



EDDIE BAZA CALVO  
Governor

RAY TENORIO  
Lieutenant Governor

*Office of the Governor Of Guam.*

March 2, 2018

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

Speaker Benjamin J.F. Cruz

MAR 02 2018

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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 KUÁTTRO 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.**

1           **BE IT ENACTED BY THE PEOPLE OF GUAM:**

2           **Section 1. Legislative Findings and Intent.** *I Liheslaturan Guåhan*

3 finds that the Guam Memorial Hospital (GMH) is underfunded operationally and

1 is due for extensive capital improvement for its modernization and its viability. *I*  
2 *Liheslatura* further finds that GMH may be properly funded with an annual  
3 surplus remaining to pay for the needed capital improvements, whether new or  
4 modernized, by increasing the business privilege tax (BPT) from four percent  
5 (4%) to six percent (6%).

6 It is further the intent of *I Liheslatura* to address the capital improvement  
7 needs of the Department of Education with the increase of the BPT rate, as well  
8 as, to address the tax base erosion caused by the passage of the Tax Cuts and Jobs  
9 Act of 2017 by providing a portion of the BPT increase to the General Fund of  
10 the government of Guam.

11 **Section 2.** § 26202 of Article 2, Chapter 26, Division 2, Title 11, Guam  
12 Code Annotated, is hereby *amended* to read as follows:

13 **“§ 26202. Rates.**

14 The following rates shall apply in computing, assessing and  
15 collecting the business privilege tax:

16 (a) Tax on the business of selling tangible personal property.  
17 Upon every person engaging or continuing within Guam in the business of  
18 selling any tangible property whatsoever (not including however, bonds or  
19 other evidence of indebtedness or stocks), there shall be a tax equivalent  
20 to six percent (6%) of gross proceeds of sales; except that on the gross  
21 proceeds of the operation of poker machines, there shall be a tax equivalent  
22 to eight percent (8%) on the gross proceeds of each machine, as determined  
23 by subtracting the winnings, pay-outs and malfunction refunds from total  
24 receipts of each machine.

25 (1) Provided, that gross proceeds of export sales of  
26 tangible property in foreign commerce shall not constitute a part of  
27 the measure of the tax imposed. Although not constituting a part of

1 the measure of the tax imposed, all such sales shall be reported in  
2 the manner provided for the reporting of the tax imposed by §  
3 26202(a).

4 (2) Provided, that any person engaging or continuing in  
5 business as a retailer and a wholesaler shall pay the tax required  
6 solely on the gross proceeds of sales of the retail business, and his  
7 books must be kept so as to show separately the gross proceeds of  
8 sale of each business.

9 (3) Provided, that a manufacturer or producer engaging in  
10 the business of selling his manufactured products at retail in Guam  
11 shall be required to make returns of the gross proceeds of such retail  
12 sales and pay the tax imposed by this Chapter for the privilege of  
13 engaging in the business of selling such products at retail in Guam;  
14 and

15 (4) Provided, that a manufacturer or producer, other than a  
16 manufacturer of alcoholic beverages, engaging in the business of  
17 selling his products to manufacturers, wholesalers, or licensed  
18 retailers, or persons actually selling the products to the United States  
19 Government, shall not be required to pay the tax imposed in this Act  
20 for the privilege of selling such products at wholesale. Nor shall any  
21 such manufacturer or producer, other than a manufacturer of  
22 alcoholic beverages, be required to pay the tax imposed in this Act  
23 for the privilege of selling products for delivery to the purchaser  
24 outside of Guam. The point of delivery for a purchaser outside of  
25 Guam may be on Guam, if the product's ultimate destination or  
26 consumption is outside of Guam.

27 (b) (1) [Repealed.]

1 (2) [Repealed.]

2 (3) Tax upon boxing. The tax levied and assessed under  
3 Subsections (b)(1) and (b)(2) (repealed) of this Section shall not  
4 apply to boxing for which a tax equivalent to twelve percent (12%)  
5 of the gross income of such boxing business is hereby levied and  
6 assessed.

