



Supreme Court of Guam

SUITE 300 GUAM JUDICIAL CENTER
120 WEST O'BRIEN DRIVE, HAGÁTÑA, GUAM 96910-5174
www.guamsupremecourt.com
Telephone: (671) 475-3413 • Facsimile: (671) 475-3164



F. PHILIP CARBULLIDO
Chief Justice

January 3, 2014

The Honorable Benjamin J.F. Cruz
Vice Speaker
I Mina' Trentai Dos Na Liheslaturan Guahan
155 Hesler Place
Hagåtña, Guam 96910

RE: Proposed Tax Clearance Declaration for Guam Bar Members

Dear Vice Speaker Cruz:

Thank you for your comments and attachments sent on December 5, 2013, in response to the notice of comment regarding the proposed tax clearance declaration for Guam bar members. Numerous comments were received, in addition to yours. After considering all comments, as well as your statement that you believed the proposal did not sufficiently address your concerns, the Supreme Court has decided not to adopt the proposal. The attached notice will be made public to the Guam bar members on Monday, January 6, 2014. However, as a courtesy, we wanted to provide this to you in advance of its publication.

Best Regards,

A handwritten signature in blue ink, appearing to read "F. Philip Carbullido".

F. PHILIP CARBULLIDO

Attachment



Supreme Court of Guam

SUITE 300 GUAM JUDICIAL CENTER
120 WEST O'BRIEN DRIVE, HAGÁTÑA, GUAM 96910-5174
www.guamsupremecourt.com



January 3, 2014

Guam Bar Association Members

Re: Notice re Proposed "Tax Clearance Declaration"


Dear GBA Members:

A notice was sent to all bar members on November 7, 2013, relative to requiring a tax clearance declaration from attorneys when renewing their license to practice law. Guam bar members were invited to submit comments on the proposed declaration through December 26, 2013. The court has considered all the comments received, and has decided not to adopt the proposal for the following reasons:

- (1) The comments received were overwhelmingly against requiring such declaration;
- (2) The comment received by Vice Speaker B.J. Cruz suggested that the proposed declaration was insufficient to address the concerns he raised;
- (3) The Code of Professional Responsibility, to which all attorneys licensed by this court are bound, already requires attorneys to conduct themselves ethically and in conformance with the law – which includes all tax laws. To the extent that an attorney fails to comply with these requirements, such failure is dealt with by the proper authorities – be it the Attorney General's Office, the Department of Revenue and Taxation, the Guam Bar Ethics Committee, or other appropriate authority as the case may be.

Attached to this notice are two of the comments received: (1) Vice Speaker Cruz's comment (with attachments); and (2) Comment from the Attorney General of Guam, which includes points and arguments that are representative of many of the other comments received from bar members.

The court thanks all those who took the time to submit comments, and will not at this time be taking any action with regard to requiring tax clearance declarations.


HANNAH G. ARROYO
Clerk of Court



December 5, 2013

Hannah Gutierrez- Arroyo
Clerk of the Supreme Court of Guam
Supreme Court of Guam
Suite 300 Guam Judicial Center
180 West O'Brien Drive
Hagatna Guam 96910

Sent Via Email to: hgutierrezarroyo@guamsupremecourt.com

Re: Comment on Proposed Rule: Requiring Certification of Tax Compliance

Ms. Gutierrez-Arroyo:

Please allow me to extend my heartfelt gratitude for the Guam Judiciary's prompt attention to my request that a certification of compliance with Guam's tax statutes be required of all attorneys as a condition of licensure renewal.

I was insulted when a citizen confronted me in public, alleging that I have targeted large hotels and off-island construction companies for nonpayment of taxes, while ignoring the fact that attorneys are allowed to renew their licenses to practice on Guam without first requiring proof that each attorney is current with any applicable Business Privilege Taxes (GRT), withholding taxes, and corporate or personal income taxes.

