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CHAPTER 26
BUSINESS PRIVILEGE TAX LAW

NOTE: Effective July 17, 2007, reference to Gross Receipts Tax (GRT), amended to Business Privilege Tax (BPT), pursuant to P.L. 29-002:VI:28 (May 18, 2007).

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§ 26101. Definitions.

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For the purpose of this Chapter except as otherwise specifically provided, the following words and phrases, together with all of the common derivatives thereof (i.e., verbs, plurals, feminine gender, etc.), shall have the meaning ascribed to them in this Section.

(a) *Business* and engaging in, transacting, conducting, continuing, doing or carrying on business includes all activities, whether personal, professional or corporate, carried on within Guam for economic benefit, either direct or indirect, but shall not include casual sales. Engaging in business shall also include the exercise of corporate franchise powers, but neither the conduct of business as such within or without Guam by an investment company or by an international finance company, as each or either is defined in any law of the United States or Guam, or by any company registered as an investment company under the United States Investment Company Act of 1940 nor the exercise of corporate franchise powers by any such corporation, shall constitute either business or engaging in business to the extent that such conduct or exercise within Guam does not exceed the management and administration of its business and activities incidental thereto, transactions involving its capitalization, and the acquisition and disposition of property from which any income would constitute foreign source income pursuant to the provisions of the Guam Income Tax Law.

Without excluding other activities which may not be considered to be specifically engaging in, transacting, conducting, continuing, doing or carrying on a business, including those activities specified above, a person shall not be considered to be engaging in, transacting, conducting, continuing, doing or carrying on a business within the meaning of this Division solely by reason of carrying on in Guam any one (1) or more of the following activities:

- (1) maintaining or defending any action or suit, or any administrative or arbitration proceeding, or effecting the settlement thereof or the settlement of claims or disputes;
- (2) holding meetings of the board of directors or shareholders, or carrying on other activities concerning internal corporate affairs;
- (3) maintaining bank accounts;

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(4) maintaining offices or agencies for the transfer, exchange and registration of the corporation's own securities, or appointing and maintaining trustees or depositaries with respect to those securities;

(5) effecting sales through independent contractors;

(6) soliciting or procuring orders, whether by mail or through employees, agents or otherwise, where those orders require acceptance outside Guam before they become binding contracts;

(7) creating or acquiring evidences of debt or mortgages, liens, or security interests in real or personal property;

(8) securing or collecting one's own debts or enforcing mortgages and security interests in property securing one's own debts;

(9) owning, without more, real or personal property;

(10) conducting an isolated transaction that is completed within ninety (90) days and that is not one in the course of a number of repeated transactions of a like nature; and

(11) transacting business in interstate commerce.

The list of activities in this Subsection is not exhaustive.

(b) *Contractor* shall include every person engaging in the business of contracting to erect, construct, repair or improve any installation of any kind or description, or to provide under contract any service or material for the erection, construction, repair or improvement of any installation, or to provide under contract, labor to another for any purpose or use whatsoever, which shall not include the personal services contract of an individual.

(c) *Drawback* shall mean a return to the taxpayer of all or a portion of a tax which he has already paid.

(d) *Export Trading Company* shall mean a person, partnership, association, or similar organization, whether operated for profit or as a nonprofit organization, which does business under the laws of Guam and which is organized and operated principally for purposes of

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(1) exporting goods or services produced in Guam; or

(2) facilitating the exportation of goods or services produced in the United States or Guam by unaffiliated persons by providing one or more export trade services;

An export Trading Company must qualify under United States Public Law 97-290 and conform to the requirements and procedures of that Act regarding Export Trading Companies.

(e) *Export Trade Service* shall mean, but be not limited to, consulting, international market research, advertising, marketing, insurance, product research and design, legal assistance, transportation, including trade documentation and freight forwarding, communication and procession of foreign orders to and for exporters and foreign purchasers, warehousing, foreign exchange, financing, and taking title to goods, when provided in order to facilitate and export of goods or services produced in the United States or Guam.

(f) *Foreign* shall mean that which is outside of the territory of Guam; and *domestic* shall mean that which is legally within the Territory of Guam.

(g) *Gross Income* or *Gross Proceeds of Sale* shall mean the total receipts, cash or accrued, of the taxpayer received as compensation from whatever activity; such terms shall refer to, and shall include, that received by reason of the investment of the capital of the business engaged in including interest, discount, rentals, royalties, fees, commissions, or other emoluments, however designated, and without any deductions whatsoever, except that actual bad debts may be excluded in the period in which they accrued.

These terms shall not be construed to include the receipts from the sale of bonds or other evidence of indebtedness, stocks, or from sale of real property nor shall there be included therein cash discounts allowed and taken on sales, the proceeds of sales when the article is returned by the customer and the sale price refunded to him.

(h) *Import* shall mean and include bringing into Guam from any source outside of Guam any tangible personal property

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whatsoever, as well as the property itself.

(i) *Manufacturer* shall mean and include any person engaged in the business of applying labor, by hand or with the aid of machinery, to raw materials or to partially processed materials so as to result in a substantial transformation of such material into a form capable of use different from that to which it could be put before such substantial transformation.

(j) *Obligation to the government of Guam* shall mean and include any and all taxes, charges, debt, or anything owed to the government of Guam which at the time is due and delinquent.

(k) *Person* includes any individual, firm, co-partnership, joint venture, association, corporation, estate, trust, limited liability company, limited partnership, limited liability partnership, or any other group or combination, foreign or domestic, acting as a unit.

(l) *Practice of a profession* shall mean the rendering of a professional service depending on the skill or art of the individual so rendering it, exclusive of the sale of tangible property.

(m) *Producer* shall mean and include any person engaged in the business of growing or extracting natural resource products in their natural state.

(n) *Resident* shall include any person within the territory of Guam with the intent of making this his fixed place of abode or business for the present.

(o) *Retail* shall mean the sale of tangible personal property, other than by a wholesaler as such within the definition of this Section, for consumption or use by the purchaser and not for resale.

(p) *Sale* means any transfer of title or possession, or both, conditional or otherwise, in any manner or by any means whatsoever, of tangible personal property and includes an exchange of properties as well as an exchange of property for money. A transaction whereby the possession of property is transferred but the seller retains title as security for the payment of the sale price on a conditional sale, shall be deemed a sale.

(q) *Storage* shall mean and include any keeping or retention in Guam for use or consumption in Guam, or for any purpose other

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than sale in the regular course of business.

(r) *Tax Commissioner* shall mean and include the person performing the duties of Commissioner of Revenue and Taxation for the government of Guam and who is charged with the administration and enforcement of the provisions of this Chapter.

(s) *Taxpayer* shall mean any person against whom a tax is levied, or who is liable for payment of any tax, or who is required to file a return under this Chapter whether such person owes a tax or not.

(t) *Use* shall mean and include the exercise of any right or power incident to the ownership of tangible property, or interest therein, except that it shall not include the keeping for sale of such property in the regular course of business.

(u) *Value* shall mean the fair and reasonable cash value in Guam.

(v) *Vessels engaged in commercial fishing* shall mean those vessels solely employed in the activity of catching fish for commercial sale and those vessels used to support such vessels such as provisioning vessels and tanker vessels.

(w) *Wholesale* shall mean the sale of tangible personal property by a person doing a regularly organized wholesale business, known to the trade as such, and licensed to do business as such, to a person for the purpose of resale.

SOURCE: GC § 19500, Subsection (a) amended by P.L. 16-65; Subsections (d) and (e) added by P.L. 17-67:1&2; (v) added by P.L. 18-2:6. Subsection (v) amended by P.L. 24-205:9. Subsections (a) and (k) amended by P.L. 27-57:3 and 4, respectively.

§ 26102. Administration.

The following provisions shall govern the administration of this entire Chapter and shall apply to all taxes levied hereunder.

(a) *Tax District.* The territory of Guam shall comprise one (1) taxing district only and no subdivision thereof shall be made for the purpose of this Chapter.

(b) *Tax Commissioner.* The Commissioner of Revenue and Taxation of the government of Guam (herein known as the Tax

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Commissioner) shall have the following duties, powers and authority:

(1) Subordinates. With the approval of the Director of Revenue & Taxation, to designate from among the employees in his division such deputy collectors and internal revenue agents as may be required; provided, however, that the hiring and removal of all such employees shall be done in accordance with the personnel laws and regulations.

(2) Assessment. He shall make all assessments of taxes levied by this Chapter.

(3) Collection. He shall be responsible for the acts of his assistants, the Tax Collector, the Deputy Tax Collector and the Internal Revenue agents and, for the enforcement and collection of all taxes imposed by this Chapter.

(4) Construction of revenue laws. He shall construe the tax and revenue laws, the administration of which are within the scope of his official duties, whenever requested by any officer acting under law, or by any interested person, provided that the Attorney General's Office shall give him such aid and assistance as he may require.

(5) Enforcement of penalties. He shall see that all penalties provided for in this Chapter are enforced.

(6) Inspection and examination of records. He shall have authority to inspect and examine the records, books of account, bank statements, taxpayer's copy of Federal income tax return, any other tax return made to the government of Guam, and any other pertinent data having relevancy to the return in question for the purpose of enabling him to obtain the information necessary to enforce the provisions of this Chapter; these powers and duties may be delegated to the Assistant Commissioner, the Tax Collector, the Deputy Tax Collectors and the Internal Revenue agents, or any other person designated by him.

(7) Rules and Regulations. With approval of the Director of Revenue & Taxation, he shall make such rules and regulations as he may deem proper within the scope of the law

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to carry out the purpose of this Chapter effectually, subject to the approval of the Governor of Guam.

(8) Forms. He shall prescribe by regulation the forms required for the administration and collection of all taxes levied by this Chapter.

(9) Compromises. With the approval of the Director of Revenue & Taxation, he shall have authority to compromise claims arising out of any tax law within the scope of his administration; and in the case of any such compromise he shall place on file a statement setting forth:

(A) The amount of the tax assessed or which could have been assessed by or in accordance with law;

(B) The amount of penalties and interest imposed, or which could have been imposed in accordance with law;

(C) The reasons for the compromise; and

(D) The approval of the Director of Revenue & Taxation.

(10) Agreement for payment. He may enter binding agreements for the installment liquidation of any tax debt due the government of Guam as he may deem to be for the benefit of the government of Guam.

(11) Extension of time. He may approve any reasonable extension of time for the filing of a return or the payment of tax under this Chapter as he may deem necessary.

(12) Refunds and Interest. He shall authorize the Treasurer of Guam, by certification, to make refund of any overpayment of a tax made by taxpayer or any assessment erroneously or illegally made and collected; provided, that such refunds as are herein authorized are to be made out of the funds in the Treasury which were derived from the collection of the tax under which the refund is made; provided, further, that the government of Guam will pay interest at an annual rate established under § 26112 of 11 GCA on all moneys erroneously or illegally assessed and collected, such interest to run from the date of the overpayment. Where a refund of any

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tax or portion thereof is due a taxpayer and the said taxpayer has any obligation owing to the government of Guam, regardless of how such obligation was accrued, the refund or such necessary part thereof, shall be applied to the obligation so owing.

(13) Notice and demand. He shall give written notice of tax liability, and make written demand for the payment of the same, whenever any return and remittance required under this Chapter is not made within the time allotted for such return and remittance. Such notice and demand shall be sent by mail, or be delivered by the Tax Commissioner or his representative, to the taxpayer's dwelling or place of business as listed on his business license, or to his last known address.

(c) Apportionment. If any person is engaged in business both within and without Guam, and if, under the Constitution or laws of the United States, the entire gross income or scope of such business activity of such person cannot be included in the measure of any tax under this Chapter, there shall then be apportioned to Guam and included in the tax base that portion of the gross income or business activity which is derived from or attributable to Guam.

(d) Tax collected declared Territorial Funds. The taxes levied, assessed and collected under this Chapter shall become funds of the Territory of Guam from the moment of collection and shall be subject to all laws, rules and regulations pertaining thereto, and unless specifically provided by law, all such taxes collected shall be covered into the Treasury of Guam as part of the General Fund.

(e) Limitation of time. Except as otherwise provided in this Subsection, the amount of any tax imposed by this Chapter shall be assessed within three (3) years after the return was filed (whether or not such return was filed on or after the date prescribed). A return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day. No proceeding in court without assessment for the collection of such tax shall be begun after the expiration of such period.

(1) False return. In the case of a false or fraudulent return with the intent to evade any tax imposed by this Chapter, the

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tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time.

(2) Willful attempt to evade tax. In the case of a willful attempt in any manner to defeat or evade any tax imposed by this Chapter, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time.

(3) No return. In the case of failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time.

(4) Extension of time to assess. Where, before the expiration of the time prescribed in Subsection 26102(e) for the assessment of any tax imposed by this Chapter, both the Tax Commissioner and the taxpayer have consented in writing to its assessment after such time, the tax may be assessed at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

(f) Period of limitation on filing claim for refund. Claim for credit or refund of an overpayment of any tax imposed by this Chapter in respect of which tax the taxpayer is required to file a return shall be filed by the taxpayer within three (3) years from the time the return was required to be filed (determined without regard to any extension of time) or two (2) years from the time the tax was paid, whichever of such periods expires the later, or if no return was filed by the taxpayer, within two (2) years from the time the tax was paid. Provided, that any claim for credit or refund of a tax imposed by this Chapter which accrued prior to the effective date of this Subsection shall be filed by the taxpayer within three (3) years from the time the return was required to be filed determined without regard to any extension of time and two (2) years from the time the tax was paid, whichever of such periods expires the later, or if no return was filed by the taxpayer, within two (2) years from the time the tax was paid; or within three (3) months after the effective date of this Subsection, whichever of such periods expires the later; provided, further, that no claim shall be filed for credit or refund of

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a tax imposed by this Chapter which was paid more than four (4) years prior to the effective date of this Subsection.

