IN THE SUPREME COURT OF GUAM

IN *RE* REQUEST OF *I MINA' BENTE SING'KO NA LIHESLATURAN GUÅHAN* RELATIVE TO THE APPLICATION OF THE EARNED INCOME TAX CREDIT PROGRAM TO GUAM TAXPAYERS ("The EIC question")

OPINION

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Supreme Court Case Number: CRQ00-001

Request for Declaratory Judgment pursuant to
section 4104 of Title 7 of the Guam Code Annotated
Argued and submitted September 7, 2000
Hagåtña, Guam

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BEFORE: BENJAMIN J.F. CRUZ, Chief Justice; PETER C. SIGUENZA, JR., Associate Justice; and JOHN A. MANGLONA, Designated Justice.

MANGLONA, J.:

[1] The Legislature submits to this court a request for a declaratory judgment pursuant to 7 GCA § 4104. The Legislature specifically seeks this court's opinion as to whether Guam's taxpayers, otherwise eligible, are entitled to the Earned Income Tax Credit, pursuant to a provision in Subtitle A of the Internal Revenue Code and applied to Guam by operation of the Organic Act, 48 U.S.C. § 1421 et seq. The Legislature also asks whether the Director of the Department of Revenue and Taxation is required to pay the credit to eligible taxpayers. We find that this court has jurisdiction over this matter notwithstanding the District Court of Guam's exclusive original jurisdiction over taxpayer suits involving the Guam Territorial Income Tax. We hold that eligible taxpayers are entitled to credit and that the Executive Branch must enforce it. Accordingly, we answer both of the Legislature's questions in the affirmative.

I.

[2] Although permitted by Congress, Guam has not promulgated its own income tax code. Instead, the Organic Act imposes certain provision of the Internal Revenue Code of the United States ("I.R.C.") as the income tax applicable to Guam taxpayers. This tax, designated the Guam Territorial Income Tax ("GTIT"), mirrors certain provisions of the I.R.C. Such mirroring includes any modification or repeal of I.R.C. sections that the United States may from time-to-time make effective for a given tax year, as well as enactments of new provisions.

[3] Section 31 of the Organic Act, as amended, specifically lists the mirroring provisions, including

inter alia Subtitle A of the I.R.C., which contains the Earned Income Tax Credit ("EIC"). *See* 48 U.S.C. § 1421i(d) ("section 1421i(d)") and 26 U.S.C. § 32 ("section 32"). The EIC, which is still in force, only became effective in tax year 1975, and was not part of the I.R.C. when the Organic Act was passed in 1950, nor was it applicable when the United States modified the Organic Act in 1954. The EIC was enacted, among other things, to provide special tax benefits to low-income workers by reducing tax burdens and making employment more attractive than welfare. *See Sorenson v. Secretary of Treasury of the United States*, 475 U.S. 851, 106 S. Ct. 1600, 89 L. Ed. 2d 855 (1986).

[4] Under the mirror code, Guam taxpayers have been eligible for the EIC since its effective date. In 1989, EIC applicability was questioned for the first time. In response to a request from the Department of Administration ("DOA"), on or about June 23, 1989, the Attorney General's office ("AG's office") issued Memorandum Opinion No. DOA 89-0750, concluding that the Government of Guam ("government") is obligated to pay EIC in excess of tax owing ("refundable EIC"). The AG's office reasoned that, because the Organic Act mandates that Guam mirror the I.R.C. in implementing the GTIT, the EIC applies to Guam taxpayers unless Guam de-links from the I.R.C. and enacts its own tax code. The AG's office also opined that the refundable EIC be paid from the General Fund, in the same manner as ordinary refunds, consistent with the practice in the United States, where the refundable EIC are classified as tax outlay and paid out of the U.S. Treasury.[1] *See* Mem. Op. No. DOA 89-0750.

[5] On or about January 4, 1996, the AG's office issued Memorandum Opinion No. DRT/DOA 96-001, which revoked Memorandum Opinion No. DOA 89-0750 and adopted instead, the Department of

[1] The United States reimbursed Guam for paying the refundable EIC for several years before the reimbursement was halted during the Carter Administration. *See* Mem. Op. No. DOA 89-0750.