This stands in stark contrast to the thousands of small business owners across the island that must be "cleared" from a number of agencies including the Department of Revenue and Taxation. This fact was brought to my attention by a small vendor at the Dededo flea market whose operation was shuttered earlier this year because he had not renewed his business license.

No one is above the law, especially not those of us privileged enough to be educated in its practice and entrusted with the responsibility of upholding its principles.

While I truly appreciate the Courts proposed rule, I do not believe that it is sufficient enough to address the issues I have raised. I have had several conversations with current and retired Revenue Agents for DRT. They have informed me that it is very difficult, if not impossible, to keep track of each practicing lawyer. They allege that lawyers are either unwilling or unable to comply with the statutes which set the parameters for the use of "fictitious names."

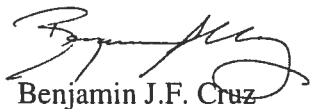
Almost weekly, lawyers leave firms; firms change principals, and partners--sometimes the name of the firm changes, sometimes it does not. Sometimes what is denoted as a firm is actually a group of lawyers sharing space and personnel. As such, the Revenue Agents are too intimidated to demand or even request clarification.

I have taken the liberty of attaching a copy of the tax clearance form used by the Contractor's License Board. All contractors are required to provide this form before their respective licenses can be renewed. This requirement was adopted after I complained that certain off island construction companies were winning multimillion dollar contracts without paying local taxes. I respectfully request that the Court consider utilizing a similar format with slight amendments to address DRT's fictitious name concerns.

If the Court were to utilize a similar form, I would suggest that the dates for certification be changed. I suggest that the form be submitted with our Bar Renewal Application. I make this suggestion so that we would not have to suffer the long lines in May and June when thousands of businesses are getting their clearances to renew their licenses by June 30. I also suggest we keep the December date since most of us request for extensions to file our taxes to give ourselves time to collect receipts or delay the inevitable payment of additional taxes due. I have also taken the liberty of including a copy of the tax clearance form required by the Professional Engineer Architect and Surveyors (PEALS) Board. This form addresses the Associates and Partners distinction.

Thank you for your time and attention.

Sincerely,



Benjamin J.F. Cruz



CONTRACTORS LICENSE BOARD

Inetnon Malisensiayen Kontratista

542 North Marine Corp Drive, Bldg. A • Tamuning, Guam 96913
Tel: (671) 649-2211 / 9676 / 2965 or 646-7626 • Fax: (671) 649-2210



EDDIE BAZA CALVO
GOVERNOR

EDUARDO R. ORDONEZ
EXECUTIVE DIRECTOR

RAY TENORIO
LT. GOVERNOR

March 01, 2012

Buenas Yan Saludas,

The Office of the Contractors License Board (CLB) will begin the process of clearing all **"2013 License Application Renewals"** beginning March 15, 2012. Please be advised that failure to pay *Inactive License Fees* or to **"RENEW"** your license on or before **July 02, 2012** shall automatically constitute a forfeiture of your license.

At this time, visit the CLB website for more information and to download and print the **"2013 Renewal Application"** forms: www.clb.guam.gov

In order to effectively renew for active status for License Year 2013 you must proceed to the following agencies for clearances:

- **Department of Revenue and Taxation**
4 stamps required - Business License Section, GRT Section, Income Tax Section, Collection.
- **Department of Labor (G.C.I.C. Bldg. Hagåtña)**
5 stamps required - OSHA On-Site, Bureau of Labor Statistics, Wage & Hour, Worker's Compensation, *Alien Labor Processing & Certification.
- **Department of Land Management – One Stop Center (DPW)**
- **Department of Public Works – Building Permits One Stop Center (DPW)**
- **Department of Public Health – Only for H2 Barracks**
- **Professional Engineers, Architects, Land Surveyors (P.E.A.L.S.) Board**
If Contractor has "A" Classification.

Also required is a **proof of financial solvency**. This is a bank letter of credit attesting to solvency or a financial statement from your bank. A sample form is available online to download and provide to your financial institution for review.

