Bill No. 314-35 (COR), signed into law as Public Law No. 35-134.	Office of the Governor of Guam	35GL-20-2561
12/29/20	6:11 PM	12/29/20	Bill No. 402-35 (COR), signed into law as Public Law No. 35-135.	Office of the Governor of Guam	35GL-20-2562
12/29/20	6:11 PM	12/29/20	Substitute Bill No. 340-35 (COR), lapsed into law as Public Law No. 35-136.	Office of the Governor of Guam	35GL-20-2563
12/29/20	6:11 PM	12/29/20	Bill No. 304-35 (COR), Vetoed.	Office of the Governor of Guam	35GL-20-2564

Sinseru yan Minagåhet,

Office of the Speaker • Tina Rose Muña Barnes
Committee on Public Accountability, Human Resources & the Guam Buildup

35th Guam Legislature
I Mina'trentai Singko na Liheslaturan Guåhan

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Gumai pribilehu yan konfedensia este siha na mensåhi. Solo espesiåtmente para hågu ma entensioña pat ma aturisa para unrisibi. Sen prubidu kumu ti un ma aturisa para manribisa, na'setbe, pat mandespåtcha. Yanggen lachi rinisibu-mu nu este na mensåhi , put fabot ago' guatu gi I numa'huyong gi as speaker@guamlegislature.org yan despues destrosa todu siha I kopian mensåhi. Si Yu'os ma'åse'.

13 attachments

- **GoG-Bill No. 415-35 (COR), nka PL. 35-125.pdf** 875K
- **GoG-Bill No. 353-35 (COR), nka PL. 35-126.pdf** 757K
- **GoG-Bill No. 396-35 (COR), nka PL. 35-127.pdf** 1573K
- **GoG-Bill No. 302-35 (COR), nka PL. 35-128.pdf** 1001K
- **GoG-Bill No. 368-35 (LS), nka PL. 35-129.pdf** 2715K
- **GoG-Bill No. 373-35 (COR), nka PL. 35-130.pdf** 699K
- **GoG-Bill No. 417-35 (COR), nka PL. 35-131.pdf** 1803K
- **GoG-SBill No. 56-35 (COR), nka PL. 35-132.pdf** 1098K
- **GoG-SBill No. 62-35 (COR), nka PL. 35-133.pdf** 2151K
- **GoG-Bill No. 314-35 (LS), nka PL. 35-134.pdf** 1325K
- **GoG-Bill No. 402-35 (COR), nka PL. 35-135.pdf** 1646K
- **GoG-SBill No. 340-35 (COR), lapsed as PL. 35-136.pdf** 2381K
- **GoG-Bill No. 304-35 (COR), Vetoed.pdf** 2887K

LOURDES A. LEON GUERRERO
GOVERNOR

JOSHUA F. TENORIO
LT. GOVERNOR

UFISINAN I MAGA'HÅGAN GUÅHAN
OFFICE OF THE GOVERNOR OF GUAM

December 29, 2020

35GL-20-2556
Speaker Tina Rose Muña Barnes
DEC 29 2020
Time 8:11 AM/PM
Received By: MaH

HONORABLE TINA ROSE MUÑA BARNES, *Speaker*
I Mina'trentai Singko Na Liheslaturan Guåhan
35th Guam Legislature
Guam Congress Building
163 Chalan Santo Papa
Hagåtña, Guam 96910

Re: **Bill No. 368-35 (LS) – An Act to Add a New Article 1A to Chapter 2 of Title 30, Guam Administrative Rules and Regulations, Relative to Cigarette Tax Stamps, and to Require the Department of Revenue and Taxation (DRT) to Issue a Request for Proposal for the Enforcement of Tobacco Taxes as Identified by the Director of DRT on Behalf of the Government of Guam**

Dear Madame Speaker:

From a practical standpoint, while the Department of Revenue and Taxation ("DRT") has endeavored to ensure that cigarettes are properly taxed, its efforts have likely fallen short of realizing the full revenue potential. Due to a lack of resources, both in tools and personnel, DRT's attempts could be greatly assisted by the mechanism afforded to it through Bill No. 368-35 (LS). Bill 368 builds in flexibility to allow DRT to model a program that would ensure that government continues to carry out its duty to regulate and tax while also relying on outside technical expertise and assistance. It safeguards the potential revenues by making a reasonable amount of money available for the administration of the Cigarette Tax Stamp Law and it closes loopholes in the bonded warehouse program that have, unfortunately, resulted in lost revenue to the government of Guam. Such revenue is so critical now, especially in light of the adverse effects our economy has suffered due to the global health pandemic. Increased collection, as a result of more effective and efficient enforcement, will contribute directly to our ability to maintain public health, public safety, and education services for our community. For these reasons, Bill No. 368-35 (LS) is now ***Public Law No. 35-129***.