Revenue and Taxation's ("Rev & Tax's") Revenue Ruling 96-001. Without legal analysis, the AG's office ruled that: (1) the EIC does not apply to Guam and that Rev & Tax should not administer the EIC, and (2) Rev & Tax should not certify to DOA any amounts owing as refundable EIC. The ruling further declared that, even if the EIC applied to Guam, Rev & Tax could not certify the amount each eligible taxpayer was to receive because the Legislature made no appropriations to fund the refundable EIC. The ruling was retroactively applied to tax year 1994, but under the discretion of the Director of Rev & Tax ("Director"), tax returns would not be audited. As indicated, the AG's opinion simply deferred to Revenue Ruling 96-001 and also to the Director's exclusive administrative responsibility to determine what tax shall apply in mirroring the I.R.C.

[6] In response to the Executive Branch's reversal of this tax policy, the Legislature enacted statutes to ensure that Guam taxpayers could receive the refundable EIC. Public Law 23-74 contains continuing appropriations to finance the refundable EIC. Section 4108, Title 11 of the GCA institutes the Guam Earned Income Program ("Guam EIC"), mirroring 26 U.S.C. § 32. Section 4104, Title 11 of the GCA authorizes the expenditure of funds to pay refundable credits under the Guam EIC. Section 50103, Title 11 of the GCA requires the establishment of a formula for reserving income tax receipts to pay the refundable EIC in a timely manner. Section 50103, Title 11 of the GCA provides for the deposit of amounts reserved for the refundable EIC, thereby ensuring the availability of funds. Although these measures have become law, the Executive Branch has ignored their policy mandate and refused to implement the EIC.

[7] Due to the Executive Branch's intransigent position, on May 30, 2000, the Legislature filed its Complaint for Declaratory Judgment seeking this court's opinion on the applicability of and the Executive

Branch's obligation to enforce the EIC. The Legislature presents for our review the following questions: (1) whether Guam taxpayers are entitled to the EIC; and (2) whether the Director is required to pay refundable credits. The Governor and the Director (collectively "Governor") have joined in the action opposing the Legislature's position on both issues.

II.

[8] The court is confronted, as a threshold matter, with the Governor's initial question of whether we lack jurisdiction over this request. The Legislature defends by asserting that 7 GCA § 4104 grants this court jurisdiction to address the questions posed by the request for a declaratory judgment.

[9] The Governor argues that any matter dealing with the GTIT lies within the exclusive and original jurisdiction of the District Court of Guam, as provided under section 1421i(h) of the Organic Act. The Governor further contends that *Government of Guam v. Superior Court of Guam (Guam Dai-Ichi Hotel, Inc., Real Party in Interest)* held that legislation, which can be construed to be a tax measure, would be properly brought to the District Court when a controversy arises with respect to such legislation. *See* 998 F.2d 754 (9th Cir. 1993) (disputing whether GEDA qualifying certificates may be filed in district court). Thus, the dispositive inquiry concerning jurisdiction is whether the action here falls within the ambit of the District Court's exclusive original jurisdiction. In examining this question, we turn to 48 U.S.C. § 1421i(h), which provides:

> 1421i. Income Tax.
>
> (h) Jurisdiction of District Court; suits for recovery or collection of taxes; payment of judgment. (1) Notwithstanding any provision of Section 22 of this Act [section 1424 of Title 48] or any other provisions of law to the contrary, the District Court of Guam shall have exclusive original jurisdiction over all judicial proceedings in Guam, both criminal and

> civil, regardless of the degree of the offense or of the amount involved, with respect to the Guam Territorial Income Tax.

48 U.S.C. § 1421i(h)(1) (1954). Section 1421i(h) plainly states that the District Court has exclusive original jurisdiction over all civil and criminal judicial proceedings for any offense and any amount when the GTIT is the subject matter of the litigation.