If in need of further assistance, please contact the Guam Contractors License Board Office at **(671) 649-2211 / 9676 or 646-7262**.

Dangkolo Na Si Yu'os Ma'ase'

Eduardo R. Ordonez
Executive Director

2013 RENEWAL APPLICATION

Instruction & Information Sheet

Please read before completing the application for renewal.
If you have any question, please contact our office at 646-7262, 649-2211 or 649-9676.

DEFINITION OF LICENSE TYPES

SOLE PROPRIETOR LICENSE: A license issued to an individual who passed the examination and opened his or her own company. Sole proprietors are required to complete Parts I, II & III of the renewal application.

SOLE PROPRIETOR WITH RESPONSIBLE MANAGEMENT EMPLOYEE (RME) LICENSE: A license issued to an individual who opens his or her own company but hires another individual who passed the examination to represent his or her company as the RME. Sole Proprietors with Responsible Management Employees are required to complete all parts of the renewal application.

PARTNERSHIP LICENSE: A license issued to a company owned by two (2) or more individuals. All partnerships must be registered with the Department of Revenue and Taxation. The partnership must hire an individual who passed the examination to be the RME or one of the owners must pass the examination on behalf of the partnership. Partnerships are required to complete Parts I, III & IV of the renewal application.

CORPORATION LICENSE: A license issued to companies registered with the Department of Revenue and Taxation as a Corporation. Like partnerships, the corporation must hire an individual who passed the examination to be the RME or have one of the corporate officers pass the examination on behalf of the corporation. Corporations are required to complete Parts I, III & IV of the renewal application.

JOINT VENTURE LICENSE: A license issued when two (2) currently licensed companies work together. The joint venture may be for particular projects only or may be for all work undertaken by each company. Joint Ventures are required to complete Parts I, III & IV of the renewal application.

PART I – COMPANY INFORMATION

If your company has a fictitious name (dba) you must reflect the full name of the corporation on the application and it must be registered as well with the Department of Revenue and Taxation.

Example: XYZ Corporation (dba) Zee Construction Company.

The classifications of a company are always the same as the classification of its responsible management employee. If a company has more than one (1) RME, then the company's classifications are a combination of all its RMEs classifications.

PART II – OWNER INFORMATION

Please ensure that all information is provided. If any information is a duplication of the company information "DO NOT USE".

PART III- QUESTIONS

All questions must be answered. Detailed statements must be attached to the renewal application for all questions with "yes" answer. Failure to answer may delay the process of your application.

PART IV- RESPONSIBLE MANAGEMENT EMPLOYEE (RME)

The license number of the RME is always different from the company's license number.

Exception: Sole Proprietor License.

Please ensure that all information pertaining to the RME is provided. Residential addresses should have a house number, street name, and village. Lot numbers will not be accepted as the residential address. In addition, email address, residential phone numbers, mobile and pager numbers are also requested. Be assured that the information will be for the use of our Agency. Only information on the companies that the RME represents will be given to the general public.

AGENCY CLEARANCE FORMS

Clearance from all agencies listed on the Agency Clearance Form is required. Failure to obtain complete clearances will delay the renewal process.

REQUIRED DOCUMENTS: Upon completion of the application and obtaining clearances, the following documents must be provided to our office in order to process your application. Please note that our office will not make copies. You must furnish our office with a copy of each of the following documents:

PROOF OF WORKERS COMPENSATION INSURANCE: Companies that have employees, part-time or full-time, must obtain workers compensation insurance. In the event that a corporate officer or partner is the RME of the company, workers compensation insurance for the RME is required if the RME does not own 51% or more of the company.

FINANCIAL SOLVENCY STATEMENT: A bank prepared letter of credit attesting to solvency or a financial statement. A sample form has been provided for your financial institution to review.

PROJECT LISTING: A complete listing of all projects, requiring a building permit, obtained between July 2, 2010 and June 30, 2011.

PAYMENT

Receipts must first be picked up at the CLB office. Payments may then be made at the TREASURER OF GUAM between the hours of 8:00 a.m. to 5:00 p.m. Monday to Friday, except on holidays.