(g) Claim for drawback; limitation. Any claim for drawback authorized under this Chapter shall not be filed earlier than the twentieth (20th) day of the month following the month in which the transaction or event occurred for which a drawback is authorized, and shall not be filed later than one (1) year after the date of such transaction or event.

(h) Revenue Ruling. The Tax Commissioner *shall* assess a fee of Five Hundred Dollars (\$500.00) for each request for a revenue ruling on the tax laws of Guam except when a different fee is identified and assessed by the Internal Revenue Code.

SOURCE: GC § 19501, Subsection (b) (12) amended by P.L. 13-104 and further amended by P.L. 18-30:27. Subsection (h) added by P.L. 29-002:V:I:18 (May 18, 2007).

NOTE: P.L. 13-104:2 incorrectly cited §19500.0212 as the section to be amended, rather than § 19501.0212.

§ 26103. Tax Debt: Lien.

Any tax levied, due and uncollected under this Chapter shall be a debt due the government of Guam and shall be a lien upon any property of the debtor, then owned or subsequently acquired by him, for the amount of the unpaid balance plus all penalties and interest attached thereto and thereafter accruing. Such lien shall not be valid as against any purchaser, mortgagee, pledgee or judgment creditor until assessment has been made and the Tax Commissioner has filed notice of the lien in the manner and place as hereinafter provided. With regard to real property, the lien shall apply to both registered and unregistered real property; and real property includes both land and improvements on land.

(a) Filing. Such notice of lien shall be filed in the Department of Land Management.

(b) Form. The notice of lien shall be in such form as shall be prescribed by the Tax Commissioner.

(c) Release. Subject to regulations issued pursuant to this Chapter, the Tax Commissioner may issue a certificate or release of any lien imposed by this Section if -

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(1) The Tax Commissioner finds that the liability secured by the lien has been fully satisfied or has become legally unenforceable; or

(2) There is furnished to the Tax Commissioner and accepted by him a bond that is conditioned upon the payment of the liability secured by the lien within the time prescribed by the Tax Commissioner, and that is in accordance with such requirements relating to terms, conditions and form of the bond and sureties, as may be specified by such regulations.

(d) Partial discharge of property; property double amount of liability. Subject to regulations issued pursuant to this Chapter, the Tax Commissioner may issue a certificate of discharge of any part of the property subject to any lien imposed by this Section if the Tax Commissioner finds that the fair market value of that part of such property remaining subject to the lien is at least double the amount of the unsatisfied liability secured by such lien and the amount of all other liens upon such property which have priority to such lien.

(e) Partial discharge of property; part payment or where interest valueless. Subject to regulations issued pursuant to this Chapter, the Tax Commissioner may issue a certificate of discharge of any part of the property subject to the lien if -

(1) There is paid over to the Tax Commissioner in part satisfaction of the liability secured by the lien an amount determined by the Tax Commissioner, which shall not be less than the value, as determined by the Tax Commissioner, of the interest of the government of Guam in the part to be so discharged; or

(2) The Tax Commissioner determines at any time that the interest of the government of Guam in the part to be so discharged has no value.

In determining the value of the interest of the government of Guam in the part to be so discharged pursuant to this Section, the Tax Commissioner shall give consideration to the fair market value of such part and to such liens thereon as have priority to the lien of the government of Guam.

SOURCE: GC § 19502.

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§ 26104. Collection.

The office of the Tax Commissioner shall have available for the enforcement of any delinquent tax assessment, the following remedies:

(a) Suit. The Tax Commissioner, the Assistant Tax Commissioner, the Tax Collector, or a Deputy Tax Collector may require the Office of the Attorney General to take such legal action as it shall deem proper and for the benefit of the government of Guam, provided that the following conditions have been complied with:

(1) Written notice of the assessment shall have been sent by the Tax Commissioner to the taxpayer setting forth the date originally due, the amount of the tax principal, and the amount of the penalties and interest and the rate at which such penalties and interest have accrued. Such written notice shall be sent to the taxpayer at the address listed by him on his business license, or if he has none, to his last known address.

(2) That at least thirty (30) days have elapsed since the date of such written notice; and

(3) That the taxpayer has not, within such thirty (30) day period, paid such tax plus all penalties and interest in full or made a binding agreement for the payment of the same.

(b) Distress. The Tax Commissioner may issue a warrant for the collection of any tax levied under this Chapter, plus penalties and interest accrued in accordance with law, directed to the Marshal of the Superior Court; such warrant shall have the same force and effect as a writ of execution issued by a court and it shall be levied and sale made pursuant to it in the same manner as a writ of execution. The Marshal shall receive, upon completion of his services pursuant to such warrant, and the Tax Commissioner is authorized to so pay to the said Marshal, the same fees, commissions and expenses in connection with such services as are provided by law for similar services pursuant to a writ of execution.

(c) Injunction. The Tax Commissioner may request the Office of the Attorney General to seek in a court of competent jurisdiction an injunction to restrain any person who is delinquent in the payment of any tax levied under this Chapter from continuing to

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carry on his business until such delinquent tax liability is paid, provided that the conditions set forth in § 26104(a) are first complied with, and provided further, that such action is in the interest of the Government.

SOURCE: GC § 19503.

§ 26105. Informal Hearing.

If the taxpayer or person required by this act to remit taxes shall feel aggrieved by the assessment, he shall have the right within thirty (30) days of notice of such assessment to request from the Tax Commissioner an informal hearing on the assessment and at that time the taxpayer may submit such data as may be relevant.

(a) The taxpayer must request such informal hearing by writing to the Tax Commissioner and the Tax Commissioner must notify the taxpayer of the time and place of such hearing in writing. The decision of the Tax Commissioner on such informal hearing shall be in writing and be given within thirty (30) days from the date of the completion of the hearing.

(b) The informal hearing provided by this Section may be waived by the taxpayer within thirty (30) days of notice of the assessment. Such waiver shall be made by written notice to the Tax Commissioner, and shall state that such informal hearing is waived. When such informal hearing is waived in accordance with this Subsection the taxpayer may, within thirty (30) days from the date of such notice of waiver, bring an action for review of the assessment in accordance with § 26107.

NOTE: *Manila Trading and Supply Co. (Guam) v. Maddox* (1964), 335 F.2d 150.

SOURCE: GC § 19504.

§ 26106. Adjustments.

If the Tax Commissioner decides after informal hearing that the tax was not assessed in accordance with the laws, rules and regulations pertaining thereto, he shall make such adjustments as are necessary to correct the assessment and then give written authority to the Treasurer of Guam to make any necessary refund where the tax has been overpaid, or he shall assess the tax as determined, or he shall abate such assessment, as may be necessary.

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SOURCE: GC § 19505.

§ 26107. Review.

(a) If the Tax Commissioner's decision is adverse to the taxpayer in whole or in part, the taxpayer shall have the right within thirty (30) days from the date of such decision to institute an action for review, irrespective of the amount, in the Superior Court of Guam. Such action shall be commenced by filing a petition setting forth assignments of all errors alleged to have been committed by the Tax Commissioner in his determination of the assessment, the facts relied upon to sustain such assignments of errors, and a prayer for appropriate relief. The Tax Commissioner or his successor in office shall be the respondent in such proceeding. Such action shall be tried by the Court without a jury, and the petitioner shall have the burden of proof except with regard to any finding of fraud.

(b) When the decision of the Court becomes final, or any appeal therefrom, the Tax Commissioner shall, upon presentation of a certified copy of the decree, make such adjustments as are necessary to correct, amend or abate the assessment in conformity therewith, including the taking of action in accordance with § 26102(b)(12) [Refunds & Interest] where appropriate.

(c) The Court shall have jurisdiction to redetermine the correct amount of the deficiency, even if the amount so determined is greater than the amount of the assessment, and to determine whether any additional amount should be assessed.

(d) Where the assessment is paid, in whole or in part, after the filing of the petition, the Court shall not thereby be deprived of jurisdiction.

(e) The Court shall have authority to implement by rule proceedings authorized by this section.

SOURCE: GC § 19506 repealed by P.L. 5-132:1 and added as a new section by P.L. 5-132:2. Subsections (a) through (e) added in P.L. 5-132 as ".01" through ".05", respectively. Section 19506.01 amended by P.L. 5-60:2. Subsection (a) amended by P.L. 9-256 (Court Reorganization Act of 1969 to refer to the Island Court of Guam. The Compiler in the Guam Code Annotated has replaced "Island Court" with "Superior Court" in accordance with P.L. 12-85 (Court Reorganization Act of 1974).

COURT DECISIONS: See citation to § 26107.1, below.

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COMMENT: Section 1 of P.L. 5-132 repealed, among other sections, the original §19506. Section 2, also of P.L. 5-132, added a new §19506, this time having five subparts indicated by ".01" through ".05". Public Law 5-60, which by its own terms was to become effective simultaneously with P.L. 5-132, amended §19506.01 (subsection (a) above), but did not refer to any other of the sub-items. However, Section 1 of P.L. 5-60 did repeal the original §19506 and the compiler of the 1970 Guam Codes assumed erroneously that these sub-items had been repealed because of P.L. 5-60:1. See *Blaz v. Perez*, Dist.Ct. of Guam, Civ. 6-72, and AG Opinion 90-1218, dealing with section 26107.1, below, in the same circumstances.

Since subsections (b) through (e) have never been amended or repealed (through the end of 1995), the Compiler in 1995 has inserted these sections where appropriate into the Guam Code Annotated.

§ 26107.1 Stay of Collection.

Pending decisions under an informal hearing pursuant to § 26104, or pending a review pursuant to § 26107, the taxpayer may stay collection of an assessment, by furnishing a bond or other security in such amount as the Tax Commissioner may deem necessary, not exceeding double the amount of the tax, with penalties and interest, as to which the stay is desired.

SOURCE: GC § 19507; repealed by P.L. 5-132:1; added as a new section by P.L. 5-132:3. Omitted in 1970 Codes of Guam through Compiler's error at that time.

COURT DECISIONS: D.C.Guam 1972: *Blaz v. Perez (Real Party in Interest, Guam Oil & Refining Co. Inc.)* Civ. Case 6-72 (Jan. 24, 1972). As part of the ruling, the court held:

That §19507 [this section] of the Government Code of Guam has never been repealed and is still in effect; that the alleged repeal of §19507 of the Government Code of Guam as set forth in the current 1970 edition is a compiler's error; that §19507 of the Government Code of Guam as set forth in the 1970 edition is not codified and not binding on anyone as it is not the law; and that the compiler thereof cannot legislate and had no authority to publish §19507 of the Government Code of Guam as such section appears in the current 1970 edition of such code.

AG OPINION: See DRT 90-1218 (8/31/90) which arrives at the same conclusion as did *Blaz v. Perez*, but through independent reasoning. It appears that the Attorney General was, at that time, unaware of the controlling case.

COMMENT: The Compiler of the Guam Code Annotated was shown *Blaz v. Perez* in December of 1995. This case is not published anywhere, as there was no publication of District Court cases in 1972. Since the case was in the nature of a Writ of Review, not an appeal, it was never published in Volume 1 of the Guam Reports, if the compilers of that volume were even aware of its existence. Since this section is still law, and the Compiler of Laws is directed to correct any errors in the Codes by 1 GCA §101 (a section and title not enacted in 1972), this and the

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previous section are added and corrected in the 1995 Code Updates, although the above laws were never repealed.

§ 26108. Suit for Refund.

(a) A taxpayer may file an action in the Superior Court of Guam, irrespective of the amount involved, for the refund of any tax imposed by this Chapter, alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been illegally or erroneously collected, or of any sum collected alleged to have been excessive, naming the Tax Commissioner or his successor in office as defendant.

SOURCE: GC § 19508.

§ 26109. Restrictions of Remedies.

Each and every remedy, or other provision, contained in this Chapter is expressly restricted to causes of action or other grievances which arise out of, and because of, the levy, assessment, collection or payment of a tax under this Chapter only, and is not intended to be retroactive in its effect to apply to taxes levied, assessed, collected or paid under other or prior tax laws of the government of Guam.

SOURCE: GC § 19512.

§ 26110. Returns.

All taxpayers against whom a tax is levied by the provisions of this Chapter shall file returns in the manner, and at the time herein provided, and shall make payments of the tax in accordance therewith. Such returns shall be made to the Tax Commissioner.

(a) Monthly Returns for Alcoholic Beverage Tax, Liquid Fuel Tax, Automotive Surcharges and Tobacco Tax. Each taxpayer against whom a tax is levied by the provisions of Articles 3, 4, 5 and 6 of this Chapter shall make and file monthly returns of taxes with the Tax Commissioner on or before the twentieth (20th) day following the close of the calendar month in which the taxes shall accrue, and in the form and in accordance with the rules and regulations prescribed by the Tax Commissioner. Except as may be specifically hereinafter provided, payment covering the full amount of tax liability as evidenced by the monthly return shall accompany such monthly return.