[10] As we review section 1421i, we observe illustrations in its language that the District Court's jurisdiction extends to taxpayer suits involving to specific tax controversies. Subsection (h)(2) specifically permits aggrieved individuals to sue for taxes, penalties or any sum erroneously assessed or collected; subsection (h)(3) provides certain protections to the Governor and government employees who carry out their duties in enforcing the GTIT. *See* 48 U.S.C. § 1421li(h)(2)-(h)(3); *see also* 48 U.S.C. §1421i(a) (permitting the legislature to levy additional ten percent on top of taxpayers' liabilities); 48 U.S.C. § 1421i(c) and (d)(2) (authorizing the Governor to administer and enforce GTIT similar to power granted to the Secretary of the Treasury); 48 U.S.C. § 1421i(f) (extending I.R.C. penalty provisions to Guam); 48 U.S.C. § 1421i(g) (providing that the government may attach property of individual in violation of mirror code). These provisions signal that the District Court's jurisdiction encompasses only taxpayer suits involving a specific tax controversy.

[11] Case law bolsters our interpretation of section 1421i(h). In *Guam Dai Ichi Hotel*, the hotel sued for a rebate under the GEDA qualifying certification. *See* 998 F.2d 754. The District Court's jurisdiction was found pursuant to subsection (h). *See* 998 F.2d at 755. The court in that case held:

> The language of the statute outlining the Federal District Court's jurisdiction also compels the conclusion that Federal District Court is where *disputes over rebate amounts should be litigated*. Congress provided that the District Court should exercise jurisdiction over any judicial proceeding "with respect" to the territorial tax, expressly stating that any *suits alleging recovery or rebates of the Territorial tax* are to be heard

> in the district court. 48 U.S.C. § 1421i(h)(2). As the Appellate Division correctly concluded, the "plain reading" of both provisions of the jurisdictional statute "compels the conclusion that [Congress] contemplated that all suits for a refund of income taxes, whatever the basis for the suit, be brought in the District court."

Id. (emphasis added). Other cases provide examples of how section 1421i(h) has been invoked to confer jurisdiction over specific tax controversies. In *Government of Guam v. Kaanehe*, the dispute centered on the collection of withholding taxes from a bar. *See* 124 F. Supp. 15 (D. Guam 1954). The District Court examined the legality of assessments under GTIT involving an individual taxpayer in *Wilson v. Kennedy*, 123 F. Supp. 156 (D. Guam 1954). The Ninth Circuit also ruled on a taxpayer's challenge to tax on income earned while on Guam in *Phelan v. Taitano*, 233 F.2d 117 (9th Cir. 1956), on the recovery of GTIT paid in *Government of Guam v. Koster*, 362 F.2d 248 (9th Cir. 1966), a refund sought of GTIT in *Sayre & Co. v. Riddell*, 395 F.2d 407 (9th Cir. 1986) (en banc) ("*Sayre*"), and refund of the business privilege tax in *Bank of America, Nat'l Trust and Sav. Ass'n v. Chaco*, 539 F.2d 1226 (9th Cir. 1976) (per curiam) ("*Chaco I*"). In each of these cases, we find that the action involved a taxpayer and a specific tax controversy.

[12] Such a finding is consistent with federal constitutional and prudential limitations restraining district courts from assuming jurisdiction over various disputes. The "case or controversy" limitation of the United States Constitution prohibits federal courts from rendering advisory opinions. *See Aetna Life Ins. Co. v. Haworth*, 300 U.S. 227, 57 S. Ct. 461 (1937); U.S. CONST. amend. X. *Aetna* announced the meaning of "controversy" in the constitutional sense as follows:

> A "controversy" in this sense must be one that is appropriate for judicial determination. A justiciable controversy is thus distinguished from a difference or dispute of a hypothetical or abstract character; from one that is academic or moot. The controversy must be definite and concrete, touching the legal relations of parties having adverse legal interests. It must be a real and substantial controversy admitting of specific relief through a decree of a conclusive character, as distinguished from an opinion advising what the law would be upon a hypothetical state of facts . . . .

300 U.S. at 240-41, 57 S. Ct. at 464 (citations omitted). In *Aetna*, the controversy concerned a specific insured, four specific life insurance policies, and a complaint that the policies be declared null and void by reason of lapse for nonpayment of premiums. *Id.* at 237, 239, 57 S. Ct. at 462-63. Such facts constituted a controversy in the constitutional sense. *Id.* at 244, 57 S. Ct. at 465.