*****CLB WILL CHARGE \$1.00 FOR EACH COPY MADE THROUGH THE OFFICE*****

FEE SCHEDULE

LICENSE FEES FOR COMPLETED RENEWAL APPLICATIONS PROCESSED BETWEEN APRIL 1, 2011 & JUNE 30, 2011

Sole Proprietor:	\$450.00	
Sole Proprietor with RME:	\$900.00	(\$450.00 for each additional RME)
Partnerships:	\$900.00	
Corporation with 1 RME:	\$900.00	(\$450.00 for each additional RME)
Joint Venture:	\$900.00	

LICENSE FEES FOR COMPLETED RENEWAL APPLICATIONS PROCESSED AFTER JUNE 30, 2011

Sole Proprietor:	\$495.00	
Sole Proprietor with RME:	\$990.00	(\$495.00 for each additional RME)
Partnerships:	\$990.00	
Corporations with 1 RME:	\$990.00	(\$495.00 for each additional RME)
Joint Venture:	\$990.00	

All corporation, joint ventures, and partnerships must qualify or hire an individual as a Responsible Management Employee (RME).

Application for Renewal - License Year 2013



Guam Contractors License Board
 542 N. Marine Corp. Drive – A
 Tamuning, Guam 96913
 Tel: 646-7262/649-2211/649-9676
 Fax: 649-2210

- Sole Proprietor – Complete Part I, II & III
- Sole w/RME - Complete All Parts
- Partnership – Complete Part I, III & IV
- Corporation – Complete Part I, III & IV
- Joint Venture – Complete Part I, III & IV

PART I – COMPANY INFORMATION

** Name of Company		** Company License No. #		** GRT Number	
** Mailing Address:					
** Office Phone	**Alternate Phone	** Fax	** Cell Phone	** E-Mail Address	
** Office Location (Example: 123 S. Street Name, Tamuning, Guam) DO NOT USE LOT NUMBER OF POST OFFICE BOX ADDRESS					
** Classification(s)					

PART II – OWNER INFORMATION (If company is a Corporation, Partnership, or Joint Venture, DO NOT COMPLETE THIS SECTION-GO DIRECTLY TO PART III.

**Name of Owner		**Social Security Number			
**Residential Address (DO NOT USE LOT NUMBERS OR POST OFFICE BOX- USE HOUSE NUMBER, STREET NAME & VILLAGE)					
**Home Phone	**Cell Phone	Pager	** E-Mail Address		

PART III – ALL OF THE FOLLOWING QUESTIONS MUST BE ANSWERED. Attach a detailed statement identifying the transaction, and include the names and addresses of the parties involved for each “YES” answer.

- Are there any unpaid, past due bills or claims for labor, material, or services, as a result of any construction contract or work undertaken by you or the company? Yes No
- Are there any liens, suits, or judgments of record pending as a result of any construction contract or work undertaken by you or the company? Yes No
- Are there any judgments or admitted claims against any bond or cash deposit required by Law, posted by the company or owner or share holder(s)? Yes No

I/We certify, under penalty of perjury under the laws of Guam that the information provided above and all supplementary statements are true and correct. I/We also authorize the Contractors License Board to access, inquire or obtain information necessary in order to process my/our application for the purpose of obtaining a license from their office.

_____ Signature of Owner/Partner/Corporate Officer	_____ Date	_____ Signature of Owner/Partner/Corporate Officer	_____ Date
_____ Signature of Owner/Partner/Corporate Officer	_____ Date	_____ Signature of Owner/Partner/Corporate Officer	_____ Date

** Required fields: Application will not be accepted without this information.

All corporations, joint ventures, and partnerships must qualify or hire an individual as a Responsible Management Employee (RME). The following section pertains to the individual who will serve as the RME.

PART IV- RESPONSIBLE MANAGEMENT EMPLOYEE (RME) INFORMATION.