7 (c) Tax on service business. Upon every person engaging or  
8 continuing within Guam, in any service business or calling not otherwise  
9 specifically taxed under this Section, [there shall be] a tax equivalent to six  
10 percent (6%) of the gross income of such business.

11 (d) Professions. Upon every person engaging or continuing  
12 within Guam in the practice of a profession, excluding those expounding  
13 the religious doctrines of any church, there shall be a tax equivalent to six  
14 percent (6%) of the gross income of such practice.

15 (e) Tax on Contractors. There shall be levied, assessed and  
16 collected a tax rate of six percent (6%) measured against the gross income  
17 of any contractor; provided, that there shall be deducted from the gross  
18 income of the taxpayer so much thereof as has been included in the gross  
19 income earned from another taxpayer who is a contractor as defined in §  
20 26101(b) and who has already paid the tax levied under this Subsection for  
21 goods and services that include the deductible gross income of the taxpayer  
22 who is a contractor; provided, that any person claiming a deduction under  
23 this Subsection shall be required to show in the person's return either the  
24 name and the contractor's license number issued by the Guam Contractors  
25 License Board, or the Guam business license number, or the registration  
26 number for a professional engineer, architect or land surveyor, or the  
27 Certificate of Authorization (COA) number for a business authorized to

1 provide engineering, architecture or land surveying services by the Guam  
2 Board of Registration for Professional Engineers, Architects, and Land  
3 Surveyors of the person paying the tax on the amount deducted by the  
4 person.

5 (f) Tax on banks, banking institutions, small lenders and building  
6 and loan associations. Upon every person engaging or continuing within  
7 Guam in the business of operating any bank, banking institutions, building  
8 and loan association, small lending business, or lending institutions, there  
9 shall be a tax equivalent to six percent (6%) of the net income received  
10 from business.

11 (1) Net Income. For the purpose of this Section, net income  
12 shall mean the gross income of such taxpayer received from all  
13 sources less the following deductions therefrom:

14 (A) Salaries or bonuses paid and other compensation  
15 from personal services.

16 (B) Interest or discount paid.

17 (C) Rents paid.

18 (D) Ordinary operating expenses such as supplies,  
19 utility services, insurance premiums other than for life  
20 insurance, provided that any deductible insurance expense  
21 shall be allowable only to the extent that such a premium is  
22 applicable to the tax period against which it is claimed.

23 (E) Loans or obligations charged off the books of the  
24 bank as losses unless charged against reserves then in  
25 existence.

26 (F) Losses other than loan losses, such as those  
27 occasioned by fire or other casualty, theft, embezzlement, and

1 the like, but only to the extent not covered by insurance  
2 proceeds collected.

3 (G) Transfers from earnings to reserve for bad debts  
4 or other contingencies provided for.

5 (H) Miscellaneous direct expenses such as legal,  
6 advertising, auditing, and the like.

7 (I) Loss on property sold and depreciation on  
8 property owned.

9 (2) A person liable for the payment of taxes levied under  
10 this Section shall be required to file an annual return, and shall not  
11 be required to file monthly returns. The tax year shall be calendar  
12 year except that the taxpayer may use his annual accounting period  
13 when prior permission is obtained from the Tax Commissioner. The  
14 annual return under this Subsection shall be filed not later than  
15 ninety (90) days following the close of the taxpayer's tax year.

16 (g) Dealing in foreign currency. Upon every person engaging or  
17 continuing within Guam in the business of purchasing and selling foreign  
18 money, there shall be a tax equivalent to six percent (6%) of the gross  
19 profit of such business represented by the difference between the cost and  
20 selling price of the foreign currency measured in United States dollars.

21 (h) Tax on other business. Upon every person engaging or  
22 continuing within Guam in any business, trade, activity, occupation or  
23 calling not specifically included in any other provision of this Article,  
24 there shall likewise be a tax equivalent to six percent (6%) of the gross  
25 income of such business. This Section shall apply to the gross income of  
26 persons taxable under other provisions of this Chapter but which gross  
27 income is not derived from the exercise or privilege taxable thereunder.