[13] In contrast here, we are asked by the Legislature to render an advisory opinion on the applicability of the EIC to Guam taxpayers and whether the Director is required to pay the refundable EIC. Unlike *Guam Dai Ichi Hotel* and the other tax cases, no aggrieved taxpayer, no penalty nor contested assessment is involved in the instant case. No question arises here over whether the government owes any specific individual, or individuals, the refundable EIC. Neither is there a controversy in the constitutional sense.[2]

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[2] It might be argued that the District Court of Guam, not being a court created under Article III of the United States Constitution but a court created by Congress in exercise of its authority over the United States possessions, might not have the same constitutional and prudential limitations as an Article III court. However, the Organic Act appears to set out these limitations on the District Court of Guam. Under the Organic Act, "[t]he District Court of Guam *shall have the jurisdiction of a district court of the United States*, including, but not limited to, the diversity jurisdiction provided for in § 1332 of title 28, United States Code, and that of a bankruptcy court of the United States." 48 U.S.C. §

No specific legal relationship is at stake, no specific relief is sought, nor do the parties have direct adverse legal interests in this controversy. Instead, the questions here, presented in the form of a request for declaratory judgment, involve only hypothetical taxpayers, otherwise eligible for EIC, and whether they are entitled to the tax credit. Thus, it is the position of this court that the Legislature's request for declaratory judgment falls outside the District Court's jurisdiction as defined by the Organic Act.

[14] We turn to the next inquiry of whether the instant case falls within our jurisdiction. Congress granted the Legislature authority to create local courts and define their jurisdiction over certain proceedings. Under the Organic Act,

> The legislature may vest in the local courts jurisdiction over all causes in Guam over which any court established by the Constitution and laws of the United States does not have exclusive jurisdiction. Such jurisdiction shall be subject to the exclusive or concurrent jurisdiction conferred on the District Court of Guam by section 1424(b) of this title.

48 U.S.C. § 1424-1. Having determined that the District Court does not have exclusive original jurisdiction over this request for declaratory judgment, we review the pertinent statute to determine if the Legislature has conferred on this court jurisdiction to hear such requests.

[15] Under 7 GCA § 4104,

> The Governor, in writing, or the Guam Legislature, by resolution, *may request declaratory judgments from the Supreme Court as to the interpretation of any law, federal or local lying within the jurisdiction of the courts of Guam to decide, and upon any question affecting the powers and duties of the Governor and the operation of the Executive Branch, or the Guam Legislature, respectively.* The declaratory judgments may be issued only where it is a matter of great public interest and the normal process of law would cause undue delay. Such declaratory judgments shall not be available to private parties. The Supreme Court shall, pursuant to its rules and procedure, permit interested parties to be heard on the questions presented and shall

1424(b) (1954) (emphasis added). Thus, while not an Article III court, the District Court of Guam appears bound by similar constitutional and prudential limitations.

> render its written judgment hereon. Upon a writing, or resolution in the case of the Guam Legislature, by the party submitting the request for the declaratory judgment that the party wishes the Supreme Court to dismiss its petition for declaratory judgment, the Supreme Court shall no longer have jurisdiction and shall dismiss without prejudice the declaratory judgment case, provided that the request is filed with the Supreme Court at any time before the court renders its written decision.

7 GCA § 4104 (1994) (emphasis added). Thus, through the power given the Legislature from Congress, this court has been granted the authority to issue advisory opinions interpreting any federal or local law and deciding any question affecting the powers and duties of the Governor and the operation of the Executive Branch.

[16] The questions presented by the Legislature involve interpretation of federal law, specifically the Organic Act, as it relates to the Governor's enforcement duty and the applicability of the EIC, which is contained in the I.R.C. The Legislature alleges that eligible taxpayers are deprived of the refundable EIC because of the Executive Branch's refusal to mirror the I.R.C. with regard to the EIC. Furthermore, the court is concerned about the potential for undue delay in adjudicating these questions if the Legislature waited until a taxpayer pursued litigation on the EIC. Because eligible taxpayers are generally indigent and without the financial means to challenge the Governor's decision not to pay out any refundable EIC, there is the possibility that such an action may never be filed. These considerations compel a finding that the Legislature's request for declaratory judgment, pursuant to 7 GCA § 4104, is properly before this court.