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(b) Monthly Returns for Business Privilege Tax. Each taxpayer against whom a tax is levied under the provisions of Article 2 of this Chapter, whether such taxpayer owes taxes or not, shall make and file monthly returns of taxes with the Tax Commissioner. Business Privilege Taxpayers shall file monthly Business Privilege Tax returns summarizing the tax due. The monthly return shall be filed, and any tax then due shall be paid *no later than* the twentieth (20th) day of the following month at authorized banks, financial institutions or at designated offices of the government of Guam.”

(c) Annual information return. Any person engaged in any business, or activity of a business nature, which has been declared tax exempt by the Tax Commissioner, as provided in this chapter, shall be required to file annually, not later than ninety (90) days following the close of such person’s tax year, an information return setting forth therein the nature of such business, the tax exemption given by the Tax Commissioner, the gross income of such business and any other information required in the rules and regulations promulgated by the Tax Commissioner.

(d) Erroneous Returns. If any return is erroneous in any respect, the Tax Commissioner shall assess the proper amount and so notify the taxpayer in writing. If such corrected assessment is less than the tax remitted by the taxpayer, the tax Commissioner shall direct the Treasurer of Guam to make such refund. If the corrected assessment is more than that computed by the taxpayer in his return, the taxpayer shall have thirty (30) days from receipt of the Tax Commissioner’s notice, or until the expiration of the time granted by the law levying such tax, whichever is greater, in which to pay such additional assessment before it becomes delinquent.

(e) Tax Year. The tax year shall be the calendar year, except that a taxpayer may use an annual accounting period when written permission is obtained from the Tax Commissioner.

(f) Consolidated Returns of Interrelated Businesses of Like Character. When any taxpayer required to file a return under this Section is engaged in two (2) or more businesses, or business activities, which are interrelated and of like character, such taxpayer

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may file a consolidated return covering all business activities which are thus interrelated and of like character.

(g) Returns of Interrelated Businesses of Different Character. When any taxpayer required to file a return under this Section is engaged in two (2) or more businesses, or business activities, which may or may not be interrelated but are of such different character that a different tax is levied against each, such taxpayer must file separate returns covering each such business activity.

SOURCE: §19513 GC. Subsection (g) added by P.L. 17-56:2 and R/R by P.L. 18-7:9. Repealed and reenacted by P.L. 24-12:3. Subsection (b) amended by P.L. 27-76:4. Amended by P.L. 29-002:VI:28 (May 18, 2007), effective July 17, 2007, the name, Gross Receipts Tax, changed to Business Privilege Tax

§ 26110.1.

[Repealed.]

SOURCE: Added by P.L. 24-12:4. Amended by P.L. 25-89. Repealed by P.L. 27-76:5.

§ 26111. Penalties.

The following penalties are hereby levied and shall be assessed and collected by the Tax Commissioner:

(a) Late payment. In case of failure to pay the amount shown as tax on any return required under this Chapter on or before the date prescribed for payment of such tax, unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be imposed in addition to other penalties provided herein, a specific penalty to be added to the tax in the amount of five percent (5%) of the amount of such tax if the failure is not more than thirty (30) days, with the additional five percent (5%) for each additional thirty (30) days, or fraction thereof, not to exceed twenty-five percent (25%) in the aggregate. Provided, that the minimum penalty shall be the lesser of the amount of tax due or Twenty-five Dollars (\$25.00).

(b) False and fraudulent returns. If any part of any deficiency is due to fraud with intent to evade the tax, or any portion thereof, fifty percent (50%) of the total amount of such deficiency, in addition to the penalties provided in subsection (a) above, shall be assessed and added to the deficiency assessment.

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(c) Failure to Supply Identifying Number. Every person required to file returns or pay taxes, as prescribed under §§ 26110 and 26110.1 of this Chapter, shall include his taxpayer identification on such return, statement or other document. If any person fails to comply with such requirement, such person shall, unless it is shown that such failure is due to reasonable cause and not to willful neglect, pay a penalty of Fifty Dollars (\$50.00) for each failure.

(d) [Repealed]

SOURCE: GC § 19514 , R/R by P.L. 18-15:X:40 and by P.L. 18-30:28. Subsection (c) added by P.L. 24-12:5. Subsection (d) added by P.L. 24-34:12.; repealed by P.L. 27-76:6.

§ 26112. Interest.

If any tax or penalty imposed by this Chapter is not paid on or before the date prescribed for such payment, in addition to such tax and penalties, interest on the unpaid balance of the tax and penalties at an annual rate established under this Section, shall be collected for the period from its due date until the date it is paid.

(a) Determination of Rate of Interest. The annual rate established under this Section shall be such adjusted rate as established by the Tax Commissioner.

(b) Establishment of Adjusted Rate. If the adjusted prime rate charged by banks, rounded to the nearest full percent, during the six-month period ending September 30 of any calendar year, or during the six-month period ending on March 31 of any calendar year, differs from the interest rate in effect under this Section on either such date, respectively, then the Tax Commissioner shall establish, within fifteen (15) days after the close of the applicable six-month period, an adjusted rate of interest equal to such adjusted prime rate.

(c) Effective date of Adjustment. Any adjusted rate of interest established under Subsection (b) of this Section shall be effective on January 1 of the succeeding year in the case of an adjustment attributable to the six-month period ending on September 30 and on July 1 of the same year in the case of an adjustment attributable to the six-month period ending on March 31.

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(d) Definition of Prime Rate. For purposes of this Section, the term adjusted prime rate charged by banks means the average predominant prime rate quoted by commercial banks to large business, as determined by the Board of Governors of the Federal Reserve System.

SOURCE: GC § 19515, as amended by P.L. 13-82 and R/R by P.L. 18-15:X:39.

§ 26113. Criminal Offenses.

It shall be unlawful for any person:

(a) To refuse or fail to make any return provided to be made in this Chapter;

(b) To make any false or fraudulent return or false statement in any return, with intent to defraud the government of Guam or to evade the payment of any tax, or any portion thereof, imposed by this Chapter;

(c) To aid or abet another in any attempt to evade the payment of any tax, or any portion thereof, imposed by this Chapter.

SOURCE: GC § 19516.

§ 26114. Punishment.

Any person violating any of the provisions of this Chapter shall be guilty of a misdemeanor. On conviction thereof by a court of competent jurisdiction, any license issued for the operation of such business shall be suspended upon such conviction for at least the period of any imprisonment imposed therefor plus six (6) months, and if no imprisonment is ordered, for a period of at least six (6) months.

SOURCE: GC § 19517, as amended by P.L. 13-187.

§ 26115. Unfair Competition.

It shall be unlawful for any taxpayer under this Chapter to advertise, or hold out to the public in any manner, directly or indirectly, that any tax levied hereunder is not considered as an element of the purchase price. Any person found guilty by a court of competent jurisdiction of violating this Section shall be guilty of a violation punishable by fine of not more than Fifty Dollars (\$50.00) for each separate offense.

SOURCE: GC § 19519, as amended by P.L. 13-187.

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COURT DECISIONS: “. . . it is clear in this situation that the Defendant-Appellee misrepresented the inclusion of the BPT as part of the purchase price and, further, misrepresented it as a tax above the purchase price which was imposed by the government. The overall message of the Attorney General Opinion is that if additional language indicates that the BPT is not being passed on to the consumer as part of the purchase price it is a violation of Section 26115. This is what occurred in this situation.” *Guam v. Marfega Trading Co., Inc.*, Guam Supreme Court, 1998 Guam 4 [27].

§ 26116. Penalties Separate.

The criminal offenses provided herein shall be separate from, and in addition to, all other penalties or interest provided for in this Act.

SOURCE: GC § 19520.

§ 26117. Tax Exemption.

If any person desires to claim exemption from any tax levied under this Chapter by virtue of a specific exemption allowed herein, he may be required to furnish the Tax Commissioner a statement under oath setting forth:

- (a) The character of the business;
- (b) The provision under which such exemption is claimed;
- (c) Such additional information as the Tax Commissioner may require or as may be prescribed under the rules and regulations formulated and put into effect under authority of this Chapter;
- (d) Upon presentation of the foregoing information, or as much of it as may be required, the Tax Commissioner shall determine whether the activity is taxable or exempt from tax;
- (e) The decision of the Tax Commissioner regarding the taxability of any person or business shall be binding, except:
 - (1) When reversed on appeal to the Tax Appeal Board under the same procedure provided for appeal of tax assessments in this Chapter, or;
 - (2) When reversed by a court of competent jurisdiction.

SOURCE: GC § 19521.

§ 26118. Examination of Books and Witnesses.

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(a) For the purposes of ascertaining the correctness of any return, making a return where none has been made, determining the liability of any person for any tax under Articles 3 and 4 of this Chapter, or the liability of any transferee or fiduciary of any person in respect of any tax under Articles 3 and 4 of this Chapter, or collecting any such liability, the Tax Commissioner, or his representative, is authorized:

(1) To examine any books, papers, records, tax returns, or other data, merchandise or other property, which may be relevant or material to such inquiry;

(2) To summon the person liable for the tax, or required to perform the act, or any officer or employee of such person, or any person having possession, custody, or care of books of account containing entries relating to the business of the person liable for the tax or required to perform the act, or any other person the Tax Commissioner or his representative may deem proper, to appear before the Tax Commissioner or his representative at a time and place named in the summons and to produce such books, papers, records, tax returns, or other data, and to give such testimony, under oath, as may be relevant or material to such inquiry; and

(3) To take such testimony of the person concerned, under oath, as may be relevant or material to such inquiry.

(b) Service of summons. A summons issued under § 26118(a)(2) shall be served by the Tax Commissioner or his representative by an attested copy delivered to the person to whom it is directed, or left at his dwelling or place of business, with any responsible person, and the certificate of service signed by the person serving the summons shall be evidence of the facts it states on the hearing of an application for the enforcement of the summons. When the summons requires the production of books, papers, records, tax returns, or data, it shall be sufficient if such books, papers, records, or other data are described with reasonable certainty.

(c)(1) Jurisdiction of Superior Court. If any person is summoned under § 26118(a)(2) to appear, to testify, or to produce books, papers, records, tax returns, or other data, the Superior Court of Guam shall have jurisdiction by appropriate process to compel such attendance, testimony, or production of books, papers, records, tax returns, or other data.

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(c)(2) Enforcement. Whenever any person summoned under § 26118(a)(2) neglects or refuses to obey such summons, or to produce books, papers, records, tax returns, or other data, or to give testimony as required, the Tax Commissioner may apply to a judge of the Superior Court of Guam for an attachment against him as for a contempt. It shall be the duty of the judge to hear the application, and if satisfactory proof is made, to issue an attachment, directed to some proper officer, for the arrest of such person, and upon his being brought before him to proceed to a hearing of the case; and upon such hearing the judge shall have the power to make such order as he shall deem proper to enforce obedience to the requirements of the summons and to punish such person for his default or obedience.

(c)(3) Criminal Penalty. Any person who, being summoned to appear to testify or to appear and produce books, papers, records, tax returns, or other data as required under § 26118(a)(2), neglects to appear or to produce such books, papers, records, tax returns, or other data, shall be guilty of a misdemeanor and upon conviction thereof shall be punished as provided in § 26114.

SOURCE: GC § 19522.

§ 26119. Exchange of Tax Information.

Notwithstanding any other provision of law, the Tax Commissioner may make available to the properly authorized tax officials of any state, of the Federal government, or of any other territory or possession of the United States, information contained in tax reports or returns or any audit thereof or the report of any investigation made with respect thereto, filed or made pursuant to the applicable tax laws, provided such state, the Federal Government or other territory or possession grants a like privilege to Guam.

(a) Notwithstanding any other provisions of law, the Governor of Guam, may enter into reciprocal pacts and agreements and exercise the authority and perform the duties necessary to comply therewith, with any state, the Federal government, or other territory or possession of the United States if deemed necessary or desirable to effectuate the exchange of information in connection with any matter relative to taxes in which the contracting parties may be interested.

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(b) Information may be made available or furnished pursuant to this Section only if it is to be used solely for the administration of the tax laws of the state, Federal Government, or other territory or possession of the United States and only if such above-mentioned tax jurisdiction by law prohibits the unauthorized divulging of such information and imposes penalties for the violation of such prohibition.

(c) Any person who divulges, except as authorized in this Section, or when testifying in any judicial or administrative proceeding at which Guam or any of its officials, bodies or commissions, as such, are a part, any information acquired by him or another under the provisions of this Section shall be guilty of a misdemeanor.

SOURCE: §19526 Subsection (c) amended by P.L. 13-187:34.

§ 26120. Inspection of Tax Returns and Information: Prohibition.

Tax returns and other information required to be filed or furnished by the taxpayer, or any other person, shall not be open for public inspection or divulged except when testifying in any judicial or administrative proceeding in which the government of Guam, or any of its officials in an official capacity, are a party, and in which the government of Guam has an interest in the result; except that any committee of the Legislature, duly created, authorized by resolution of the Legislature, may require that it be furnished any data contained in any tax return for use by such committee in executive session only.

SOURCE: GC § 19532.

ARTICLE 2
BUSINESS PRIVILEGE TAXES

- § 26201. Levy.
- § 26202. Rates.
- § 26202.1. Exemption to Increase in BPT
- § 26203. Exemptions.
- § 26204. General Provisions.
- § 26205. Statute of Limitations for Collections.
- § 26206. Penalty for Non-Filing of Business Privilege Tax Return.

