clerks@guamlegislature.org

From: Committee on Rules 36GL <cor@guamlegislature.org>
Sent: Monday, May 16, 2022 10:17 AM
To: Clerks; Rennae Meno
Cc: Speaker Therese M. Terlaje
Subject: Messages and Communications for Doc. No. 36GL-22-2028*.
Attachments: 36GL-22-2028.pdf

Håfa Adai Clerks,

Please see attached M&C Doc. No. 36GL-22-2028 for processing:

36GL-22-2028	Substitute BILL NO. 258-36 (LS) "AN ACT TO ADD A NEW § 26203(k)(39) TO ARTICLE 2 OF CHAPTER 26, TITLE 11, GUAM CODE ANNOTATED, RELATIVE TO EXEMPTING HOMEOWNER ASSOCIATION MEMBERSHIP DUES AND COMMON AREA FEES FROM THE BUSINESS PRIVILEGE TAX". **Substitute BILL NO. 258-36 (LS) nka P.L. 36-97** "AN ACT TO *ADD* A NEW § 26203(k)(39) TO ARTICLE 2 OF CHAPTER 26, TITLE 11, GUAM CODE ANNOTATED, RELATIVE TO EXEMPTING HOMEOWNER ASSOCIATION MEMBERSHIP DUES AND COMMON AREA FEES FROM THE BUSINESS PRIVILEGE TAX"*.	Office of the Governor of Guam

Electronic and Hard Copy received and attached.

Si Yu'os Ma'åse',

COMMITTEE ON RULES
Vice Speaker Tina Rose Muña Barnes
36th Guam Legislature
I Mina'trentai Sais Na Liheslaturan Guåhan
163 Chalan Santo Papa Hågatña Guam 96910
Email: cor@guamlegislature.org

"Disclaimer: This message is intended only for the use of the individual or entity to which it is addressed and may contain information which is privileged, confidential, proprietary, or exempt from disclosure under applicable law. If you are not the intended recipient or the individual responsible for delivering the message to the intended recipient, you are strictly prohibited from disclosing, distributing, copying, or in any way using this message. If you have received this communication in error, please notify the sender and immediately delete any copies you may have received. Thank you."

---------- Forwarded message ---------
From: **Speaker Therese M. Terlaje** <speaker@guamlegislature.org>
Date: Fri, May 13, 2022 at 6:01 PM
Subject: Messages and Communications for 36GL-22-2028
To: Legislative Secretary Amanda Shelton <officeofsenatorshelton@guamlegislature.org>, Committee on Rules 36GL <cor@guamlegislature.org>

Håfa Adai,

Please see attached M&C Doc. No. 36GL-22-2028.

36GL-22-2028	Substitute BILL NO. 258-36 (LS) "AN ACT TO ADD A NEW § 26203(k)(39) TO ARTICLE 2 OF CHAPTER 26, TITLE 11, GUAM CODE ANNOTATED, RELATIVE TO EXEMPTING HOMEOWNER ASSOCIATION MEMBERSHIP DUES AND COMMON AREA FEES FROM THE BUSINESS PRIVILEGE TAX".	Office of the Governor of Guam

Note: e-delivery received May 13th at 4:40 p.m.; hard copy delivered and received May 13th at 4:51 p.m.

Si Yu'os Ma'åse',

Marie Cruz
Community Relations Liaison

Office of Speaker Therese M. Terlaje
Committee on Health, Land, Justice and Culture
I Mina'trentai Sais na Liheslaturan Guåhan
36th Guam Legislature
Guam Congress Building, 163 Chalan Santo Papa, Hagåtña, Guam 96910
T: (671) 472-3586 F: (671) 989-3590 Email: senatorterlajeguam@gmail.com
website: www.senatorterlaje.com

---------- Forwarded message ---------
From: **Brianne LG Dunstan** <brianne.dunstan@guam.gov>
Date: Fri, May 13, 2022 at 4:40 PM
Subject: Governor Leon Guerrero's Statements regarding Legislative Bills passed on April 29, 2022
To: Speaker Therese M. Terlaje <speaker@guamlegislature.org>
Cc: GOVERNOR Lourdes A. Leon Guerrero <governor@guam.gov>, LT. GOVERNOR Joshua F. Tenorio <lt.governor@guam.gov>, Geraldine A. Cepeda <gcepeda@guamcourts.gov>, Guam Compiler of Laws <guamcompiler@gmail.com>, Lisa C. Ibanez <libanez@guamcourts.gov>, CHIEF OF STAFF Jon Junior Calvo <jon.calvo@guam.gov>, DEPUTY COS Alice Taijeron <alice.taijeron@guam.gov>, Legal <legal@guam.gov>, Leslie Travis <leslie.travis@guam.gov>, Jeffrey Moots <jeffrey.moots@guam.gov>, Cheerful Catunao <cheerful.catunao@guam.gov>, Stephanie G. Flores <stephanie.flores@guam.gov>, Krystal Paco-San Agustin <krystal.paco@guam.gov>, <lester.carlson@bbmr.guam.gov>, BERTHA <bertha.duenas@guam.gov>, Eliza G. Dames (Chamber) <eliza.dames@guam.gov>, Shamra L.A. Chargualaf (Chamber) <shamra.chargualaf@guam.gov>, Josephine C. Cepeda (Chamber) <josephine.cepeda@guam.gov>, Kathleen C. Cepeda (COS) <kathleen.cepeda@guam.gov>, Rhea Chang <rhea.chang@guam.gov>, Jessica Cruz (CF) <jessica.cruz@guam.gov>, BBMR Administrative Staff <admin@bbmr.guam.gov>, Analyn Eustaquio <analyn.eustaquio@bbmr.guam.gov>, Rikki Orsini <rikki.orsini@guam.gov>