(If there is more than one RME, please make a copy of this form)

** Name of Responsible Management Employee (RME)		** RME's License No. #	** Social Security Number
**Mailing Address			
** Residential Address (DO NOT USE LOT NUMBER OR POST OFFICE BOX ADDRESSES-USE HOUSE NUMBER, STREET NAME AND VILLAGE)			
** Home Phone	** Cell Phone	Pager	** E-Mail Address
** Classification(s)			

The signature below indicates that _____ hereby appoints the above individual as the RME of My/our company.

Name of Company

Signature of Owner/Partner/Corporate Officer Date

I, the undersigned, accept appointment as the Responsible Management Employee (RME) for the company stated above. I understand my duties include supervising personnel on construction, daily inspections of project progress to ensure compliance with the plans, specifications, building codes, and laws of the Laws of Guam.

I also understand I must provide the Contractors License Board with a written notification of my dissociation, upon resignation or termination as the RME of the above company, or the company (ies) listed below. Furthermore, I declare, under penalty or perjury under the laws of the Laws of Guam, that all statements, information, and representations in this application, are true and accurate.

In addition to the company above, I am currently the RME for the following company (ies).

**Company
**Company

Signature of Responsible Management Employee Date

** Required fields: Application will not be accepted without this information.

Agencies Clearance Form - License Year 2013

Company Name	Social Security or Employment Identification Number (EIN)
Name of Owner or RME	GRT Number:

YOU MUST OBTAIN EACH DEPARTMENT AND SECTION LISTED BELOW. IF STAMPS ARE INCOMPLETE, THE APPLICATION PROCESS MAY BE DELAYED.

DEPARTMENT OF REVENUE AND TAXATION

BUSINESS LICENSE SECTION GRT SECTION INCOME TAX SECTION COLLECTION

DEPARTMENT OF LABOR

OSHA ON-SITE BUREAU OF LABOR STATISTICS WAGE & HOUR WORKER'S COMPENSATION

DEPT. OF LABOR (ALIEN LABOR PROCESSING & CERT. DIV. (ALPCD))

DEPT. OF LAND MANGMENT

**DEPT. OF PUB WORK
BUILDING PERMITS**

**DEPT. OF PUBLIC HEALTH
(ONLY FOR H-2 BARRACKS)**

**PEALS BOARD
(Aclass)**

ZONE CLEARANCE FOR CONTRACTORS LICENSE

(To be attached to contractor's license application)

THIS FORM MUST BE COMPLETED IN ORDER TO OBTAIN A CLEARANCE FROM THE DEPARTMENT OF LAND MANAGEMENT. IF YOU ARE LEASING, RENTING OR USING A LOCATION FOR OFFICE, BARRACKS, EQUIPMENT AND STORAGE YARD OR STORAGE OF CONSTRUCTION MATERIALS, PLEASE ATTACH ALL OF THE REQUIRED DOCUMENTS AS SHOWN ON BACK OF THIS FORM.

COMPANY NAME: _____

1. OFFICE LOCATION:

Lot No:	Block Number:
Tract No:	Municipality:

2. BARRACKS:

Number of Alien Employees: _____ **If more the five (5), where are they being housed?**

Lot No:	Block Number:
Tract No:	Municipality:

3. EQUIPMENT AND STORAGE YARD:

Do you have any heavy equipment? () Yes () No

If yes, where are they parked or stored when not in use:

Lot No:	Block Number:
Tract No:	Municipality:

4. STORAGE OF CONSTRUCTION MATERIALS:

Lot No:	Block Number:
Tract No:	Municipality:

I certify that the above information is true and correct.

Name (Print)

Name (Signature)

Date



Guam Contractors License Board
 542 N. Marine Corps Dr. - Bldg. A
 Tamuning, Guam 96913
 Tel: 646-7262/649-2211/9676 • Fax: 649-2210

LICENSE PERIOD COVERED
 July 1, 2010 – June 2011
 July 1, 2011 – June 2012
 July 1, 2012 – June 2013

PROJECT LISTING

Company Name: _____ RME Name: _____

Company License #: _____ RME License #: _____

Please provide a complete listing of all contracts, whether the contract was oral or written, obtained during the License Period selected above.