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- § 26207. Liability of Officers, Directors and Employees for Corporate Business Privilege Taxes.
- § 26208. Creation of the Guam Memorial Hospital Authority Pharmaceuticals Fund.
- § 26208.1 Appropriation to the Guam Memorial Hospital Authority Pharmaceuticals Fund.
- § 26208.2 Application of Guam Memorial Hospital Authority Pharmaceuticals Fund.
- § 26209. Appropriation of School Operations Fund.
- § 26210. Creation of Performance Incentive Fund.
- § 26211. Appropriation of Performance Incentive Fund.
- § 26212. Capital Improvement Fund.
- § 26213. Appropriation of Capital Improvement Fund.
- § 26214. Immediate Construction of New Schools.
- § 26215. Business Privilege Tax Credit for Services Purchased from Competing Telecommunications Companies.
- § 26216. Health Care Service Provider.

NOTE: Effective July 17, 2007, reference to Gross Receipts Tax (GRT), amended to Business Privilege Tax (BPT) pursuant to P.L. 29-002:VI:28 (May 18, 2007).

§ 26201. Levy.

There is hereby levied and shall be assessed and collected monthly privilege taxes against the persons on account of their businesses and other activities in Guam measured by the application of rates against values, gross proceeds of sales or gross income, as the case may be.

SOURCE: GC § 19540. Amended by P.L. 27-41:2. Subsections (b), (c) and (d) repealed by P.L. 29-002:VII:1(b) (May 18, 2007). Subsection (a) remains as the paragraph above.

NOTE: Apportionment of Gross Receipts Tax, see *Asiatic Trans-Pacific, Inc. v. Maddox* (1967), 371 F.2d. 132.

§ 26202. Rates.

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

- (a) Tax on the business of selling tangible personal property. Upon every person engaging or continuing within Guam in the business of selling any tangible property whatsoever (not including however, bonds or other evidence of indebtedness or stocks), there shall be a tax equivalent to four percent (4%) of gross proceeds of

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sales; except that on the gross proceeds of the operation of poker machines, there shall be a tax equivalent to eight percent (8%) on the gross proceeds of each machine, as determined by subtracting the winnings, pay-outs and malfunction refunds from total receipts of each machine.

(1) *Provided*, that gross proceeds of export sales of tangible property in foreign commerce shall not constitute a part of the measure of the tax imposed. Although not constituting a part of the measure of the tax imposed, all such sales shall be reported in the manner provided for the reporting of the tax imposed by § 26202(a).

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

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

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

NOTE: This subsection was amended by P.L. 17-67, effective September 7, 1984.

(b)(1) [Repealed.]

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(2) [Repealed.]

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

(c) Tax on service business. Upon every person engaging or continuing within Guam, in any service business or calling not otherwise specifically taxed under this Section, [there shall be] a tax equivalent to four percent (4%) of the gross income of such business.

(d) Professions. Upon every person engaging or continuing within Guam in the practice of a profession, excluding those expounding the religious doctrines of any church, [there shall be] a tax equivalent to four percent (4%) of the gross income of such practice. ["There shall be" added by editor, 1970 Ed. of the Government Code]

(e) Tax on Contractors. There shall be levied, assessed and collected a tax rate of four percent (4%) measured against the gross income of any contractor; *provided*, that there shall be deducted from the gross income of the taxpayer so much thereof as has been included in the measure of tax levied under this Subsection on another taxpayer who is a contractor, as defined in § 26101(b); *provided*, that any person claiming a deduction under this Subsection shall be required to show in the person's return either the name and contractor's license number or the registration number for a professional engineer, architect or land surveyor or the Certificate of Authorization (COA) number for a business authorized to provide engineering, architecture or land surveying services by the Guam Board of Registration for Professional Engineers, Architects, Land Surveyors of the person paying the tax on the amount deducted by the person.

(f) Tax on banks, banking institutions, small lenders and building and loan associations. Upon every person engaging or continuing within Guam in the business of operating any bank, banking institutions, building and loan association, small lending

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business, or lending institutions, there shall be a tax equivalent to four percent (4%) of the net income received from business.

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

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

(B) Interest or discount paid.

(C) Rents paid.

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

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

(F) Losses other than loan losses, such as those occasioned by fire or other casualty, theft, embezzlement, and the like, but only to the extent not covered by insurance proceeds collected.

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

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

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

(2) A person liable for the payment of taxes levied under this Section shall be required to file an annual return, and shall not be required to file monthly returns. The tax year shall be calendar year except that the taxpayer may use his annual accounting period when prior permission is obtained from the Tax Commissioner. The annual return under this Subsection

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shall be filed not later than ninety (90) days following the close of the taxpayer's tax year.

(g) Dealing in foreign currency. Upon every person engaging or continuing within Guam in the business of purchasing and selling foreign money, there shall be a tax equivalent to four percent (4%) of the gross profit of such business represented by the difference between the cost and selling price of the foreign currency measured in United States dollars.

(h) Tax on other business. Upon every person engaging or continuing within Guam in any business, trade, activity, occupation or calling not specifically included in any other provision of this Article, there shall likewise be a tax equivalent to four percent (4%) of the gross income of such business. This Section shall apply to the gross income of persons taxable under other provisions of this Chapter but which gross income is not derived from the exercise or privilege taxable thereunder.

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

(j) Tour Agencies. Upon every person engaging or continuing within Guam in the business of a tour agency or travel agency, where tourism-related services are furnished to consumers by independent vendors through arrangements made by a travel agency, or tour packager, and the gross income is divided between the provider of the services on the one hand and the travel agency or tour packager on the other hand, a tax equivalent of four percent (4%) shall be imposed on each person with respect to such person's respective portion of the proceeds, and no more.

Where transient accommodations are furnished through arrangements made by a travel agency or tour packager, the gross income is divided between the provider of the transient accommodations on the one hand and the travel agency, or tour

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packager, on the other hand, a tax equivalent of four percent (4%) shall be imposed on each person with respect to such person's respective portion of the proceeds, and no more.

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

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

SOURCE: GC § 19541. Subsection (a) amended by P.L. 18-33:34; (a)(1) amended by P.L. 17-50; (a)(2) by P.L. 18-2:7; Subsection (a)(4) amended by P.L. 17-34 and P.L. 17-67:8; Subsection (e) amended by P.L. 11-156; repealed/reenacted by P.L. 26-149:1 (eff. 9/27/2002); amended by P.L. 28-106:2 (April 14, 2006) (eff. Sept. 24, 2002). First paragraph of subsection (f) amended by P.L. 27-05:V:6c). Subsection (j) added by P.L. 25-117. Subsection (i) amended by P.L. 24-253:2. Amended by P.L. 29-002:VI:28 (May 18, 2007), effective July 17, 2007, the name, Gross Receipts Tax, changed to Business Privilege Tax.

NOTE: [2003] P.L. 27-05:V:6 (a) and (b) stated with respect to this entire section:

Section 6. Increase in Gross Receipts Tax Rates.

(a) Notwithstanding any other provision of law, the four percent (4%) gross receipts tax rate contained in 11 GCA § 26202 (a),(c),(d),(e),(f),(g),(h), (i), and (j) shall be amended to six percent (6%), effective April 1, 2003. This Section shall cease to be effective after September 30, 2005, at which time the rate shall revert to four percent (4%).

(b) Not less than six (6) months prior to September 30, 2005, I Maga'lahaen Guåhan [the Governor] shall submit a plan to I Liheslaturan Guåhan [the Legislature] on the deletion of the Gross Receipts or Business Privilege Tax, and the implementation of a sales tax or other tax.

NOTE: P.L. 9-124, effective August 26, 1967, contained the following pertinent language:

"Notwithstanding the provisions of P.L. 9-60, Ninth Guam Legislature, the increase in the rates of the Gross Receipt Tax, as set forth in said law, shall not apply to the proceeds of any transaction entered into prior to the effective date of said public law including any transaction resulting from a public bid opened prior to the effective date of said public law, the rates of tax which were in effect prior to said public law to be applied to the proceeds of any such transaction, provided that this Act shall be of no force and effect eighteen (18) months after the effective date

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of its approval and upon its expiration Public Law 9-60 shall govern the taxation of the proceeds of any transaction regardless of when said transaction was entered into. The Commissioner of Revenue and Taxation is authorized to issue such regulations as are necessary to effectuate the purpose of this Act, which the Legislature hereby declares to be that of equitably treating taxpayers who entered into transactions prior to the increase in gross receipt tax."

P.L. 17-50 contained the following language: "The amendment made to Subsection .0101 of Section 19541 [§ 26202(a)(1)] of Section 2 of this Act shall be effective as of January 25, 1984."

§ 26202.1. Exemption to Increase in BPT.

(a) The increase in the Business Privilege Tax (*BPT*) set forth in Subsections 26202(a), (c), (d), (e), (f), (g), (h), (i), and (j) of this Chapter effective April 1, 2003, shall not apply to income generated from the following contracts:

Contracts entered into or awarded prior to February 28, 2003, which were based upon bid awards made prior to February 28, 2003, that cannot be amended or renegotiated to accommodate the increase in BPT; and

Contracts entered into or awarded after February 28, 2003, which were based upon bids or proposals submitted prior to February 28, 2003, that cannot be amended or renegotiated to accommodate the increase in BPT.

(b) For purposes of this Section, each taxpayer claiming an exemption under this Section shall provide to the Department of Revenue & Taxation a copy of its bid contract or award under which any claimed exempt income was generated and shall segregate in their tax filings, relative to the Business Privilege Tax, said exempt income from any other income generated by the taxpayer.

SOURCE: Added by P.L. 27-023:3. Amended by P.L. 29-002:VI:28 (May 18, 2007), effective July 17, 2007, the name, Gross Receipts Tax, changed to Business Privilege Tax

NOTE: Section 4 of P.L. 27-23 states with respect to this Section:

Affidavit. The Director of the Department of Revenue & Taxation shall create an affidavit form to be completed and submitted concurrently with monthly Gross Receipts Tax filings by businesses or individuals claiming exemption from the increase in Gross Receipts Taxes that took effect on April 1, 2003, as provided for in this Act. Said affidavit shall request from the filing entity, properly licensed to

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conduct business in Guam, all relevant information necessary to properly execute the law as provided in this Act.

§ 26203. Exemptions.

The provisions of this Article, and the taxes levied thereunder, shall not apply to the following persons:

(a) The government of Guam, the government of the United States, the government of any foreign sovereignty, or any agency or instrumentality of any of the foregoing governments in regard to any activity or function engaged in.

(b) Fraternal benefit societies, orders or associations, operating under the lodge system, or for the exclusive benefit of the members of the fraternity itself which provide for the payment of death, sick, accident or other benefits to the members of such fraternity and their dependents.

(c) Corporations, associations or societies organized and operated exclusively for religious, charitable, scientific or educational purposes, or the preservation of the culture historically indigenous to Guam.

(d) Business leagues, chambers of commerce, boards of trade, civic leagues, public schools, and organizations operated exclusively for the benefit of the community and for the promotion of social welfare, provided that no profit accrues to the benefit of the private stockholder or individual.

(e) Hospitals, infirmaries and sanitariums.

(f) Totally blind, with respect to the first Three Thousand Dollars (\$3,000.00) of gross income for each tax year.

(g) Agricultural producers and fisheries.

(h) Manufacturers, producers or importers, who shall have paid the taxes levied by Articles 3 or 6 of this Chapter on the manufacture, production or importation of alcoholic beverages, and tobacco; provided that any such taxpayer claiming exemption under this Section may claim it only to the extent of the gross proceeds of sales accruing to him from the sale to a wholesaler or retailer of the product taxes under such other sections; provided further, that a person claiming exemption under this Section shall keep accounts of

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such sales separately and support them by sales receipts for each separate transaction which is taxable under Articles 3 or 6 of this Chapter.

(i) Any person doing business as home industry and holding a business license issued pursuant to § 16114 of the Government Code.

(j) The exemption of § 26203(b), (c), (d) and (e), shall apply only to the gross income of any person included in any such subsection received:

(1) from the regular activities of such person, or

(2) from a lottery authorized under 9 GCA, Chapter 64, or

(3) from a carnival, fiesta, dance, athletic performance, or other similar entertainment, sponsored by such person, the profits of which are to be used exclusively for, or in furtherance of, the regular activities of such person, and shall not accrue in whole or in part to the benefit of any private stockholder or individual. Such exemptions shall be allowed only upon application to the Tax Commissioner in accordance with § 26117. The within Subsection (j) shall not be construed to exempt from the taxes levied by this Article any person having a concession or contract from an exempt person for the furnishing or sale of any tangible property, or the furnishing of any service, from which gross income accrues to such person.

(k) The provisions of this Article and the taxes levied hereunder, shall not apply to the following gross income or gross proceeds of sale:

(1) Amounts received under life insurance policies and contracts paid by reason of the death of the insured.

(2) Amounts received (other than amounts paid by reasons of death of the insured) under life insurance, endowment or annuity, or upon surrender of the contract.

(3) Amounts received by any persons under any accident insurance or health insurance policy or contract, or under worker's compensation acts or employer's liability acts, as compensation for personal injuries, death or sickness, including

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also the amount of any damages or other compensation received, whether as a result of action or by private agreement between the parties on account of such personal injuries, death or sickness.