III.

[17] Having decided that we have jurisdiction, we turn to the substance of the Legislature's request for declaratory judgment and the first question presented for our review. In asserting that Guam taxpayers are entitled to the EIC, the Legislature argues that, until section 32 of the I.R.C. is expressly excluded from the GTIT, or until Guam enacts its own tax code in lieu of the mirror code, Guam must follow the EIC. The Legislature contends that, according to *Sayre* and *Kaaneche*, section 1421i requires Guam to apply the I.R.C. to persons and incomes within the territory's boundaries. *See also* I.R.C. § 7651(2)(B) (extending the administration, collection and enforcement provisions of I.R.C. to U.S. possessions). The Legislature also emphasizes that, after Revenue Ruling 96-001 halted EIC payments to eligible taxpayers, it enacted a series of statutes making the EIC applicable to Guam taxpayers "to the full extent permitted by federal law" and approved continuing appropriations from the general fund to pay for the EIC. *See* Public Law Nos. 23-74, 24-61, 25-03, 25-43. According to the Legislature, the Governor is bound by both federal and Guam law to pay the refundable EIC to eligible taxpayers. Because section 1421i imposes the enlisted provisions of the I.R.C. as the tax code of Guam, because section 32 is specifically included in the enlisted applicable chapters of the I.R.C., and because Guam law has made section 32 applicable to Guam taxpayers, the Legislature urges this court to hold that Guam taxpayers are entitled to receive the refundable EIC.

[18] The Governor counters by acknowledging that while, "it is undeniably true that section 32 is part of Subtitle A of the [I.R.C.] . . . which applies to Guam . . .", when viewed through the lens of the Organic Act, particularly those sections establishing the GTIT, Congress did not intend to make section 32 applicable to Guam. Governor's Opening Brief at 13-14. In support of this argument, the Governor points

to Congress's omission of Social Security taxes from the Organic Act in order to shield Guam from Social Security's fiscal impacts. The Governor argues that likewise the EIC does not apply to Guam since its funding in the United States is paid by Social Security taxes and Congress has not appropriated such funding to pay for the EIC on Guam. Instead, the EIC requires the government to use its own funds to pay the EIC. Labeling the EIC as a social welfare program disguised as a tax credit, the Governor asserts that nowhere in its legislative history is there an allusion that Congress expected the EIC apply to Guam. The Governor suggests that the absence of any mention of the EIC's applicability to Guam indicates that "Guam never crossed any one's mind." Governor's Opening Brief at 17.

[19] We disagree. Nothing in section 32 of the I.R.C., nor its legislative history indicates that Congress's failure to address Guam and the other mirror code jurisdictions, when enacting the EIC, was an oversight. In fact, while the Governor seizes on just one of the objectives in establishing the EIC, we note that not only did Congress intend to reduce the disincentive to work caused by the imposition of Social Security taxes on earned income, but it also sought to provide relief for low-income families hurt by rising food and energy prices and to stimulate the economy by funneling funds to persons likely to spend money immediately. *See Sorenson*, 475 U.S. at 864, 106 S. Ct. at 1608-09 (citing congressional committee reports, hearings and other legislative materials). The fact that Guam does not pay certain Social Security taxes should not prevent low-income families, who reside on Guam, from being paid the refundable EIC when there is no indication from Congress that, in designating the beneficiaries of this tax program, Guam low-income families were to be excluded.

[20] Moreover, there is ample evidence contradicting the Governor's argument, in light of the numerous opportunities that Congress has dealt with the EIC as it relates to Guam. Congress could have addressed

this issue when it passed the Omnibus Territories Act in 1986, or very recently, when it passed the Guam Omnibus Opportunities Act. Likewise, Congress could have provided for the non-applicability of EIC by modifying the I.R.C. directly, as it did when providing the governors of the possessions of the United States the power to alter ceilings for qualified mortgage bonds. *See* 48 GCA § 1421i(h) (adding authority under the I.R.C. in Section 204 of the Act of October 5, 1984, P.L. 98-454). We must assume that Congress knew what it was doing when it implemented the EIC without making it specifically inapplicable to Guam. The Governor's contention that Congress's failure to address the EIC's effects on Guam was mere inadvertence is pure speculation and is not grounded on sound solid evidence either in the language of section 32 itself or its legislative history.