Hafa Adai Madame Speaker,

Enclosed are copies of statements from the *Honorable,* Lourdes A. Leon Guerrero, regarding the following five (5) bills:

- **BILL NO. 286-36 (LS) nka P.L. 36-95** "AN ACT TO AMEND § 715(1)(13) OF CHAPTER 7, TITLE 1, GUAM CODE ANNOTATED, RELATIVE TO EXEMPTING THE GUAM DEPARTMENT OF EDUCATION FROM THE REQUIREMENT OF ONE HUNDRED EIGHTY (180) INSTRUCTIONAL DAYS, OR ITS EQUIVALENCE OF NINE HUNDRED (900) INSTRUCTIONAL HOURS, FOR SCHOOL YEARS 2020-2021 AND 2021-2022"

- **BILL NO. 287-36 (LS) nka P.L. 36-96** "AN ACT TO ADD A NEW § 4124(b)(2) TO CHAPTER 4 OF TITLE 17, GUAM CODE ANNOTATED RELATIVE TO CREATING AN EXEMPTION FROM THE SERVICE- LEARNING REQUIREMENT FOR GRADUATING HIGH SCHOOL STUDENTS FOR SCHOOL YEARS 2021-2022 AND 2022-2023"

- **Substitute BILL NO. 258-36 (LS) nka P.L. 36-97** "AN ACT TO ADD A NEW § 26203(k)(39) TO ARTICLE 2 OF CHAPTER 26, TITLE 11, GUAM CODE ANNOTATED, RELATIVE TO EXEMPTING HOMEOWNER ASSOCIATION MEMBERSHIP DUES AND COMMON AREA FEES FROM THE BUSINESS PRIVILEGE TAX"

- **BILL NO. 245-36 (LS) nka P.L. 36-98** "AN ACT TO AMEND § 54B103(b) OF CHAPTER 54B, TITLE 10, GUAM CODE ANNOTATED , RELATIVE TO EXTENDING THE EFFECTIVE DATE OF THE PAPER BAG BAN FOR RETAIL AND WHOLESALE ESTABLISHMENTS TO JULY 1, 2025"

- **Substitute BILL NO. 267-36 (COR) nka P.L 36-99 (Lapse)** "AN ACT TO AMEND §§ 13102(6), 13103, AND 13104 (a) AND (b) OF CHAPTER 13, DIVISION 1, TITLE 12, GUAM CODE ANNOTATED; AND TO AMEND § 2121 OF ARTICLE 1, CHAPTER 2, TITLE 28, GUAM ADMINISTRATIVE RULES AND REGULATIONS, RELATIVE TO ESTABLISHING A FAIR PROCESS FOR RESOLVING PUBLIC UTILITY RATEPAYER DISPUTES

The original statements and bills will be delivered to your office today.

Thank you.

Respectfully,
--

Brianne LG Dunstan
Unisifan I Maga'hågan Guåhan
Office of the Governor of Guam
Office of Legal Counsel
513 West Marine Corps Drive
Ricardo J. Bordallo Governor's Complex
Hagåtña, Guam 96910
Office: 671.473.1118
brianne.dunstan@guam.gov

Virus-free. www.avg.com

LOURDES A. LEON GUERRERO
GOVERNOR

JOSHUA F. TENORIO
LT. GOVERNOR

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

Doc Type: 36GL-22-2028
OFFICE OF THE SPEAKER
THERESE M. TERLAJE
05 13 2022
Time: 4:51pm
Received:

May 13, 2022

HONORABLE THERESE M. TERLAJE
Speaker
I Mina'trentai Sais Na Liheslaturan Guåhan
36th Guam Legislature
Guam Congress Building
163 Chalan Santo Papa
Hagåtña, Guam 96910

Re: SUBSTITUTE BILL NO. 258-36 (LS) – AN ACT TO *ADD* A NEW § 26203(k)(39) TO ARTICLE 2 OF CHAPTER 26, TITLE 11, GUAM CODE ANNOTATED, RELATIVE TO EXEMPTING HOMEOWNER ASSOCIATION MEMBERSHIP DUES AND COMMON AREA FEES FROM THE BUSINESS PRIVILEGE TAX

Hafa Adai Madame Speaker,

Homeowner associations are an important tool used to maintain the homes and common areas of their members, which helps maintain property values, and promotes community engagement and pride. With current strains in Guam's housing market, it is critical to explore and pursue measures to ensure the cost of housing does not rise to a level that hinders our people's ability to afford a place to live. Exempting membership dues and common area fees for homeowner associations from the business privilege tax will empower these associations to maintain and enhance their properties and community without raising the fees that are collected from their members. I hereby sign Substitute Bill No. 258-36 into law as ***Public Law 36-97***.