(4) The value of all property of every kind and sort acquired by any person by gift, bequest or devise, and the value of all property acquired by any person by descent or inheritance.

(5) Amounts received by any person as compensatory damages for any tort injury to him, or to his character or reputation, or received by any person as compensatory damages for any tort injury to or destruction of property, whether as the result of action or by private agreement between the parties; provided, however, that amounts received by any person as punitive damages for tort injury or breach of contract injury shall be included in gross income.

(6) Amounts received as salaries or wages for services, rendered by an employee to an employer.

(7) Amounts received as alimony and other similar payments and settlements.

(8) Amounts received by a distributor from the sale of liquid fuel when the tax levied by Article 4 of this Chapter has been paid thereon by the distributor. A distributor for purposes of this Section excludes all retailing activities of any business entity. This exemption shall not apply to the sale by a retailer or a retailing subdivision of a distributor of any liquid fuel on which a tax is levied under Article 4 of this Chapter.

(9) The first Forty Thousand Dollars (\$40,000) earned or received per taxable year by any person as rental income from real property whose gross annual rental income from real property is less than Fifty Thousand Dollars (\$50,000) during the most recent tax year. The exemption shall apply annually, commencing at the first day of the month of the new tax year, based on the gross annual rental income of a person during the most recent year, and shall end on the last day of the last month of the same tax year.

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(10) All of the gross proceeds received by contractors for the construction of residential buildings developed, owned, and operated by non-profit corporations or associations, which construction is pursuant to a program approved by the Secretary of Housing and Urban Development pursuant to § 221 (d)(3) of the Housing Act, as amended.

(11) The amounts collected by persons required to collect taxes imposed under Chapter 30.

(12) All the gross proceeds received by those persons selling goods, arts or crafts in the Guam and Micronesian Cultural Village established by 12 GCA § 9302 of the Government Code of Guam for a period of ten (10) years commencing on the date that any business privilege tax would otherwise be required to be paid to the government of Guam.

(13) Amounts received from the sales of liquid fuel to the United States of America, to the government of Guam or for commercial aviation purposes.

(14) Amounts received from the sale of residual fuel for marine purposes. As used in this Subsection, residual fuel means that liquid which is the heaviest grade petroleum product used in marine oil-burning boilers. It consists of the residue of certain crude oils after the lighter fractions such as benzine, kerosene, gas-oils and lubricating oils have been removed by distillation.

(15) Amounts received from the sales of personal property to the government of Guam.

(16) Amounts received as contributions or received from fund raising activities by political candidates, committees, parties, corporations, associations, organizations or funds and which are expended for political campaign purposes and reported to the Election Commission pursuant to the laws of Guam.

(17) (A) Amounts received from the sale or resale of products processed or manufactured at the Guam Rehabilitation Workshop Center by registered clients of the Center, or certified as disabled worker products,

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and products processed and manufactured independently by registered clients of the Center where fifty percent (50%) of the value of the product is added by the client.

(B) The Director of the Department of Vocational Rehabilitation shall certify that such products were processed or manufactured at the Guam Rehabilitation Workshop Center by registered clients of the Center, or certified as disabled worker products, or else processed and manufactured independently by registered clients of the Center where fifty percent (50%) of the value of the product is added by the client.

(18) Export Trading companies as defined by § 26101(d) of this Title and goods and services exported by them.

(19) All of the foreign trade income of a FSC, as defined in 12 GCA § 60101 (b).

(20) All of the investment income of a FSC as defined in 12 GCA § 60101(f) and carrying charges as defined in 12 GCA § 60101(g).

(21) Amounts received from the sale of liquid fuel to vessels engaged in commercial fishing.

(22) Amounts received from engaging or continuing in business as a wholesaler, except that if such persons are, in addition, engaging or continuing in business as a retailer, the provisions of this Subchapter and the taxes levied thereunder shall apply to that part of the businesses of such persons that involve retail.

(i) Amounts received from engaging or continuing in business as a wholesaler shall include the sales of tangible personal property to contractors.

(23) The amount of winnings, payouts or malfunction refunds reported pursuant to § 26110(g) of this Title.

(24) Amounts paid by the contractor out of the contract gross proceeds to individual clients or to the rehabilitation

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center or workshop pursuant to the provisions of 17 GCA § 41106.

(25) Amounts received by a participant in the Guam-Micronesia Island Fair from sales of goods or services at the Fair.

(26) Amounts received from the sale of betelnut (pugua), pepper tree leaf (pupulu), and lime (afok) for use with pugua.

(27) All of the gross income of a Foreign Sales Corporation (FSC) from sources without Guam, as determined under 12 GCA § 60102(c).

(28) The first Forty Thousand Dollars (\$40,000) earned or received per taxable year by any person as income from retailing whose gross annual retail income is less than Fifty Thousand Dollars (\$50,000) during the most recent tax year. The exemption shall apply annually, commencing at the first day of the month of the new tax year, subject to the gross annual retail income of a person during the most recent year, and shall end on the last day of the last month of the same tax year.

(i) Fifty percent (50%) of the amounts received from the retail sale of local produce, as defined in this Subdivision.

(ii) *Local produce* as used in this Subdivision shall mean the following: locally produced crops, including, but not limited to, plants and plant products collectively grown or cared for and used for food and other useful purposes; locally raised livestock, including but not limited to, cattle, carabao, swine, sheep, goats, equine and poultry raised for food or other purposes; and locally caught fish to include any aquatic animal life, including, but not limited to, oysters, clams, mollusks, mussels, crustaceans and other shellfish

(29) The first Forty Thousand Dollars (\$40,000) earned or received per taxable year by any person as income service, which includes, but is not limited to, legal; medical; dental; accounting; consulting and engineering fees; commissions on

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real estate sales or property management; fees charged by barbershops, beauty parlors, shoe shining parlors, dry cleaning and laundry establishments; and automobile, appliance, electronics and computer repair shops, whose gross annual service income is less than Fifty Thousand Dollars (\$50,000.00) during the most recent tax year. This exemption shall apply annually, commencing at the first day of the month of the new tax year, subject to the gross annual service income of the person during the most recent tax year, and shall end on the last day of the month of the same tax year.

(30) The first Forty Thousand Dollars (\$40,000) earned or received per taxable year by person as rental income whose gross annual rental income is less than Fifty Thousand Dollars (\$50,000.00) during the most recent tax year. This exemption shall apply annually, commencing at the first day of the month of the new tax year, based on the gross annual rental income of a person during the most recent year, and shall end on the last day of the last month of the same tax year.

(31) The first Forty Thousand Dollars (\$40,000.00) earned or received per taxable year by a person, partnership or corporation as commission income whose gross annual commission income is less than Fifty Thousand Dollars (\$50,000.00) during the most recent tax year. This exemption shall apply annually, commencing at the first day of the month of the new tax year, subject to the gross annual income of the person during the most recent tax year, and shall end on the last day of the month of the same tax year.

(32) The first Forty Thousand Dollars (\$40,000) earned or received per taxable year by a licensed insurance company as insurance premium income whose gross annual insurance premium income is less than Fifty Thousand Dollars (\$50,000.00) during the most recent tax year. This exemption shall apply annually, commencing at the first day of the month of the new tax year, subject to the gross annual income of the person during the most recent tax year, and shall end on the last day of the month of the same tax year.

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(34) Any amounts received by businesses participating in the Performance of BOS Activities, defined in 12 GCA § 58128.7, as a BOS Contractor, or Subcontractors of the BOS Contractor, provided that such business is a ‘Guam-based Contractor or Guam-based Subcontractor’ for purposes of 12 GCA § 58128.7.

(35) Any amounts received by a private water contractor having a joint operating agreement with the Guam Waterworks Authority to operate a community-wide water production and distribution system, or a wastewater disposal system, or both such systems.

(36) Amounts received from the sale of telecommunication services including telephony, internet, data transmission line, wired/wireless/cable television and satellite service, two-way radios, paging and wired and wireless data communications and related services to customers outside of Guam.

(l) The amounts collected on behalf of the government as tipping fees imposed under Chapter 51 of Title 10 of the Guam Code Annotated.

SOURCE: GC § 19543, Subsection (c) amended by P.L. 16-88; Subsection (i) added by P.L. 15-71; Subsection (j)(2) amended by P.L. 13-187; Subsection (k)(8) R/R by P.L. 13-131; Subsection (k)(10) renumbered by P.L. 11-156; Subsection (k)(11) added by P.L. 10-166; Subsection (k)(12) added by P.L. 13-171; Subsection (k)(13) added by P.L. 16-26; Subsection (k)(14) added by P.L. 16-101; Subsection (k)(15) added by P.L. 16-124; Subsection (k)(16) added by P.L. 17-49; Subsection (k)(17) added by P.L. 17-50; Subsection (k)(18) added by P.L. 17-67; (k)(19) by P.L. 17-63:6; (k)(20) by P.L. 17-75:23; (k)(21) by P.L. 18-2:4 and (k)(23) by P.L. 18-07:10; (k)(24) by P.L. 18-32:2; (k)(25) added by P.L. 19-7:4. Item (k)(26) added by P.L. 21-3:2. Item (k)(27) added by P.L. 22-55:1(e) (12/2/93). Item (k)(9) amended by P.L. 24-12:6. Item (k)(28) added by P.L. 24-12:7) Item (k)(29) added by P.L. 24-12:8. Item (k)(30) added by P.L. 24-12:9. Item (k)(28)(i) & (ii) added by P.L. 24-156:2. Item (k)(29) amended by P.L. 24-226:4. (Item (k)(31) added by P.L. 24-226:2. Item (k)(32) added by P.L. 24-226:3. Item (k)(22) amended by P.L. 26-149:2 eff. 9/27/2002. 12 GCA §§ 9301-9303, which established the Guam & Micronesian Cultural Village, were repealed by P.L. 19-7:7. Subsection (l) added by P.L. 25-93:11. Item (k)(35) added by P.L. 24-295:18. Subsection (k)(34) amended by P.L. 27-103:4. Item (k)(36) added by P.L. 28-144:3 (August 4, 2006). Subsections (k)(9) and (k)(28-32) amended by P.L. 29-002:V:I:106 (May 18, 2007). Amended by P.L. 29-002:VI:28 (May 18, 2007), effective July 17, 2007, the name, Gross Receipts Tax, changed to Business Privilege Tax.

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NOTE: [2003] With respect to this Section, P.L. 27-05:V:7 states:

Section 7. Reduction of Gross Receipt Tax Exemptions. Notwithstanding any other provision of law, the Fifty Thousand Dollars (\$50,000.00) exemptions contained in items (9), (28), (29), (30), (31), and (32) of 11 GCA § 26203(k) are reduced to Thirty-Five Thousand Dollars (\$35,000.00) effective April 1, 2003. In addition, the Five Hundred Thousand Dollars (\$500,000.00) recent tax year caps contained in the same items are decreased to Three Hundred Thousand Dollars (\$300,000.00) effective April 1, 2003.

This Section shall cease to be effective after September 30, 2005, at which time the original Fifty Thousand (\$50,000.00) and Five Hundred Thousand (\$500,000.00) amounts are restored.

NOTE: "Workman's" changed to Worker's Compensation pursuant to P.L. 16-1.

P.L. 11-156 declared the legislative intent that the provisions of the Act "shall not apply to gross receipts from contracts executed on or before the effective date of this Act, and contractors or subcontractors having executed such contracts shall be entitled to the exemptions allowed under [§ 26203(k)(10)] and [§ 26202(e)] of 11 GCA prior to the effective date of this Act."

NOTE: Public Law 29-002:V:I:106 (May 18, 2007) reduced the \$50,000 exemption to \$40,000 and the \$500,000 gross income limit to \$50,000 in subsections (k)(9) and (k)(28-32).

§ 26203.1. Exemption Limitation.

The aggregate amount of exemption allowed under Items (9), (28), (29) and (30) of Subsection 26203(k) of this Chapter for the taxable year shall not exceed Fifty Thousand Dollars (\$50,000.00).

SOURCE: Added by P.L. 24-59:IV:6.

§ 26204. General Provisions.

The provisions of this Section are restricted in application to this Article but are in addition to the general provisions of Article 1 and the rules and regulations promulgated under law by the Tax Commissioner.

(a) Computing value. Where delivery of any produce is made by a person to affiliated persons, or under other circumstances where the relation between the parties is such that the consideration paid, if any, is not indicative of the true value of the products delivered, the tax imposed by this Act shall be measured by the value of said products rather than by the gross income or the gross proceeds of sale accruing therefrom.

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(b) Tax in Addition to Other Taxes. Taxes levied by this Article shall be in addition to any other taxes or licenses imposed by the laws of Guam or the United States, except as specifically provided otherwise, and shall be a condition precedent to engaging in any business, trade or calling taxable hereunder.

SOURCE: GC § 19544.

§ 26205. Statute of Limitations for Collections.

The statute of limitations for collections of unpaid taxes due on business privilege tax returns shall be seven (7) years after the return is filed. For amendment, correction, adjustment, challenge, determination of correctness of the amount of taxes paid, or audit of income reported and the correctness of the amount of tax liability shown on the business privilege tax returns, the statute of limitations shall be three (3) years after filing and payment of taxes due. There shall be no statute of limitations on unfiled business privilege tax returns or on the collection of taxes on revenues not shown or reported on Business Privilege Tax Returns."