[21] The instant case stands in contrast to *Flores v. Guam*, where the Ninth Circuit examined the legislative history of the 1958 amendments to the Organic Act and found in a Senate Report a statement that section 932 of the I.R.C. is to be excluded from the GTIT. *See* 444 F.2d 284, 287-88 (9th Cir. 1971). Accordingly, the Ninth Circuit held that "section [932] is simply not a part of the tax law of Guam." *See id.* at 288. The Governor offers no such specific evidence to buttress his claim. Absent any clear indication from Congress, we will not impute to its complete silence on the EIC's applicability to Guam an intent to exclude our lower-income taxpayers from receiving the benefits of this tax program.

[22] Nor do we agree with the Governor's second argument that section 32 is inorganic because it undermines the government's ability to attain self-sufficiency and to control expenditures in financing other government programs and services, pursuant to section 1423j of the Organic Act.[3] Admittedly, the mirror

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[3]Section 1423j provides:

> Appropriations by the Legislature Authorized. (a) Appropriations, except as otherwise provided in this chapter, and except such appropriations as shall be made from time to time by the congress of the

code was implemented with the immediate purpose of relieving the United States Treasury from making direct appropriations to Guam and of making Guam financially self-sufficient.[4] *See Laguana v. Ansell*, 102 F. Supp. 919, 920-21 (D. Guam 1952); *Chaco I,* 539 F.2d at 1227-28. But Congress established the means in which Guam was to achieve financial self-sufficiency by creating, in section 1421i, "a separate integral taxing structure for Guam 'mirroring' the provisions of the federal tax code, except for those provision which were incompatible with such a 'separate tax' structure."[5] *Sayre*, 395 F.2d at 410. In *Flores*, the Ninth Circuit found the following excerpt of legislative history to be the most authoritative source on congressional intent in enacting section 1421i(d)(1):

> The specific mention of chapter 2 and section 931 of the 1954 code and of corresponding provisions of the 1939 code from the income-tax laws in force in Guam is not intended to exclude other provisions of the 1954 or 1939 codes from the category of provisions which are manifestly inapplicable or incompatible with the intent of Congress in making the income-tax law of the United States applicable in Guam. Other provisions of the 1954 and 1939 codes which are manifestly inapplicable or incompatible with that intent (for instance, section 932 of the 1954 code and section 252 of the 1939 code) are also excluded even though not

United States, shall be made by the legislature.
(b) If at the termination of any fiscal year the legislature shall have failed to pass appropriation bills providing for payments of the necessary current expenses of the government and meeting its legal obligations for the ensuing fiscal year, then the several sums appropriated in the last appropriation bills for the objects and purposes therein specified, so far as the same may be applicable, shall be deemed to be re-appropriated, item by item.
(c) All appropriations made prior to August 1, 1950 shall be available to the government of Guam. Organic Act § 1423j.

[4] In fact, by not appropriating the needed funding to pay for the EIC, Congress remains consistent with its original intent not to make direct appropriations to Guam.

[5] In reviewing the legislative history of the 1958 amendments to the Organic Act, the Court noted that the Department of Interior's materials to the Congress make it clear "that the purpose of the amended statute was to give Guam a separate, integral tax system, which would duplicate the United States' tax system in all substantive particulars." *See* 395 F.2d at 412. Thus it found that Congress intended that Guam apply the I.R.C., subject to section 1421i(d)(1) "to persons and income within its territory just as the United States applies the [I.R.C.] . . . to persons and income within its territory." *See id.* at 412.

> specifically singled out for mention.