	Client Name & Address	Description of Contract	Contract Amount	Bonding Company	Permit No. (if any)	Primary Contractor	Sub-Contractor Name
1	SAMPLE: Joe & Ann Salas P.O. Box 2-A Hagaña, Guam 96900	3 Bedroom, 3 Bath Concrete	\$2,000,000.00	Moylan's Insurance	B05007	Yes	ABC Construction Co.
2							
3							
4							
5							
6							
7							
8							
9							
10							
11							

The above information is submitted under penalty of perjury under the laws of Guam.

Signature of Owner / Partner / Corp. Officer _____ Name of Owner / Partner / Corp. Officer _____ Title _____ Date _____

BANK LETTERHEAD

This information is CONFIDENTIAL and furnished as a matter of business courtesy in reply to your inquiry. No responsibility is assumed by the BANK OF GUAM or its officer.

DATE: _____

CONTRACTORS LICENSE BOARD

The information check below is in reply to your recent inquiry regarding
*****JOHN DOE*****

And is given in confidence without liability on the part of this bank. It is based solely on our direct experience with our customer.

_____ Enclosed signature compares favorably.

_____ Has maintained an account since	<u>January 1, 2011</u>
_____ Year to Date	<u>\$15,000.00</u>
_____ Present Balance	<u>\$10,000.00</u>
_____ Account Number (s)	<u>Savings ACCT # 0102-111111</u>

_____ Account has been satisfactory.

_____ Credit relations have been satisfactory.

_____ Unable to locate record of credit relations

_____ Account recently opened. Not yet identified.

_____ Please give full name, address, and line of business as we have similar names.

_____ Please give the name or address of the branch where the subject is known: otherwise, we are unable to locate this name. We shall be pleased to recheck it for you upon receipt of this specific reference.

REMARKS: NONE

I, John Doe
Authorized the Bank of Hawaii
To release information

Joe Cruz
Operations Officer
Agana Branch

PROOF OF FINANCIAL SOLVENCY, (BANK LETTER OF CREDIT ATTESTING TO SOLVENCY OR FINANCIAL STATEMENT FROM THE BANK)



Office Location Map - License Year 2013

Company Name: _____

RME Name: _____

Company License #: _____ RME License #: _____

Business/Office Address: _____

Mobile #: _____ Email Address: _____

PLEASE DRAW A MAP BELOW & SHOW LANDMARKS WITHIN THE VICINITY



The Guam Board of Registration for
PROFESSIONAL ENGINEERS, ARCHITECTS & LAND SURVEYORS

Institúon "Rehistrasion Injineron Profesional, Arkitektos yan Agrián, risat Tera"

DECLARATION AND ACKNOWLEDGMENT

The "Class A - General Engineering Contractor" license is issued under the authority of the Contractors Licensing Board ("CLB") in accordance with Chapter 70 (Contractors) of Title 21 (Real Property) of the Guam Code Annotated (21 GCA §§ 70101, *et seq.*). The intent of the law establishing the categories or classes of different licenses issued by the CLB was to differentiate the types of construction for which contractors may qualify. The words "General Engineering" as used in the Class A license issued by the CLB, are intended to denote that type of construction commonly referred to as "horizontal construction," and are not intended to authorize any engineering activity which is licensed and regulated by the Guam Board of Registration for Professional Engineers, Architects and Land Surveyors (PEALS Board).