Senseramente,

LOURDES A. LEON GUERRERO
I Maga'hågan Guåhan
Governor of Guam

Enclosure: Bill No. 368-35 (LS) *nka P.L. 35-129*

cc via email: *Sigundo Maga'låhen Guåhan*
Compiler of Laws

I MINA'TRENTAI SINGKO NA LIHESLATURAN GUÅHAN
2020 (SECOND) Regular Session

CERTIFICATION OF PASSAGE OF AN ACT TO *I MAGA'HÅGAN GUÅHAN*

This is to certify that **Bill No. 368-35 (LS), "AN ACT TO *ADD* A NEW ARTICLE 1A TO CHAPTER 2 OF TITLE 30, GUAM ADMINISTRATIVE RULES AND REGULATIONS, RELATIVE TO CIGARETTE TAX STAMPS, AND TO REQUIRE THE DEPARTMENT OF REVENUE AND TAXATION (DRT) TO ISSUE A REQUEST FOR PROPOSAL FOR THE ENFORCEMENT OF TOBACCO TAXES AS IDENTIFIED BY THE DIRECTOR OF DRT ON BEHALF OF THE GOVERNMENT OF GUAM,"** was on the 17th day of December 2020, duly and regularly passed.

Tina Rose Muña Barnes
Speaker

Attested:

Amanda L. Shelton
Legislative Secretary

This Act was received by *I Maga'hågan Guåhan* this 17th day of Dec, 2020, at 10:26 o'clock P.M.

P03 MA Staff - Azara 787
Assistant Staff Officer
Maga'håga's Office

APPROVED:

Lourdes A. Leon Guerrero
I Maga'hågan Guåhan

Date: 12/29/2020

Public Law No. 35-129

I MINA'TRENTAI SINGKO NA LIHESLATURAN GUÅHAN
2020 (SECOND) Regular Session

Bill No. 368-35 (LS)
As amended by the Committee on General Government Operations, Appropriations, and Housing; and further amended in the Committee of the Whole.

Introduced by: Tina Rose Muña Barnes
Jose "Pedo" Terlaje
William M. Castro
Régine Biscoe Lee
Kelly Marsh (Taitano), PhD
James C. Moylan
Louise B. Muña
Telena Cruz Nelson
Clynton E. Ridgell
Joe S. San Agustin
Amanda L. Shelton
Telo T. Taitague
Therese M. Terlaje
Mary Camacho Torres

AN ACT TO *ADD* A NEW ARTICLE 1A TO CHAPTER 2 OF TITLE 30, GUAM ADMINISTRATIVE RULES AND REGULATIONS, RELATIVE TO CIGARETTE TAX STAMPS, AND TO REQUIRE THE DEPARTMENT OF REVENUE AND TAXATION (DRT) TO ISSUE A REQUEST FOR PROPOSAL FOR THE ENFORCEMENT OF TOBACCO TAXES AS IDENTIFIED BY THE DIRECTOR OF DRT ON BEHALF OF THE GOVERNMENT OF GUAM.

BE IT ENACTED BY THE PEOPLE OF GUAM:

Section 1. Private Enforcement of the Tobacco Tax Laws. Within forty-five (45) days of the enactment of this Act, the Department of Revenue and Taxation

(Department) shall issue a Request for Proposal (RFP) in compliance with the Guam Procurement Law for a company to enforce the tobacco tax law levied under Article 7 of Chapter 6, Title 11, Guam Code Annotated, which shall include the administration of the Cigarette Tax Stamp Law established by Public Law 34-55 and codified at Article 7 of Chapter 6, Title 11, Guam Code Annotated. The RFP shall include, but not necessarily be limited to:

(a) the drafting of any additional rules and regulations deemed necessary for the enforcement of the Cigarette Tax Stamp Law, Article 7 of Chapter 6, 11 GCA, or this Section, subject to approval via the Administrative Adjudication Law;

(b) the owning, operation, maintenance, and oversight of any and all security, equipment, and software deemed necessary for the implementation of this Section;

(c) the owning, operation, maintenance, and oversight of a payment system for either the direct payment to the government of Guam or payment of the government of Guam via the contractor for the duration of the contract;

(d) the provision of any other goods and services required for such enforcement for the duration of the contract, to include any necessary audits; and

(e) in an effort to reduce outlays by the government of Guam, the payment to the company selected to own, operate, maintain, and oversee private enforcement of excise taxes described herein shall be based on the following formula designed to maximize and incentivize collection of taxes:

(1) For the purposes of enforcing the Cigarette Tax Stamp Law, the total cost of administration of the Cigarette Tax Stamp program, which shall include payment to the offeror and such costs incurred by DRT for contract management, shall be a percentage not

more than twelve percent (12%) of the tobacco tax collected in excess of the average actual monthly excise tax collected over the last three (3) fiscal years.

Section 2. Cigarette Tax Stamps Rules and Regulations. A new Article 1A is hereby *added* to Chapter 2 of Division 1, Title 30, Guam Administrative Rules and Regulations, to read:

"Article 1A

Cigarette Tax Stamps

§ 21A01. Definitions.
§ 21A02. Conformity with Statute(s).
§ 21A03. Collection of Taxes Imposed on Licensees Purchasing and Importing Cigarettes into Guam.
§ 21A04. Preparation and Sale of Cigarette Tax Stamps.
§ 21A05. Method and Manner of Affixing Stamps.
§ 21A06. Adherence of Stamps.
§ 21A07. Purchase of Stamps, Refund, or Credit for Unused Stamps.
§ 21A08. Cigarettes Shipped Outside of Guam for Sale or Use Outside of Guam.
§ 21A09. Refund or Credit for Mutilated Stamps.
§ 21A10. Refund or Credit for Stamps Destroyed.
§ 21A11. Claim Forms.
§ 21A12. Unsalable Cigarettes.
§ 21A13. Authorization of Designee to Purchase Stamps for Licensee; Revocation of Authorization.
§ 21A14. Reporting Requirement for Missing Shipment of Stamped Cigarettes and Damaged or Otherwise Unusable Stamps.

§ 21A01. Definitions.

(a) *Cigarette package* means an individually sealed pack of cigarettes originating from the manufacturer and bearing the health warning required by law.

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

(c) *License* means a license granted by Guam law that authorizes the holder to engage in the business of a wholesaler or retailer of cigarettes or tobacco products in Guam.

(d) *Licensee* means the holder of a license granted as a wholesaler or retailer under 11 GCA Chapter 6.

(e) *Minor* means a person under the age of twenty-one (21).

(f) *Sale* includes every act of selling and includes any sale or act of selling that originates from any order that is placed or submitted by means of a telephonic or other method of voice transmission, the mail or any other delivery service, or the internet or other online service.

(g) *Stamp* means a stamp printed, manufactured, or made by authority of the Department, as provided in 11 GCA Chapter 6, that is issued, sold, circulated, or authorized to be issued, sold, or circulated by the Department, that is placed on the bottom of a cigarette package wrapping up to the front of the package, and by the use of which designates that the tax levied under 11 GCA §§ 26602 and 26603(a) has been paid.

(h) *Traffic* means importing and exporting for commercial purposes or the business of bartering or buying and selling.

§ 21A02. Conformity with Statute(s). These rules and regulations are in conjunction with 11 GCA §§ 26601 through 26609, and all other rules and regulations of tobacco products. These rules and regulations are passed into law by the Legislature. Any discrepancy between these rules and regulations and the statutes they interpret should be resolved in favor of the statute(s). To the extent these rules and regulations contain discrepancies with other regulations, the discrepancies

should be harmonized to give the broadest possible effect to the relevant rules and regulations evidencing a discrepancy. The Department may amend or adopt additional rules and regulations in accordance with the Administrative Adjudication Law.

§ 21A03. Collection of Taxes Imposed on Licensees Purchasing and Importing Cigarettes into Guam.