See 444 F.2d at 287. It follows that, unless an I.R.C. provision is "manifestly inapplicable or incompatible" with the GTIT, it applies to Guam taxpayers.[6] *See id*; 48 U.S.C. § 1421i(d). What is deemed "manifestly inapplicable or incompatible" must be strictly construed within congressional intent of making the income tax laws of the United States applicable in Guam.[7] *See* 539 F.2d at 1227. The District Court of Guam had occasion to apply this test in *Bank of America, Nat'l Trust and Sav. Ass'n v. Chaco* ("*Chaco II*"), where it held that the Foreign Investors Tax Act of 1964 ("FITA"), was inapplicable to corporations incorporated in the United States but doing business in Guam. *See* 423 F.Supp 409, 412 (D. Guam 1976). The District Court examined the legislative history of FITA and found that "the very purpose of the Act, i.e., to increase tax revenues, could be severely frustrated" if the tax were imposed on the corporate taxpayer. *Id*. at 413. It reasoned that Congress could not have intended to indirectly benefit Guam at the expense of the United States. *See id*.

[23] Unlike *Chaco II* and the FITA, there is no evidence in the record supporting the Governor's contention that the application of the EIC in Guam would "severely frustrate" congressional intent in applying the federal income-tax laws to Guam. In fact, we find it especially difficult to accept the

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[6]The Ninth Circuit's recent decision in *Gumataotao v. JSU, Dir. of Dep't of Revenue and Taxation*, 2001 WL 21012 (9th Cir. Jan. 10, 2001), reinforces our position. Citing, *Sayre*, 395 F.2d at 412 and the Third Circuit's decision in *Vitco*, 560 F.2d 180, 184-85 (3d Cir. 1977), the Court reiterated Congress's intent to provide uniform tax treatment for U.S. and Guam taxpayers. *See* 2001 WL 21012, at *5. Thus, it rejected the taxpayer's argument that Guam was not authorized to tax U.S. bonds. *See id.* "[A]llowing Guam to tax the interest from federal bonds would provide uniformity, whereas disallowing Guam from taxing them would create 'disparate tax treatment.'" *See id.* It should similarly follow in the instant case that allowing Guam to apply the EIC would provide uniformity, whereas disallowing the EIC would invariably create disparate tax treatment between Guam and U.S. taxpayers. Accordingly, unless Congress expressly indicates otherwise, the general rule that Guam and U.S. taxpayers are to be afforded uniform tax treatment applies to the refundable EIC.

[7]*Gumataotao* also notes that the Ninth Circuit has never held a provision of the I.R.C. "manifestly inapplicable or incompatible" with the intent of the Income Tax Section, while acknowledging that only one district court has done so, *see Bank of Guam v. Chaco*, 423 F.Supp. 409, 413 (D. Guam 1976). *Gumataotao*, 2001 WL 21012, at *5.

Governor's position when the government, from 1990 to 1994, paid the EIC and the Legislature has approved continuing appropriations from the general fund to pay for this refundable credit. According to Ninth Circuit, when determining which I.R.C. provision is "manifestly inapplicable or incompatible" we must strictly construe the provision within congressional intent to establish a tax system for Guam mirroring the I.R.C. *See* 539 F.2d at 1227. We hold therefore that, given the absence of any evidence demonstrating the EIC's manifest inapplicability or incompatibility to Congress's intent in creating the mirror tax structure of the GTIT, Guam taxpayers are entitled to the EIC as provided in 26 U.S.C. § 32.

[24] Following our conclusion that Guam taxpayers are entitled to EIC, we likewise hold that the Director is bound by section 1421i to pay the EIC to eligible Guam taxpayers. We agree with the Legislature that, unless Guam de-links from the I.R.C., in accordance with the Tax Reform Act of 1986, or unless an I.R.C. provision is deemed "manifestly incompatible or inapplicable" with congressional intent, Guam tax officials are limited by section 1421i to rule-making authority affecting GTIT collection and enforcement, but may not substantively modify any tax law set forth in the I.R.C. *See Koster*, 362 F.2d at 251; *see also* 539 F.2d at 1227-28 ("Government of Guam is powerless to vary the terms of the federal income tax laws as applied to Guam, except as permitted by Congress").