SOURCE: Added by P.L. 19-10:20; amended by P.L. 19-13:9. Amended by P.L. 29-002:VI:28 (May 18, 2007), effective July 17, 2007, the name, Gross Receipts Tax, changed to Business Privilege Tax.

§ 26206. Penalty for Non-filing of Business Privilege Tax Return.

An annual business privilege tax return shall be filed on or before April 15 of each year for the previous calendar year by every Guam corporation or foreign corporation authorized to do business on Guam which has not filed a monthly or other tax return for or during the said previous calendar year, even for corporations without any income for said year. If a corporation fails to file such a return when required, the Director of Revenue and Taxation shall, after a hearing pursuant to the Administrative Adjudication Law, suspend the certificate and license, if any, of the corporation until all required tax returns are filed, and payment arrangements are made for any unpaid tax liability and penalties. In addition, there shall be imposed a penalty against said corporation by the Director of Revenue and Taxation of One Hundred Dollars (\$100.00) plus One Hundred Dollars (\$100.00), per month or part thereof that the filing of the business privilege tax return is delinquent.

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If a Taxpayer omits from Business Privilege an amount includible therein which is in excess of twenty-five percent (25%) of the amount of business privilege stated in the return, the tax may be assessed, or a proceeding in court for the collection of such tax be begun without assessment, at any time within six (6) years after the return was filed.

SOURCE: Added by P.L. 19-10:21; amended by P.L. 19-13:9. Repealed/reenacted by P.L. 24-59:IV:7. Amended by P.L. 29-002:VI:28 (May 18, 2007), effective July 17, 2007, the name, Gross Receipts Tax, changed to Business Privilege Tax.

§ 26207. Liability of Officers, Directors and Employees for Corporate Business Privilege Taxes.

In the case of a corporation, the officers, directors, and employees thereof, the liability of such directors, officers and employees of the corporation for unpaid business privilege taxes payable by the corporation shall be the same as the liability for directors, officers, and employees of a corporation for unpaid U. S. wage withholding tax, as indicated in the Internal Revenue Code of the United States.

SOURCE: Added by P.L. 19-10:24; amended by P.L. 19-13:11. Amended by P.L. 29-002:VI:28 (May 18, 2007), effective July 17, 2007, the name, Gross Receipts Tax, changed to Business Privilege Tax.

§ 26208. Creation of the Guam Memorial Hospital Authority Pharmaceuticals Fund.

There is hereby created, separate and apart from other funds of the government of Guam, a fund known as the “Guam Memorial Hospital Authority Pharmaceuticals Fund.” This Fund shall *not* be commingled with the General Fund and shall be kept in a separate bank account. Six and nineteen hundredths percent (6.19%) of all Business Privilege Taxes collected in Guam shall be deposited in the Guam Memorial Hospital Authority Pharmaceuticals Fund and shall be appropriated by *I Liheslaturan Guåhan* to fund all pharmaceutical, drug, medical supplies, medical equipment, blood and blood products, and medicine requirements for Guam Memorial Hospital. The Department of Administration shall deposit, on the last day of each month, a sum equal to six and nineteen hundredths percent (6.19%) of all Business Privilege Taxes collected for that month in the Guam Memorial Hospital Authority Pharmaceuticals Fund.

SOURCE: Added by P.L. 24-17:1. Amended by P.L. 24-34:9; P.L. 25-03; P.L. 25-71:9; P.L. 27-19:5. Repealed and reenacted by P.L. 28-068:II:III:22 (Sept. 30, 2005). Amended by P.L. 28-150:II:IV:1 (Sept. 30, 2006). Amended by P.L. 29-

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002:VI:28 (May 18, 2007), effective July 17, 2007, the name, Gross Receipts Tax, changed to Business Privilege Tax.

2008 NOTE: Public Law 29-002:VI:31 (May 18, 2007) repealed P.L. 27-19 (which amended this section). However, because this section was repealed and reenacted by P.L. 28-068, the amendments of P.L. 27-019 were of no effect.

§26208.1. Appropriation to the Guam Memorial Hospital Authority Pharmaceuticals Fund.

The contents of the Guam Memorial Hospital Authority Pharmaceuticals Fund are appropriated to the Guam Memorial Hospital Authority. This appropriation is continuous, contingent on the annual submission of a detailed budget *no later than* January 30 to *I Liheslaturan Guåhan*. The Director of Administration shall transfer, on the first day of each month, all funds contained in the Guam Memorial Hospital Authority Subsidy Fund to the Guam Memorial Hospital Authority. Nothing herein shall prohibit *I Liheslaturan Guåhan* from appropriating any other supplemental amounts to the Guam Memorial Hospital Authority.

SOURCE: Added by P.L. 28-068:II:III:22 (Sept. 30, 2005).

§ 26208.2. Application of Guam Memorial Hospital Authority Pharmaceuticals Fund.

For the purpose of recognizing appropriated Pharmaceutical funds as operating revenue by the Guam Memorial Hospital Authority, retroactively and prospectively, the Hospital *shall* apply the funds received towards the payment of bills for services incurred by qualified MIP recipients involved in the program at the Hospital. Any funds remaining after such payments *shall* be then applied to services provided to qualified recipients enrolled in the Medicaid program by the Hospital. The Hospital will be responsible to fully demonstrate the manner in which the payments were applied via the Hospital's annual audited financial report. Such distinction *shall* in no way result in the recognition of additional revenue by the Hospital other than what was appropriated by *I Liheslatura*.

SOURCE: Added by P.L. 29-132:1 (Jan. 8, 2009).

§ 26209. Appropriation of School Operations Fund.

[Repealed.]

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SOURCE: Added by P.L. 24-17:2. Amended by P.L. 24-34:10. Repealed by P.L. 25-03:IV:11.

§ 26210. Creation of Performance Incentive Fund.

[Repealed.]

SOURCE: Added by P.L. 24-142:5. Amended by P.L. 24-299:21. Repealed by P.L. 26-26:4.

§ 26211. Appropriation of Performance Incentive Fund.

[Repealed]

SOURCE: Added by P.L. 24-142:6. Amended by P.L. 24-299:22. Repealed by P.L. 26-26:5.

§ 26212. Capital Improvement Fund.

[Repealed.]

SOURCE: Added by P.L. 24-299:48. Repealed by P.L. 26-26:6.

§ 26213. Appropriation of Capital Improvement Fund.

[Repealed.]

SOURCE: Added by P.L. 24-299:49. Repealed by P.L. 26-26:7.

§ 26214. Immediate Construction of New Schools.

[Repealed.]

SOURCE: Added by P.L. 24-299:50. Repealed by P.L. 26-26:8.

§ 26215. Business Privilege Tax Credit for Services Purchased from Competing Telecommunications Companies.

Any telecommunications company that purchases services from a telecommunications competitor, parent, subsidiary, or sister company of a telecommunications competitor may claim an exemption against its business privilege tax liability as a result of the purchase of such services. The amount of the credit shall be equal to the Business Privilege taxes paid by the selling telecommunications company on the purchase price of the services when the services purchased are resold or used to provide other services sold to consumers.

SOURCE: Added by P.L. 28-144:2 (Aug. 4, 2006). Amended by P.L. 29-002:VI:28 (May 18, 2007), effective July 17, 2007, the name, Gross Receipts Tax, changed to Business Privilege Tax.

§ 26216. Health Care Service Provider.

(a) Offset Against Business Privilege Taxes for Past Due Medically Indigent Program Billings.

(1) If the Medically Indigent Program (MIP) fails to pay a claim for services and products for more than ninety (90) days after receiving an invoice, the health care provider, unless he has a qualifying certificate, that provided said services or products *shall* be entitled to an offset equal to the value of unpaid for MIP services it provides against the Business Privilege Taxes it owes for any given month. The value of said services and products *shall* be the MIP rates for the provider's claims that are approved by the MIP.

(2) Any unused offset authorized by this Section against Business Privilege Taxes owed for any given month may be carried over into subsequent months until said offset is exhausted.

(3) The government *shall not* pay health care providers for services *if* an offset against total Business Privilege Taxes has been exercised.

(4) Any health care service provider that claims an offset against Business Privilege Taxes pursuant hereto must "participate" and continuously provide services to MIP recipients to qualify for said offsets for any given month. The term "participate" in this subsection means that ten percent (10%) of the patients *or* clients serviced by the provider in a given month must be recipients of the Medically Indigent Program.

(5) "*Health Care Service Provider*", in this subsection means a properly licensed business that provides medical equipment *or* supplies; pharmaceutical health care services and products; medical health care services; dental health care services; behavioral health care services; and allied health care services, including a clinic, hospital, specialized health care facility, licensed practitioner, hospital or health care providers to recipients of the Medically Indigent Program.

(b) Reimbursements. The Director of Administration *shall* reduce the amount of a provider's MIP payables by the amount of Business Privilege Taxes offset it exercises. Tax offsets exercised by a provider *shall* constitute final payment of MIP obligations. The appropriations for MIP for a fiscal year *shall* be automatically reduced by the amount of

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any tax offsets taken in that year.

(c) Coordination. To avoid double payment to providers, the Director of Revenue and Taxation *shall* immediately notify the Director of Administration and the appropriate department *or* agency when a health care service provider claims an offset pursuant to this section.

(d) Administrative Rules and Regulations. The Director of Revenue and Taxation *shall*, pursuant to the Administrative Adjudication Law, enact rules and regulations to implement this Section within ninety (90) days after enactment hereof.

SOURCE: Added by P.L. 29-019:VI:23 (Sept. 29, 2007).

**ARTICLE 3
ALCOHOLIC BEVERAGE TAX**

- § 26301. Definitions.
- § 26302. Excise Tax on Alcoholic Beverages.
- § 26303. Presumption of Sale of Alcoholic Beverages in Guam: Contrary Proof.
- § 26304. Alcoholic Beverages to Which Excise Tax not Applicable.
- § 26305. General Provisions.
- § 26306. Construction.
- § 26307. Sale of Alcoholic Beverages to Instrumentalities of Armed Forces: Credit for Excise Tax Paid.

§ 26301. Definitions.

For the purpose of this Article, the following definition of words and phrases used herein shall govern the interpretation:

(a) Alcoholic beverage. *Alcoholic beverage* means beer, distilled spirits or wine and every liquid or solid which contains one-half (1/2) of one percent (1%) or more of alcohol by volume and which is fit for beverage purposes either alone or when combined with other substances.

(b) Distilled beverage. *Distilled beverage* means aggie, alcohol, brandy, or whiskey and ever product of distillation of any fermented liquid which is fit for beverage purposes.

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(c) Malted fermented beverage. *Malted fermented beverage* shall mean any beverage for human consumption manufactured from malt, wholly or in part, or from any substitute thereof, by any of the processes of fermentation.

(d) Manufacturer. *Manufacturer* means any person who produces alcoholic beverages in any manner.

(e) Rectifier. *Rectifier* means every person who colors, flavors, or otherwise processes alcoholic beverages by distillation, blending, percolating or other processes.

(f) Sale. *Sale* includes any transaction whereby, for any consideration, title to alcoholic beverages is transferred from one person to another and includes the deliver of alcoholic beverages pursuant to an order placed for the purchase of such beverages, and soliciting or receiving an order for such beverages, but does not include the return of alcoholic beverages by a licensee to the licensee from whom such beverages were purchased.

(g) Vinous beverage. *Vinous beverage* shall mean beverage for human consumption consisting of the product of the normal alcoholic fermentation of the juice of any fruit or any natural produce having the nature of, or resembling wine.

(h) Wholesaler. *Wholesaler* means any consignee of alcoholic beverages brought into Guam from without Guam, when the alcoholic beverages are for delivery or use within Guam; any person to whom delivery is first made in Guam of alcoholic beverages brought into Guam from without Guam for delivery or use within Guam; any person selling alcoholic beverages to nonlicensees within an area over which the United States Government exercises jurisdiction, when delivery of the alcoholic beverages is made to the nonlicensees by a common carrier transporting the alcoholic beverages from a point outside this Territory; any person bringing alcoholic beverages into the Territory from without this Territory which are not consigned to any person and which are for delivery or use within this Territory.

SOURCE: GC § 19563.

§ 26302. Excise Tax on Alcoholic Beverages.

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An excise tax is imposed upon all alcoholic beverages (except alcoholic beverages manufactured in Guam) sold in Guam by manufacturer, manufacturer's agents, rectifiers or wholesalers or sellers of alcoholic beverages selling alcoholic beverages with respect to which no tax has been paid within areas of which the Federal government exercises jurisdiction at the following rates:

(a) Malted Fermented Beverage. A tax in the amount of Seven Cents (\$0.07) per each twelve (12) fluid ounces or fraction thereof on all malted fermented beverages to be applied to the measure of the container in which it is offered for sale.

(b) Distilled Beverages. A tax in the amount of Eighteen Dollars (\$18.00) per gallon on all distilled beverages to be applied to the measure of the container in which it is offered for sale; provided further that any fraction of One Cent (\$0.01) shall be taken as a whole cent.

(c) Vinous Beverages. A tax at the rate of Four Dollars and Ninety-Five Cents (\$4.95) per wine gallon on all vinous beverages to be applied to the measure of the container in which it is offered for sale; provided, however, that the tax levied by this Section shall be prorated in units of measure less than one (1) gallon; and provided further, that any fraction of One Cent (\$0.01) shall be taken as a whole cent.