The PEALS Board maintains strict rules regarding the use of the term "Engineering" and the practice of offering "engineering services." Unless a person or company is licensed and registered with the PEALS Board, offering or advertising engineering services or general engineering is a violation of the law. This includes, without limitation, use of these words on business cards, newspaper or magazine articles and advertisements, and phone listings. Specifically, 22 GCA § 32102 states (emphasis added):

§ 32102. GENERAL PROVISIONS

In order to safeguard life, health, and property, and to promote the public welfare, the practice of engineering, architecture and land surveying in Guam is hereby declared to be subject to regulation in the public interest. It shall be unlawful for any person to practice, or to offer to practice, engineering, architecture or land surveying in Guam as defined in the provisions of this Title, or to use in connection with his name or otherwise assume, or advertise any title or description tending to convey the impression that he is an engineer, an architect or land surveyor, unless such person has been duly registered or exempted under the provisions of this Title. The practice of engineering, architecture and land surveying shall be deemed a privilege granted by the territory through the Guam Board of Registration for Professional Engineers, Architects and Land Surveyors, based on the qualifications of the individual as evidenced by his certificate of registration, which shall not be transferable.

I, _____, as the Responsible Managing Employee of _____ (name of firm/company), by my signature below, hereby acknowledge that the issuance of a Class A - General Engineering Contractor license does not authorize me or the above-named company to engage in, offer, advertise or otherwise perform engineering as a regulated and licensed by the PEALS Board in accordance with the Professional Engineers, Architects and Land Surveyors Law (22 GCA §§ 32101, *et seq.*). I further acknowledge that doing so constitutes a violation of the law, subject to all applicable penalties and prosecution authorized by law.

I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF GUAM THAT THE FOREGOING IS TRUE AND CORRECT.

Acknowledged by: _____

Signature: _____

RME Name: _____

Date: _____



The Guam Board of Registration for
PROFESSIONAL ENGINEERS, ARCHITECTS & LAND SURVEYORS

Inetnon Rikestrasion Inheneron Profisionat, Atketchlo yan Agransot Tano'

TAX CLEARANCE FORM FOR BUSINESS FIRMS

Effective with October 2009 registration renewal, all business firms must obtain a clearance from the Department of Revenue & Taxation prior to renewing your firm's COA with the PEALS Board as required by Public Law 30-35. Section 32117 of the Law states in part:

“Renewals for Certificates of Authorization for corporations, partnerships, limited liability companies, proprietorships and associations shall require a clearance from the Department of Revenue and Taxation that they are current on their taxes with the government of Guam, or have an agreement with the Department of Revenue and Taxation for their back taxes. Such clearance shall be submitted with their renewal application form”.

Applications with incomplete clearances may delay consideration of the PEALS Board.

<u>Name of Firm (as registered with the PEALS Board):</u>	<u>Employer's Identification Number (EIN) or Social Security Number, as applicable:</u>
<u>PEALS Certificate of Authorization (COA) No.:</u>	<u>Gross Receipts Tax (GRT) Number:</u>
<u>BUSINESS LICENSE SECTION</u>	<u>GRT SECTION</u>

<u>INCOME TAX SECTION</u>	<u>COLLECTION SECTION</u>
---------------------------	---------------------------

Leonardo M. Rapadas
Attorney General
RECEIVED



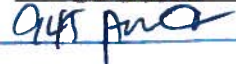
Phillip J. Tydingco
Chief Deputy Attorney General

DEC 05 2013

SUPREME COURT
OF GUAM

OFFICE OF THE ATTORNEY GENERAL

By:



December 4, 2013

Hannah G. Arroyo, Clerk of Court
Supreme Court of Guam
Guam Judicial Center – Suite 300
120 West O'Brien Drive
Hagatna, Guam 96910

The Guam Bar Association
Guam Judicial Center - Suite 300
120 West O'Brien Drive
Hagatna, Guam 96910

Attn: Ms. Cynthia V. Ecube, President

Re: Comments on Notice of Proposed “Tax Clearance Declaration”, AG File No. AG13-1013

Dear Supreme Court of Guam and Ms. Ecube:

The Office of the Attorney General (“AGO”) is in receipt of the Court’s letter of November 7, 2013 regarding the Notice of Proposed “Tax Clearance Declaration” soliciting written comments on the proposal, and thanks the Court for the opportunity to do so.