[25] The extent of Guam tax official's rule-making authority was initially examined in *Koster*. In 1952, Guam tax officials promulgated the following two regulations which deviated from the corresponding provisions in the I.R.C.: (1) defining gross income to exclude income not derived from Guam and that gross income under the I.R.C. includes income from whatever source derived, and (2) allowing only deductions which could be attributed to income derived from Guam. The government disallowed Koster's deductions for business losses in the U.S., and Koster brought suit claiming that the regulations were in violation of the

Organic Act's mirror code provisions. The Ninth Circuit agreed with Koster and opined that, although under section 1421i(d)(2), tax officials could promulgate rules and regulations, consistent with IRS regulations, but only for GTIT administration or collection of taxes. *Koster*, 362 F.2d at 250-51. The Court rejected the government's argument, premised on the explanatory note in the legislative history of the 1958 amendments to the Organic Act, that it was allowed to "adapt" the I.R.C., which was "designed for a huge and fully developed economy" to suit a "small and as yet underdeveloped island territory." *Id*. The Ninth Circuit reasoned that the excerpt from the legislative history must be construed as follows:

> The word 'adapt' must be read in conjunction with the closing words of the sentence in which it appears, viz., '* * * in accordance with the intent and under the terms of section 31.' Section 31, read as a whole, exhibits an intent to apply to Guam the substantive provisions of the income-tax laws of the United States (with specified exceptions), except where manifestly inapplicable or incompatible with the intent of that section. Any adaptation which cannot be so justified is not authorized.

Id.

[26] We read *Koster* and the subsequent Ninth Circuit decisions to mean that the enlisted substantive provisions of the I.R.C. in section 1421i are to be applied to Guam without deviation "except where manifestly inapplicable or incompatible" with the intent of section 1421i. Thus, tax officials may modify the mirror code only where such modification concerns tax administration or collection, or where an enlisted I.R.C. substantive provision is "manifestly inapplicable or incompatible" with the intent of section 1421i. Our reading of *Koster*, in particular, suggests that Guam tax officials are powerless to tailor the GTIT to suit the island's economic situation, thereby rendering indefensible the Governor's position that tax officials may adapt the I.R.C. to meet Guam's fiscal constraints.

[27] Like *Koster*, where tax officials sought to exclude extra-jurisdictional income and deductions from the meaning of gross income by omitting en entire section of the I.R.C., the Director's refusal, through

Revenue Ruling 96-001, to pay the refundable EIC to otherwise eligible taxpayers, does not involve the mere administration of the GTIT, but substantively modifies an I.R.C. provision. We therefore hold that Revenue Ruling 96-001 is invalid as a matter of law and tax officials may not continue to rely on it as authority in denying the refundable EIC to otherwise eligible low-income taxpayers. Accordingly, the Director, pursuant to section 32 of the I.R.C. which applies to Guam through section 1421i, is required to pay the EIC to eligible Guam taxpayers.

[28] Having concluded that the EIC applies in Guam and that the Director is obligated to pay the EIC to eligible taxpayers, we do not reach the Governor's alternative argument that, if in fact section 32 is inapplicable in Guam, then the Guam EIC, which incorporates section 32 of the I.R.C. as its operative provisions, is inorganic. We note nevertheless that the Legislature's attempts to implement the Guam EIC is consistent with Congress's intent in enacting section 1421i because the U.S. treasury does not make direct appropriations to fund the refundable EIC.

IV.

[29] We hold that the District Court of Guam does not have exclusive original jurisdiction over this case because it is not a taxpayer suit. This court has jurisdiction over the Legislature's request for a declaratory judgment pursuant to 7 GCA § 4104.

[30] We also hold that the substantive provisions of the I.R.C. enlisted in the Organic Act, including the EIC, must be applied in mirrored fashion to Guam. Revenue Ruling 96-001 which purportedly removed the EIC from the GTIT is inorganic as a matter of law because it seeks to modify the substance of the I.R.C. The Governor, to whom Congress has delegated the functions of collecting and enforcing the GTIT,

is likewise required to enforce and administer the EIC.

PETER C. SIGUENZA, JR.
Associate Justice

JOHN A. MANGLONA
Designated Justice

BENJAMIN J.F. CRUZ
Chief Justice