Senseremente,

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

Enclosure: Substitute Bill No. 258-36 (LS) *nka P.L. No. 36-97*

cc via email: *Honorable* Joshua F. Tenorio, *Sigundo Maga'låhen Guåhan*
Compiler of Laws

I MINA'TRENTAI SAIS NA LIHESLATURAN GUÅHAN
2022 (SECOND) Regular Session

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

This is to certify that **Substitute Bill No. 258-36 (LS), "AN ACT TO *ADD* A NEW § 26203(k)(39) TO ARTICLE 2 OF CHAPTER 26, TITLE 11, GUAM CODE ANNOTATED, RELATIVE TO EXEMPTING HOMEOWNER ASSOCIATION MEMBERSHIP DUES AND COMMON AREA FEES FROM THE BUSINESS PRIVILEGE TAX,"** was on the 29th day of April 2022, duly and regularly passed.

Therese M. Terlaje

Therese M. Terlaje
Speaker

Attested:

Amanda Shelton

Amanda L. Shelton
Legislative Secretary

This Act was received by *I Maga'hågan Guåhan* this 2nd day of May, 2022, at 5:17 o'clock P.M.

Assistant Staff Officer
Maga'håga's Office

APPROVED:

Lourdes A. Leon Guerrero
I Maga'hågan Guåhan

Date: 5/13/2022

Public Law No. 36-97

RCVD AT CENTRAL FILES
MAY 3 '22 AM8:48
2022-16436
Evelyn Fejeran

I MINA'TRENTAI SAIS NA LIHESLATURAN GUÅHAN
2022 (SECOND) Regular Session

Bill No. 258-36 (LS)
As amended by the Committee on General Government Operations, Appropriations, and Housing; and substituted and further amended on the Floor.

Introduced by: Frank Blas Jr.
Telo T. Taitague
Telena Cruz Nelson
Sabina Flores Perez
Tina Rose Muña Barnes
Christopher M. Dueñas
V. Anthony Ada
Joanne Brown
Joe S. San Agustin
James C. Moylan
Clynton E. Ridgell
Amanda L. Shelton
Jose "Pedo" Terlaje
Therese M. Terlaje
Mary Camacho Torres

AN ACT TO *ADD* A NEW § 26203(k)(39) TO ARTICLE 2 OF CHAPTER 26, TITLE 11, GUAM CODE ANNOTATED, RELATIVE TO EXEMPTING HOMEOWNER ASSOCIATION MEMBERSHIP DUES AND COMMON AREA FEES FROM THE BUSINESS PRIVILEGE TAX.

BE IT ENACTED BY THE PEOPLE OF GUAM:

Section 1. Legislative Findings and Intent. *I Liheslaturan Guåhan* finds that homeowners' associations (HOA) are often organized as not-for-profit bodies incorporated into the bylaws and articles of incorporation towards operating for the

community it serves. HOAs generally have non-profit status by default, and the purpose of the association is not to make money but to maintain and govern.

In 2022, the Department of Revenue and Taxation has compelled HOAs to pay business privilege taxes (BPT) as most do not fall within the Internal Revenue Service (IRS) section 501(c)(3) exemption. However, as not-for-profit corporations, HOAs are eligible for IRS section 501(c)(4) exemptions. Being non-profit often gets confused with being tax-exempt, which is different and unrelated.

An HOA must file taxes as a corporation and may also obtain IRS exemption through a section 501(c)(4) or elect to file using the provision of IRS Code section 528 to receive certain tax benefits that, in effect, permit it to exclude its exempt function income from its corporate gross income.

I Liheslaturan Guåhan finds that membership fees, penalties, and common area fees paid by the HOA homeowners are integral in maintaining and repairing improvements, including infrastructure located within the common areas of a condominium or townhouse community. Regular subdivisions and housing communities in Guam expect the government of Guam to maintain and repair roads, sewers, and electrical infrastructure that service their homes.

Through this Act, *I Liheslaturan Guåhan* intends to exempt homeowner association membership dues and common area fees from BPT assessments, as HOAs are responsible for filing a corporate tax return every year for its operations. Though an HOA does not function for profit, some activities may result in taxable income. For example, some communities sell t-shirts or mugs with the community logo, charge for use of the exercise or clubhouse facilities, or operate a store or restaurant as part of their amenities. Income from such activities is taxable, and the HOA is therefore responsible for paying those taxes.

Section 2. A new § 26203(k)(39) is *added* to Article 2 of Chapter 26, Title 11, Guam Code Annotated, to read:

"(39) Amounts received from homeowner association membership dues and common area fees."

Section 3. Severability. If any portion of this Act is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate provision and shall not affect the validity of the remaining portions of the Act.

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