(d) **[Repealed.]**

(e) Proceeds of Excise Tax on Alcoholic Beverages. All proceeds from taxes collected under this Section shall be deposited in the "*Healthy Futures Fund*" created pursuant to 11 GCA § 26603(d).

SOURCE: GC § 19560, amended by P.L. 10-115 and further amended by P.L. 17-4. Amended by P.L. 27-05:V:1. Subsection (d) amended by P.L. 27-29:VI:16. Subsection (d) repealed by P.L. 28-068:IV:27 (Sept. 30, 2005). Subsection (e) repealed and reenacted by P.L. 28-068:IV:26 (Sept. 30, 2005).

§ 26303. Presumption of Sale of Alcoholic Beverages in Guam: Contrary Proof.

It shall be presumed that all alcoholic beverages acquired by any taxpayer have been sold in Guam by him and that alcoholic beverages transported or imported into Guam are transported or imported for

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delivery and use in Guam unless one of the following is established, in reports on such forms as may be prescribed by the Tax Commissioner:

(a) That the alcoholic beverages are still in possession of the licensee.

(b) That the alcoholic beverages have been sold or delivered to another licensed alcoholic beverages manufacturer, rectifier, importer, or wholesaler.

(c) That the alcoholic beverages have been exported without Guam or sold for export by the licensee making the report and actually exported from Guam within ninety (90) days from the date of the sale or delivered on board a ship or vessel for store use or ship's consumption, or sold to special licensees authorized under § 25126 of the Government Code to sell alcoholic beverages to departing passengers at the airport or Commercial Port.

(d) That prior to the termination of possession the alcoholic beverages have been lost through unintentional destruction.

(e) That prior to the termination of possession there has been an unaccounted for loss, but the unaccounted loss shall not exceed a tolerance to be fixed by the Tax Commissioner.

(f) That the alcoholic beverages are otherwise exempt from taxation under this Article.

SOURCE: GC § 19561, amended by P.L. 12-214; Subsection (c) amended by P.L. 14-59.

§ 26304. Alcoholic Beverages to Which Excise Tax not Applicable.

The tax is not imposed upon any alcoholic beverages specifically mentioned in Subsections (a) to (f), inclusive, of § 26303, nor to any alcoholic beverage manufactured in Guam.

SOURCE: GC § 19562, as amended by P.L. 10-115.

§ 26305. General Provisions.

The preceding general provisions are restricted in application to this Article, and are in addition to the general provisions of Article 1 and by rules and regulations promulgated under authority of law by the Tax Commissioner.

SOURCE: GC § 19564.

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§ 26306. Construction.

The provisions of this Article, insofar as they are substantially the same as existing provisions of law relating to the same subject matter, shall be construed as restatements and continuations and not as new enactments.

SOURCE: GC § 19565.

§ 26307. Sale of Alcoholic Beverages to Instrumentalities of Armed Forces: Credit for Excise Tax Paid.

No tax is imposed upon the sale of alcoholic beverages to the following listed instrumentalities of the Armed Forces of the United States organized under Army, Air Force or Navy regulations:

- (a) Army, Air Force, Coast Guard and Navy exchanges; and
- (b) Officers, "non-commissioned officers" and enlisted men's club or messes.

If any person has paid the tax on alcoholic beverages thereafter delivered to or used by an instrumentality of the Armed Forces so located, the taxpayer may claim and shall be allowed credit with respect to the tax so paid in any return filed or assessment paid under this Subchapter.

SOURCE: GC § 19567, as amended by P.L. 14-79.

ARTICLE 4
LIQUID FUEL TAX

- § 26401. General Provisions.
- § 26402. Levy.
- § 26403. Rates.
- § 26404. Exemption from Levy Under § 26402 and Special Rule Regarding Drawbacks.
- § 26405. Regulations, Reports of Transfers, etc.
- § 26406. Penalty.
- § 26407. Liquid Fuel Monitoring Unit.
- § 26408. Special Rule Regarding Drawbacks.

§ 26401. General Provisions.

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The following general provisions are restricted in application to this Article, and are in addition to the general provisions of Article 1 and the rules and regulations promulgated under authority of law by the Tax Commissioner.

(a) Definitions. When used in this Article the following definitions of words and phrases used herein shall govern the interpretations:

(1) *Distributors* shall mean and include any person who refines, manufactures, produces, blends or compounds liquid fuel in Guam, or who imports liquid fuel into Guam, or who receives in Guam liquid fuel with respect to which the liquid fuel tax is not already imposed hereunder, or who receives liquid fuel in Guam in bulk form from a Distributor, as defined in this Subsection and who acquires physical possession of such liquid fuel or rights in such liquid fuel directly from a pipeline, directly from a cargo ship, or via an in-tank change or ownership of such liquid fuel occurring in a petroleum facility, and includes the United States, and any agency or instrumentality thereof, as well as any other person, to the extent such inclusion is authorized by the laws of the United States, and particularly by 4 U.S.C. § 104, as amended.

(2) *Consumer* shall mean and include any person who purchases liquid fuel for his own use or storage, but shall not mean a person who purchases for resale, provided such person is properly licensed to engage in the business of selling liquid fuel. Consumer shall also mean and include any distributor who consumes the liquid fuel itself as the end-user.

(3) *Liquid fuel* or *fuel* shall mean and include all liquids ordinarily, practically and commercially usable in internal combustion, turbo-jet and jet engines for the generation of power and shall include all distillates of, and condensates from petroleum, natural gas, coal, coal tar and vegetable ferments, such distillates and condensates being ordinarily designated as gasoline, butane, naphtha, benzol, benzine, kerosene and alcohol so usable, but *not* restricted to such designation. However, kerosene purchased for actual use other than internal combustion, turbo-jet, *or* jet engines and crude oil are

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specifically excluded from the meaning of liquid fuel under this Article. *Bio-fuels* such as bio-diesel, ethanol, and vegetable/microbe ferments; and *non-petroleum-based fuels*, including hydrogen fuels, are specifically excluded from the meaning of liquid fuel under this Article if manufactured on Guam.

(4) *Diesel fuel* shall mean and include all petroleum-based liquids ordinarily, practically and commercially usable in those ignition-compression engines commonly known as diesel engines.

(5) (a) *Transfer* shall mean and include any sale, conveyance, assignment, disposition or change of possession of liquid fuel made or effected in Guam by a distributor to Consumer, and shall also mean and include all liquid fuel dedicated or made available by a distributor for retail sales to consumers in Guam by the said distributor or wholesale sales to independent retailers, or use by the distributor as a consumer.

(b) *Export Transfer* shall mean any export of liquid fuel from a point within Guam to a point outside of Guam.

(6) *Dedicated or made available*

(a) shall mean and include the point in time when liquid fuel is delivered by a distributor to any facility or device used or to be used by the said distributor to dispense liquid fuel to consumers in the case of a distributor who operates its own retail activities; or

(b) the point in time when liquid fuel is delivered to an independent retailer in the case wherein a distributor transfers liquid fuel to an independent retailer.

(7) *Stock gain or loss* is any gain or loss in quantity or volume of liquid fuel resulting from natural phenomena that may give rise to a gain or loss or any other gain or loss deemed by the Tax Commissioner to have resulted from an effect not caused directly or indirectly by such distributor.

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SOURCE: GC § 19574. Amended by P.L. 24-205:2. Subsection (a)(3) amended by P.L. 29-150:3 (Jan. 30, 2009). Subsection (a)(4) amended by P.L. 29-150:4 (Jan. 30, 2009).

§ 26402. Levy.

There is hereby levied, and shall be assessed and collected, upon every distributor, in addition to any other taxes provided by law, an excise tax to be measured by the application of the rates set forth in the next succeeding § 26403 against any transfer in Guam of liquid fuel made by a distributor, except that the liquid fuel tax shall not be applied more than once with respect to the same liquid fuel. Provided, however, that the provisions of this Article shall not apply to liquefied petroleum gas, unless the same is used as fuel for transportation purposes.

SOURCE: GC § 19570. Amended by P.L. 24-205:3.

§ 26403. Rates.

The following rates shall apply in computing, assessing and collecting the liquid fuel tax:

(a) A tax at the rate of Ten Cents (\$0.10) per gallon on diesel fuel; and

(b) A tax at the rate of Eleven Cents (\$0.11) per gallon on all other liquid fuel as defined herein except liquid fuel used for commercial aviation purposes which is taxed at a rate of Four Cents (\$0.04) per gallon.

SOURCE: GC § 19571, amended by P.L. 15-74, further amended by P.L. 17-4.

§ 26404. Exemption from Levy Under § 26402 and Special Rule Regarding Drawbacks.

The following transfers of liquid fuel in Guam made by a distributor shall be exempt from the liquid fuel tax levied under § 26402:

(a) Liquid fuel transferred to vessels engaged in commercial fishing.

(b) Liquid fuel transferred to the United States, or any agency or instrumentality thereof for its use or consumption.

(c) Liquid fuel transferred for aviation purposes and used solely in aircraft under charter to the United States Department of Defense.

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(d) Transfer of liquid fuel by a distributor to another distributor.

(e) Transfer of liquid fuel to the government of Guam or any of its instrumentalities.

(f) Transfer of liquid fuel to a point outside of Guam.

(g) Stock losses of less than one half of one percent (.5%) (.005) during the fiscal year of the taxpayer. In computing taxable or non-taxable stock losses, any gross stock gains shall be off-set against any gross stock losses in determining net stock losses for the purposes of assessing the tax.

SOURCE: GC § 19575.01 amended by P.L. 18-2:5. Subsection (c) added by P.L. 22-43:1 (11/26/93). Amended and renumbered from § 26406 by P.L. 24-205:5. Original § 26404 (GC § 19572) was repealed by P.L. 24-205:4.

§ 26405. Regulations, Reports of Transfers, etc.

All transfers of liquid fuel in Guam shall be reported by the distributor transferring the liquid fuel in such manner and at such time as the Tax Commissioner may adopt by regulation. The Tax Commissioner may also adopt such other regulations as to be consistent with the statute and as may be necessary to administer and implement this Article 4.

SOURCE: Added by P.L. 24-206:7. Original § 26405 [GC § 19573] was repealed by P.L. 24-205:6.

§ 26406. Penalty.

In addition to all other penalties provided by law, a penalty of One Thousand Dollars (\$1,000.00) shall be assessed and collected from a distributor who fails to report to the Tax Commissioner a transfer in Guam of liquid fuel unless it is shown by the distributor that such failure is due to reasonable cause and not due to willful neglect. The penalty shall apply to each such failure to report a transfer.

SOURCE: Added by P.L. 24-205:7.

§ 26407. Liquid Fuel Monitoring Unit.

There is hereby created a Liquid Fuel Monitoring Unit within the Examination Branch of the Department of Revenue and Taxation. Such Unit shall be staffed by a Revenue Agent II, one Tax Auditor II, and three Tax Technicians II. These positions shall be in addition to positions

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already contained within the budget of the Department of Revenue and Taxation for the Tax Enforcement Division.

SOURCE: Added by P.L. 24-205:7. Original § 26407 [GC § 19575.02] repealed by P.L. 24-205:6.

§ 26408. Special Rule Regarding Drawbacks.

The provisions of Article 4, *Liquid Fuel Tax*, Chapter 26, Division 2 of Title 11 of the Guam Code Annotated, regarding drawbacks of the liquid fuel tax as in effect prior to the effective date of this Act shall apply to transfers of liquid fuel made prior to such effective date.

SOURCE: Added by P.L. 24-205:7.

ARTICLE 5
AUTOMOTIVE SURCHARGES

- § 26501. Legislative Intent and Use of Revenues.
- § 26502. Automotive Surcharge.
- § 26503. Mass Transit Automotive Surcharge.
- § 26504. Automotive Surcharges.

§ 26501. Legislative Intent and Use of Revenues.

(a) The Legislature recognizes that the need for more revenues for educational programs and facilities continue to be demanded by educational policy makers and administrators in order that the instructional requirements of Guam's students can be effectively addressed, and also that there is currently an apparent trend towards a continual decline of gasoline prices at the retail outlets, thereby creating a more conducive climate for the children of Guam to be benefactors of this economic benefit.

The Legislature, in performing its responsibility to seek ways by which needed financial resources are obtained, justifiably pursues the revenue producing scheme in this Section which provides less burden to the tax-paying citizenry than other often discussed revenue producing means since the current strong demand for additional revenues for educational purposes requires an immediate response and infusion of new funds will enhance significantly the Government's ability to finance urgent educational needs.

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The intent of the Legislature in enacting Sections 10 and 11 of this Act is to establish an Automotive Surcharge and a Mass Transit Automotive Surcharge, both of which shall be separate and apart from other surcharges or taxes on liquid fuel. All revenues derived from the Automotive Surcharge and the Mass Transit Automotive Surcharge shall be used for the purposes specified in Section 10 and 11 of this Act, respectively, and for no other purpose.

SOURCE: Added by P.L. 18-33:10(a) and amended by P.L. 18-49:12. Codified by Compiler.

NOTE: "Sections 10 and 11 of this Act" refer to §§ 26502 and 26503 in this Chapter, also enacted by P.L. 18-33.

§ 26502. Automotive Surcharge. Levy.

Except for liquid fuel used for aviation purposes, there is hereby levied an automotive surcharge of Four Cents (\$0.04) per gallon on all liquid fuel taxed pursuant to Subsection (b) of § 26403 of this Title. This automotive surcharge shall be in addition to the liquid fuel tax levied pursuant to Subsection (b) of § 26403 of this Title.