1 (i) Insurers. Upon every person engaged or continuing within  
2 Guam in the business of an insurer, there shall be a tax at the rate of six  
3 percent (6%) of gross income received as premium for the writing of  
4 insurance, less returned premiums and less all commissions attributable to  
5 the sale and purchase of an insurance policy or policies of the insurer paid  
6 by said insurer to agents of the same, and six percent (6%) of any other  
7 gross income earned or derived on Guam.

8 (j) Tour Agencies. Upon every person engaging or continuing  
9 within Guam in the business of a tour agency or travel agency, where  
10 tourism-related services are furnished to consumers by independent  
11 vendors through arrangements made by a travel agency, or tour packager,  
12 and the gross income is divided between the provider of the services on  
13 the one hand and the travel agency or tour packager on the other hand, a  
14 tax equivalent to six percent (6%) shall be imposed on each person with  
15 respect to such person's respective portion of the proceeds, and no more.

16 Where transient accommodations are furnished through  
17 arrangements made by a travel agency or tour packager, the gross income  
18 is divided between the provider of the transient accommodations on the  
19 one hand and the travel agency, or tour packager, on the other hand, a tax  
20 equivalent to six percent (6%) shall be imposed on each person with  
21 respect to such person's respective portion of the proceeds, and no more.

22 (1) As used in this Subsection tourism-related services  
23 shall mean dinner cruises, transportation included in a tour package,  
24 sightseeing tours, dinner shows, extravaganzas, cultural and  
25 educational facilities, and other services rendered directly to the  
26 customer or tourist.



1 (2) As used in this Subsection ‘transient accommodations’  
2 shall mean hotel, lodging facility, or similar facility located on  
3 Guam and subject to the provisions of 11 GCA § 30101.”

4 **Section 3. Effective Date of Increased BPT Rate; Sunset Provision.**

5 (a) The increased BPT rate of six percent (6%) *shall* be  
6 immediately effective and implemented following the enactment of this  
7 Act by *I Maga’låhen Guåhan*, and it *shall* remain in effect for one (1) year  
8 until March 31, 2019, therefrom when at the expiration of such period,  
9 1.25% of the increased rate of six percent (6%) representing the allocation  
10 made in Section 4 herein to the Department of Education and the General  
11 Fund *shall* automatically be deemed repealed, and the BPT rate *shall*  
12 decrease and revert to 4.75% without any further legislative action  
13 necessary. Of the reverted 4.75% rate, 0.75% *shall* continue to be allocated  
14 to the Guam Memorial Hospital Authority.

15 (b) During the one (1) year period when the effective BPT rate is  
16 six percent (6%), *I Liheslatura* and the Executive Branch *shall* collaborate  
17 to explore and identify any and all potential government revenue streams,  
18 financing sources or grants to address the tax base erosion.

19 **Section 4. Use and Appropriation of Revenue.**

20 The increased revenues derived from the increase of the BPT described in  
21 this Act *shall* be allocated accordingly:

22 (a) 0.75% to the Guam Memorial Hospital Authority for its  
23 purposes, including, but not limited to, capital investment, operational  
24 requirements or reserves;

25 (b) 0.25% to the Guam Department of Education for its capital  
26 improvement needs; and

1 (c) 1.00% to the General Fund of the government of Guam to  
2 address the erosion of the tax base resulting from the passage of the Tax  
3 Cuts and Jobs Act of 2017.

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

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

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

19 (b) capital improvement projects.

20 **Section 7. Section 7. Weekly meetings of the Special Economic**  
21 **Service. Notwithstanding any other provision of law, the Special Economic**  
22 **Service work group established by Title 2 Guam Code Annotated Section**  
23 **13108 shall meet no less than once a week to address the FY2018 revenue**  
24 **shortfall and the FY2019 budget.**

25 **Section 8. Severability.** If any provision of this Act or its application to  
26 any person or circumstance is found to be invalid, or contrary to law, such  
27 invalidity *shall not* affect other provisions or applications of this Act that can be

- 1 given effect without the invalid provision or application, and to this end the
- 2 provisions of this Act are severable.