The Office appreciates the senators’ concerns that due to licensure of attorneys by the Court rather than the Department of Revenue and Taxation, attorneys are not required to make an affirmative statement to the effect that all tax returns which are due have been filed, and all taxes owing have been paid, or arrangements have been made to pay them.

The AGO believes that the Court’s proposed consideration of adding an annual licensure requirement for attorneys by way of a “tax clearance declaration” is unnecessary; overly broad; and that if a problem exists with attorneys paying taxes, the solution lies with the legislature rather than the Court, for the following reasons.

"Tax clearance declaration" is unnecessary

The Guam Supreme Court letter states the concern expressed by senators is that because Guam attorneys are licensed by the Supreme Court, they need not obtain an annual business license f/Rev & Tax, and thus are not subject to 11 G.C.A. § 70132 (Clearance Necessary that Taxes Due are Paid to Obtain Business License). The senators opine that absent a provision in the annual license renewal process for attorneys that mirrors § 70132, attorneys are not required to make an affirmative statement similar to that in § 70132 (that all taxes due have been paid or arrangements therefor are current) - as a condition of obtaining or renewing a license to practice law.

Under Guam Rules of Professional Conduct, in the opening section entitled "Preamble: A Lawyer's Responsibilities", section 5 provides that a lawyer's conduct should conform to the requirements of law, both in professional service to clients and in the lawyer's business and personal affairs. This language imposes the duty on lawyers to conform to the law in their business, i.e., paying taxes.

Rule 8.4 (Misconduct) provides that it is professional misconduct for a lawyer to (1) violate or attempt to violate the Rules of Professional Conduct; (b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects; and (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation. Failing to file taxes would constitute professional misconduct under the rules.

Willful failure to file a tax return is a misdemeanor pursuant to IRC § 7203; and in cases where an overt act of evasion occurs, willful failure to file may be elevated to a felony under IRC § 7201 (Tax Evasion).

Attorneys already have the duty to do what the declaration is supposedly requiring lawyers to say they have done. Requiring a Tax Clearance Declaration by lawyers is unnecessary.

Many professionals besides attorneys are exempt

Notably other professions are likewise exempt from the business license law. They include CPAs, realtors, Guam contractors, health professionals under the allied board, and professional engineers and architects, amongst others.

Singling out the profession of attorneys might raise the presumption that, unlike other professionals, attorneys are somehow less honest or trustworthy because they are required to file a declaration of tax clearance, while other professionals are not.

"Tax clearance declaration" is overly broad

The requirement is too broad insofar as it requires filing of a declaration by all attorneys, some of whom are not required under the business privilege tax law to obtain a

business license, such as government attorneys, private practitioners who are employees receiving 1040s or 1099s, inactive Guam bar members, or members not practicing on Guam.

Remedies for collection of unpaid taxes lie with the legislature

A statutory mechanism (11 G.C.A. Ch. 70) providing for the licensing of businesses in the Territory of Guam is already in place for all other businesses on Guam (except professionals that have their own boards). If the Legislature has concerns about attorneys or other professionals not making an affirmative statement that they have paid their taxes, all the Legislature needs to do is clarify the existing statute and require all professionals entering into their own business to get the appropriate license from the Department of Revenue and Taxation.

If the Legislature is worried about government employees, 4 G.C.A. could be amended to require all employees, including senators and non-classified employees) to complete a tax clearance statement to retain employment.

Conclusion

In sum, all business professionals should be treated the same. Individual requirements, by profession, should not be carved out on a one-by-one basis. If the Legislature truly believes a problem exists with professionals not paying their taxes, the Legislature has the means to correct such an issue through legislative amendment. Lawyers have pre-existing obligations to file their taxes, so imposition of the requirement of a declaration of payment of taxes is duplicitous and unnecessary.

Thank you for your consideration of the comments reflecting thoughts both of individual lawyers at, and the Office of the Attorney General overall as well.

Sincerely,



LEONARDO M. RAPADAS
Attorney General