SOURCE: Added by P.L. 18-33:10(a) as GC § 19576.

NOTE: Public Law 21-110:5(a) states:

(a) Subsections (c), (d) and (e) of § 19576 of the Government Code enacted in Section 10 of Public Law No. 18-33 are repealed.

These sections were not enacted as part of § 19576 of the Government Code, but as separate subsections of uncodified Section 10 of P.L. 18-33. These subsections (c), (d), and (e), in any event, earmarked portions of the automotive surcharge to specific projects. This earmarking was repealed by P.L. 21-110:5.

§ 26503. Mass Transit Automotive Surcharge.

(a) Levy. There is hereby levied a Mass Transit Automotive Surcharge of Four Cents (\$0.04) per gallon on all liquid fuel taxed pursuant to Subsection (a) of § 26403 of this Title. This Mass Transit Automotive Surcharge shall be in addition to the liquid fuel tax levied pursuant to Subsection (a) of § 26403 of this Title.

(b) The proceeds of the Mass Transit Automotive Surcharge levied pursuant to Subsection (a) of this Section, as and to the extent released from the pledge of such proceeds pursuant to Subsection (d) of § 1504 of Title 5 of the Guam Code Annotated, are to be placed in a separate fund

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hereby created and known as the Public Transit Fund to be administered by the Department of Administration. For purposes of such pledge and release, the proceeds of the Mass Transit Automotive Surcharge shall be deemed to be the last revenues used pursuant to such pledge and the first revenues released from such pledge.

(c) A portion of the revenues in the Public Transit Fund shall be used for the operation of the mass transit system by the Department of Administration.

(d) The Department of Administration shall report on a monthly basis to the Legislative Committee which has oversight over the Guam Mass Transit Authority on the balance and status of the Public Transit Fund.

SOURCE: Added by P.L. 18-33:11 as GC § 19577. Repealed/reenacted by P.L. 21-110:5. Subsection (c) amended by P.L. 22-120:1 (4/26/94). Subsection (d) added by P.L. 22-41:70 (9/29/93). Subsection (c) amended by P.L. 26-76:29 as part of the abolition of GMTA and the transfer of its functions to the Dept. Of Administration.

NOTE: P.L. 18-49:12 contained the following language:

"Sections 19576 and 19577 of the Government Code, enacted pursuant to Section 10 and 11 of this Act, respectively, shall not be included in Subchapter D of Chapter VI of Title XX of the Government Code and, notwithstanding any other provision of law, the Compiler of Laws shall codify Section 19576 and Section 19577 of the Government Code to be included in a new Subchapter E of Chapter VI of Title XX of the Government Code."

In compliance, the Compiler has placed the sections in the same relative position, renumbered appropriately to the GCA.

§ 26504. Automotive Surcharges.

The Automotive Surcharges levied pursuant to §§ 26502 and 26503 of this Title shall not apply to liquid fuel which is exempt from the liquid fuel tax under this Article 4. If any Automotive Surcharges is levied pursuant to §§ 26501 and 26503 of this Title regarding liquid fuel taxed pursuant to this Article 4, and a drawback of the liquid tax is allowed, there shall be allowed a drawback of such Automotive Surcharges along with the drawback of the liquid fuel tax.

SOURCE: Added by P.L. 24-205:8.

ARTICLE 6
TOBACCO TAX

- § 26601. General Provisions.
- § 26602. Levy.
- § 26603. Rates.
- § 26604. Export Drawback.
- § 26605. Military Sales Drawback.
- § 26606. Departing Passengers Drawback.
- § 26607. Spoilage Drawback.
- § 26608. Spoilage Relief.

§ 26601. General Provisions.

The following general provisions are restricted in application to this Article, and are in addition to the general provisions of Article 1 and the rules and regulations promulgated under authority of law by the Tax Commissioner.

(a) Time of attachment. The tax levied hereunder shall attach at the time the product enters the economy of the territory of Guam which shall be either:

- (1) Upon the completion of the process when manufactured or produced in Guam; or
- (2) At the time the article is discharged from its carrier when brought into the territory of Guam; or
- (3) At the time of purchase for resale, if the tobacco tax has not hereto attached.

(b) Definitions. For the purpose of this Section the following definitions of words and phrases shall govern its interpretation:

- (1) Tobacco products shall mean and include the product or manufacture of any of the genus of plants commonly prepared for smoking or chewing or use as snuff.
- (2) Cigarette shall mean and include any preparation of finely cut tobacco rolled and enclosed so that it is held together for smoking.
- (3) Cigar shall mean and include any shaped roll of tobacco leaves prepared for smoking.

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(c) Bonding. Any taxpayer holding an Annual Wholesaler License pursuant to Title 11 G.C.A. § 6201 and against whom taxes are levied under this Article with respect to tobacco products may, by complying with the rules and regulations promulgated by the Tax Commissioner, and by placing such tobacco products in a warehouse under bond, delay the payment of said taxes until the due date of the monthly tax return for the month in which the tobacco products are withdrawn from the warehouse and no interest shall commence to run thereon until such due date.

(1) Relief from tax upon export. When the taxes levied under this Article have not been paid with respect to any tobacco products because said tobacco products were placed in a warehouse under bond, the taxpayer may export such tobacco products from Guam without payment of the taxes levied under this Article and, subject to the conditions set forth in §§ 26604(a), 26604(b) and 26605(d), be relieved of liability therefor upon submission of a claim for relief to the Tax Commissioner not later than the twentieth (20th) day of the month following the month in which the tobacco products are withdrawn from the warehouse.

SOURCE: GC § 19593, Subsection (a)(3) added by P.L. 10-182. Subsection (c) amended by P.L. 28-170:2 (Jan. 29, 2007).

§ 26602. Levy.

There is hereby levied, and shall be assessed and collected, upon every business engaged in the manufacture or production in Guam, or importation into Guam, of any tobacco products, in addition to all other applicable taxes, an excise tax to be measured by the application of the following rates against the tobacco products so manufactured, produced or brought into Guam as herein provided. Such excise tax shall also be levied upon, assessed and collected from every business purchasing tobacco products in Guam for resale if no tax had been paid upon said tobacco products as herein provided.

SOURCE: GC § 19590, as added by P.L. 10-182.

§ 26603. Rates.

The following rates shall apply in computing, assessing and collecting Tobacco Tax:

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(a) Cigarettes. A tax at the rate of Five Dollars (\$5.00) per one hundred (100) cigarettes to be prorated in accordance with the number of cigarettes contained in the individual package taxed.

(b) Cigars. The tax rates for cigars shall be based on the following sizes:

1. Mini Cigars: Twenty Cents (\$0.20) Per Cigar. Mini Cigars are defined as cigars with a ring size of forty (40) or less, or a length of less than four and one-half inches (4.5"), regardless of ring size as specified by the manufacturer's label.

2. Standard Cigars: Twenty-Two Cents (\$0.22) Per Cigar. Standard Cigars are defined as cigars with a ring size of more than forty (40), but less than sixty-four (64) as specified by the manufacturer's label.

3. Large Cigars: Twenty-Five Cents (\$0.25) Per Cigar. Large Cigars are defined as cigars with a ring size of more than sixty-four (64), or a length of more than eight inches (8"), regardless of the ring size as specified by the manufacturer's label.

4. Where no ring size or length is specified by the manufacturer's label, the tax shall be Twenty-Two Cents (\$0.22) per cigar. For purposes of this Section, ring size shall be defined as the usually accepted measure used by cigar manufacturers for determining the diameter of cigar at its widest point. A ring size of one (1) is equal to one sixty-fourth (1/64) of an inch.

(c) Other Tobacco Products. A tax at the rate of Three Dollars and Fifty Cents (\$3.50) per pound for all other tobacco products to be prorated in accordance with the size of the package to be taxed.

(d) Creation of the Healthy Futures Fund. There is hereby created the Healthy Futures Fund (Fund) which shall be maintained separate and apart from other funds of the government of Guam and shall be kept in a separate bank account and shall *not* be subject to any transfer authority of *I Maga'lahen Guåhan*. All proceeds from taxes collected under this Section shall be deposited into the Fund and shall not be commingled with the General Fund. The Fund is subject to *I Liheslaturan Guåhan*'s appropriation for the following

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purposes:

(1) health, education, public safety and social programs providing awareness on tobacco and alcohol and substance abuse prevention, cessation, treatment and control; programs and activities for improving overall health and well-being; and, programs that enforce alcohol regulations;

(2) public safety and social programs that enforce alcohol and substance abuse regulations, reduce underage drinking, support traffic safety, reduce drug-related violence and abuse;

(3) community-based drug and substance abuse prevention programs; and

(4) matters pertinent to the items, supra, as deemed appropriate by *I Liheslaturan Guåhan*.

Preference shall be given to programs directed towards youth, low-income or at-risk persons and families, drug, alcohol, tobacco and substance prevention, cessation, and treatment, preventative health care, and chronic disease management.

The Director of Administration shall report on a quarterly basis to the Speaker of *I Liheslaturan Guåhan* the revenues collected and expended from this Fund and shall post such report on the Department's website.

SOURCE: GC § 19591, as amended by P.L. 17-4. Amended by P.L. 25-104:2. Repealed/reenacted by P.L. 27-05:V:2. Subsection (d) amended by P.L. 27-29:VI:17. Subsection (d) repealed and reenacted by P.L. 28-068:IV:25 (Sept. 30, 2005).

§ 26604. Export Drawback.

There shall be allowed to any applicant therefor an export drawback of the full amount of a tax paid under this Article, exclusive of penalties and interest, upon fulfillment of the following conditions:

(a) That the tobacco manufactured or produced in Guam or brought into Guam, has been consigned, and duly delivered to a point outside the territory of Guam, or delivered on board a ship or vessel for ship store use or ship's consumption;

(b) That the tobacco so exported or so delivered for ship store use or ship's consumption, was not subject to any sale within Guam

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other than a transfer involving substantially all the stock in trade, good will and franchise or other rights concerning the tobacco upon which the tax was paid;

(c) That the taxes levied hereunder have been fully paid to the government of Guam; and

(d) That the applicant is a duly licensed manufacturer, producer, wholesaler or retailer in Guam.

SOURCE: GC § 19592.

§ 26605. Military Sales Drawback.

There shall be allowed to any applicant therefor a drawback of the full amount of tax paid under this Article upon a satisfactory showing, within the rules and regulations promulgated by the Tax Commissioner, that:

(a) The tobacco manufactured or produced in Guam, or brought in the territory of Guam, has been sold, consigned, and duly delivered to, an authorized purchaser for any United States military establishment in Guam;

(b) The tobacco sold, consigned and delivered to such military establishment was not the subject of any prior sales transaction in Guam other than a transfer of substantially the entire stock in trade, good will and franchise or other rights concerning the tobacco upon which the tax has been paid;

(c) The taxes levied under this Article have been fully paid to the government of Guam; and

(d) The applicant applying for the drawback is a duly licensed wholesaler or retailer, in Guam.

SOURCE: GC § 19592.1.

§ 26606. Departing Passengers Drawback.

In addition to any other drawback provided for under this Article, a drawback shall also be allowed to any applicant for the full amount of the tax paid under this Article upon a satisfactory showing, within the rules and regulations promulgated by the Tax Commissioner, that the tobacco and tobacco products upon which the tax has been paid have been sold to persons licensed as concessionaires at Guam International

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Air Terminal or the Commercial Port under § 25126 of the Government Code and that those persons have resold such tobacco or tobacco products to persons departing Guam.

SOURCE: GC § 19592.2, added by P.L. 14-106, R/R by P.L. 14-107.

§ 26607. Spoilage Drawback.

There shall be allowed a spoilage drawback of the full amount of the tax paid under this Article, exclusive of any penalties or interest, upon a satisfactory showing, under the rules and regulations promulgated by the Tax Commissioner, that:

(a) The tobacco products manufactured or produced in Guam, or imported into Guam, have become incapable of use as such for human consumption due to spoilage, and have been destroyed under the supervision of the Tax Commissioner or his representative;

(b) The tobacco products were not the subject of any prior sales transaction in Guam other than a transfer involving substantially the entire stock in trade, good will and franchise or other rights concerning the tobacco products with respect to which the tax was paid.

(c) The applicant is a duly licensed manufacturer, producer, or wholesaler or retailer in Guam and is either the taxpayer or a transferee from or through the taxpayer of substantially the entire stock in trade, good will and franchise or other rights concerning the tobacco products with respect to which the tax was paid;

(d) The applicant is not indemnified by insurance or otherwise in respect of the tax.

SOURCE: GC § 19595.

§ 26608. Spoilage Relief.

Where tobacco products which have been placed in a bonded warehouse without payment of the taxes levied under this Article, upon a satisfactory showing, under the rules and regulations promulgated by the Tax Commissioner, that such tobacco products have been incapable of use as such for human consumption due to spoilage and have been destroyed under the supervision of the Tax Commissioner or his representative, and that the taxpayer is not indemnified by insurance or otherwise in respect of the tax, the taxpayer manufacturing, producing or

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importing such tobacco products may be relieved of his tax liability with regard to such tobacco products upon submission of a claim for relief to the Tax Commissioner not later than the twentieth (20th) day of the month following the month in which such tobacco products have been destroyed under the supervision of the Tax Commissioner or his representative.

SOURCE: GC § 19596.