(a) The Department shall aggressively seek to collect all tobacco taxes imposed by Article 6 of Chapter 26, 11 GCA, and use the information submitted in the reports filed with the Department pursuant to 11 GCA § 6708; and the Department shall make all reasonable efforts to collect all taxes due under 11 GCA Chapter 26. To administer the cigarette tax stamp system codified at Article 7 of Chapter 6, 11 GCA, the Department shall either partner with a stamp provider and purchase stamps or, within ninety (90) days of enactment of these rules and regulations, issue a Request for Proposal (RFP), in compliance with the Guam Procurement Law, for the purpose of a local company procuring stamps to be sold.

(b) The Department, or its agent, shall, every six (6) months, submit a report to the Speaker of the Legislature on the steps taken to enforce this Section and the amounts collected pursuant to collection activities mandated by this Section. The amounts collected from each individual licensee shall be public records as defined by 5 GCA § 10102(d).

§ 21A04. Preparation and Sale of Tax Stamps. Within ninety (90) days of enactment of these rules and regulations, the Department shall prescribe, prepare, and furnish stamps, or procure a company to do so, of such design, specifications, denominations, and quantities as may be necessary for the payment of the tax imposed by 11 GCA §§ 26602 and 26603(a), and may provide for the issuance and exclusive use of stamps of a new design and forbid the use of stamps of any other design.

§ 21A05. Method and Manner of Affixing Stamps. Stamps shall be securely affixed to the bottom of each cigarette package in such a manner that the stamps are clearly visible from at least five (5) feet away, legible, and complete. How the stamps become affixed shall be the concern of the persons importing the cigarettes so long as they adhere to these rules and regulations.

It shall be illegal to sell cigarettes on Guam after one (1) year from enactment of this Act without a stamp as contemplated by these rules and regulations.

§ 21A06. Adherence of Stamps. Stamps shall be affixed in such manner as to adhere securely to the bottom of each cigarette package. If the cigarette packages are wrapped in or covered by some substance to which the stamps do not readily adhere, such wrapper or covering must be roughened or treated so that stamps will adhere securely thereto.

§ 21A07. Purchase of Stamps, Refund, or Credit for Unused Stamps.

(a) Cigarette stamps for packages of twenty (20) or fewer cigarettes shall be sold in rolls of fifteen thousand (15,000) or thirty thousand (30,000) or sheets of one hundred fifty (150) with a minimum order of one thousand five hundred (1,500) stamps. Cigarette stamps for packages of twenty-five (25) cigarettes are sold in rolls of three thousand six hundred (3,600) or sheets of one hundred fifty (150) with a minimum order of one thousand two hundred (1,200) stamps. The total amount of tax, postage, and handling charges must be submitted with each purchase order.

(b) The Department, or its agent, will refund or credit to a licensee who purchased stamps the denominated value of any unused stamps which are returned to the Department; provided, that the stamps were lawfully purchased, and the licensee provides a receipt for the purchase of the stamps.

§ 21A08. Cigarettes Shipped Outside of Guam for Sale or Use Outside of Guam.

(a) All claims for tax exemption on any shipment of unstamped, cartoned cigarettes consigned for export from Guam shall be presented to the Director of the Department in a monthly report. The report shall be on a form and in the manner prescribed by the Director. This monthly report is a public record as defined by 5 GCA § 10102(d).

(b) All invoices or delivery tickets supporting the export claims shall be preserved by the wholesale cigarette dealer for three (3) years. Each invoice or delivery ticket shall detail the following information:

(1) the name and address of the consignee;

(2) the date of sale;

(3) the quantity of cigarettes sold; and

(4) if the invoice or delivery ticket includes other merchandise, a separate list of the cigarettes sold by brand at the top or bottom of the invoice or delivery ticket. The invoices or delivery tickets filed for preservation shall be signed by the consignee to whom delivery was made or by the common carrier making the delivery.

(c) If sealed cartons of cigarettes have not been stamped and are not detailed on invoices or delivery tickets showing them to be consigned to out-of-territory dealers or authorized persons or a government military post, each wholesale cigarette dealer shall furnish the driver of the vehicle transporting these sealed cartons of cigarettes with a memorandum detailing the quantity of unstamped, cartoned, and not consigned cigarettes to be transported.

(d) The driver of the vehicle transporting the cartons of cigarettes that have not been stamped or consigned shall have in the driver's possession at all times the quantity of cigarettes outlined in the memorandum or receipted invoices or delivery tickets showing to whom the cigarettes were sold, delivered, or disposed of, so that the total number of cartons of cigarettes shown by the signed invoices and delivery

tickets and the number of cartons of cigarettes on hand balance with the memorandum described. All claims for the tax exemption on any sales or deliveries made in this manner shall be procured as outlined in these rules and regulations.

§ 21A09. Refund or Credit for Mutilated Stamps. The Department, or its agent, will refund or credit to a licensee who purchased stamps the denominated value of any stamps when the stamps have become no longer legible or recognizable as stamps issued by the Department; provided, that the stamps were lawfully purchased, and the licensee provides a receipt for the purchase of the stamps.

§ 21A10. Refund or Credit for Stamps Destroyed. The Department, or its agent, will refund or credit to a licensee the denominated value of any stamps when the stamps have been destroyed by fire, flood, or other casualty prior to the affixation of the tax stamps to packages of cigarettes. The licensee must establish by clear and convincing evidence that the stamps were destroyed by fire, flood, or other casualty, and the denominated value of the stamps. Theft or mysterious disappearance of unaffixed stamps shall not constitute a casualty for which refund or credit will be given. However, theft or mysterious disappearance of unaffixed stamps must be reported to the police, and the Department must be notified in writing within forty-eight (48) hours of the discovery that the unaffixed stamps were stolen or mysteriously disappeared.

§ 21A11. Claim Forms. A claim for refund or credit made pursuant to §§ 21A09 and 21A10 of these rules and regulations must be made on a form prescribed by and filed with the Department.

§ 21A12. Unsellable Cigarettes. The Department, or its agent, will refund or credit to a licensee the denominated value, less the purchase discount, of identifiable stamps affixed to packages of cigarettes which have become unfit for use or unsellable before distribution, or after distribution if the cigarettes have been returned for credit or have been replaced and proof is submitted to the Department

showing that the cigarettes have not been used for smoking in Guam. A claim for refund or credit must be made on a form prescribed by the Department and shall be accompanied by a properly executed receipt and a copy of the credit memorandum of the manufacturer for returned stock, or by proof of destruction of the cigarettes with the tax stamps thereon in the presence of an employee of the Department authorized to witness the destruction.

§ 21A13. Authorization of Designee to Purchase Stamps for Licensee; Revocation of Authorization.

(a) The Department, or its agent, shall sell stamps only to persons holding licenses as required by the wholesaler or their designee. A designee may purchase stamps, provided that:

(1) written authorization is made naming the designee and identifying the designee by means of a signature or any other means of identification the Department or designated bank may require;

(2) the written authorization and means of identification as required in Subsection (a)(l) is delivered by certified mail or hand delivery to the stamp sales location at which the designee will be purchasing the stamps; and

(3) only a person who is not a minor is eligible to be a designee to purchase the stamps.

(b) The written authorization shall continue in effect until written notice of revocation of the authority by the licensee is delivered by certified mail or by hand delivery to the stamp sales location at which the designee has been purchasing the stamps.

§ 21A14. Reporting Requirement for Missing Shipment of Stamped Cigarettes and Damaged or Otherwise Unusable Stamps. Licensees must, within twenty-four (24) hours, report to the Office of the Attorney General and the Department, and its agent, if any, information on missing shipments of stamped

cigarettes and damaged stamps or stamps which have become unusable, within twenty-four (24) hours of the discovery that the shipments are missing, or the stamps have been damaged or have become unusable. Licensees shall report the following information to the appropriate division of the Attorney General's Office, which is responsible for investigating missing shipments of stamped cigarettes and damaged or otherwise unusable stamps:

(a) name and address of licensee;

(b) serial numbers of the stamps involved;

(c) number of stamps involved, and the dollar amount of the stamps involved;

(d) in the case of missing shipments, the name and address of the entity to whom the stamped cigarettes were shipped to; and

(e) any other information the Department or the Attorney General may require."

Section 3. Forms. Notwithstanding any other provision of law to the contrary, the Director of Revenue and Taxation shall adopt such forms as may be necessary for the enforcement of rules and regulations promulgated pursuant to Section 2 of this Act.

Section 4. Effective Date. This Act shall be effective upon enactment.

Section 5. 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.