

**30 GAR - REVENUE AND TAXATION
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**CHAPTER 2
GENERAL TAX**

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NOTE: Rule-making authority cited for formulation of business tax regulations by Tax Commissioner, 11 GCA, § 26107-26120.

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The regulations for Tax on Amusement Devices, Admissions Tax, Tax on Recreation Facilities and Business Privilege Tax have been consolidated into one Subchapter A - Business Privilege Tax for the purpose of convenience.

The regulations for the Business Privilege Tax are reprinted here in form as exact as possible to those filed on December 10, 1975 with the Legislative Secretary. The substance of the regulations has not been changed. However, for the purpose of uniformity and ease of use, a new system of numbering has been adopted by the Editor. It is hoped that the revised numerical system will eventually be substituted for that formulated by the Tax Commissioner.

§ 2101. Exemption of Rental Income from Gross Receipts Tax.

(a) The purpose of this Section [regulation] is to implement § 26203(j). Gross Receipts Tax, 11 GCA Chapter 26, Government Code of Guam (Public Law 43 - Second Guam Legislature) which provides as follows:

“§ .1010. The first Twelve Hundred Dollars (\$1,200.00) received by any person as rental income from real property.”

(b) The exemption of One Thousand Two Hundred Dollars (\$1,200.00) provided by 11 GCA § 26203(j) applies to the first One Thousand Two Hundred Dollars (\$1,200.00) of rental income received by any person within each tax year.

(c) The first One Thousand Two Hundred Dollars (\$1,200.00) of rental income received in any tax year need not be reported in the monthly returns required to be filed by 11 GCA § 26110(a). When rental income received has reached the amount of One Thousand Two Hundred Dollars (\$1,200.00) on any tax year, any amount received in excess of One Thousand Two Hundred Dollars (\$1,200.00) shall thereafter be reported monthly in compliance with § 26110(a).

(d) Each person shall report all rental income received during the tax year in the annual return required by 11 GCA § 26110(b). The One Thousand Two Hundred Dollars (\$1,200.00) exemption allowed by § 26203 shall be applied to the total rental income for the tax year.

(e) The term person as used on 11 GCA § 26203(j) means person as defined on § 26101(k) and includes any individual, firm, co-partnership, joint venture, association, corporation, estate, trust or other group or combination acting as a unit. Where two (2) or more persons share rental income from the same real property other than as a firm, co-partnership, joint venture, association, corporation, estate, trust or other group or combination of persons

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acting as a unit, each such person shall be entitled to the exemption of One Thousand Two Hundred Dollars (\$1,200.00).

(f) The term rental income as used in 11 GCA § 26203(j) and this regulation applies only to rental income from real property.

(g) This Section [regulation] shall become effective January 1, 1956. It shall apply to all annual returns filed subsequent to January 1, 1956, and monthly returns filed for the month of January 1956 and subsequent months.

§ 2102. Landed Costs: Definition of the Term Landed Cost.

(a) The purpose of this regulation is to revoke Business Privilege Tax Regulation No. 3, approved September 13, 1956, and to correctly restate the section [regulation] with respect to the definition of the term “landed cost” within the meaning of 11 GCA § 26603(b), as amended, 11 GCA Chapter 26. The aforesaid § 26603(b) is set forth below:

“§ 26603. Rates. The following rates shall apply in computing assessing and collecting the Tobacco Tax:”

“(b) Cigars. A tax at the rate of forty percent (40) of the value of all cigars. The term value, as used in this Subsection, means the landed costs with respect to cigars imported into Guam, and wholesale market value with respect to cigars manufactured or produced in Guam.”

(b) The term landed cost as used in 11 GCA § 26603(b) means the invoice price of the cigars including shipping charges and port handling charges (excluding demurrage).

§ 2103. Prescribed Form for Monthly Tax Returns.

(a) The purpose of this Section [regulation] is to prescribe one form for the reporting of monthly Business Privilege Taxes.

(b) The use of the attached Form FCN 2-2-57 Rev. 9-59 for filing monthly returns of Business Privilege Taxes of all types authorized by 11 GCA Chapter 26 is hereby prescribed.

(c) Every individual, firm, co-partnership, joint venture, association, corporation, estate, trust or other group or combination acting as a unit, subject to the tax and not exempted therefrom under 11 GCA § § 26117 and 26203, or not required to

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file a monthly return by 11 GCA § 26201(f)(2), shall make a monthly return on Form FCN 2-2-57 Rev. 9-59 and file the same with the Commissioner of Revenue and Taxation before the expiration of twenty (20) days following the end of the month in which the taxes shall accrue. The remittance covering the full amount of tax liability evidenced therein shall accompany the return.

(d) The return of an individual shall be signed by the individual tax payer; the return of a co-partnership, joint venture association or any group or combination acting as a group by a responsible individual connected therewith and designated for this purpose; the return of a corporation by the president, vice-president or other authorized officer; the return of an estate, by the administrator or executor; the return of a trust, by the trustee; or in any instance by a duly authorized agent of the taxpayer under a power of attorney. Every return must be sworn to or affirmed by the person or persons signing it under the penalties provided by law that it is a true, complete and correct return to the best of his knowledge and belief.

(e) A return prepared by a person other than the person signing the return must be sworn to or affirmed by the preparer under the penalties provided by law as being a true, complete and correct return to the best of his knowledge and belief, and as based on all the information relating to the matters required to be reported in the return of which he has any knowledge.

(f) A return is not valid until it has been signed as provided in Subsections (d) and (e) hereof.

(g) Returns containing the first reporting of rental income from real property in any tax year for which rental exemption is allowable must show the total rental income received to date during the tax year. The first Twelve Hundred Dollars (\$1,200.00) received by any person as rental income from real property is exempt from gross receipts tax under 11 GCA § 26203. This exemption is for a twelve-month period, for the calendar or fiscal year in accordance with the taxpayer's annual accounting period.

(h) The return shall be completed so as to reflect all information called for in the return form.

(i) If a taxpayer who has regularly filed returns has received no income in a particular month, he shall file a statement to that

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effect with the Commissioner in lieu of a return for that month; no return being required in this instance.

§ 2104. Refund, Abatement or Drawback.

The purpose of this Section [regulation] is to prescribe a convenient form for use by taxpayers in filing claims for refund, abatement or drawback under the provisions of the Business Privilege Tax Law:

(a) "Form FCN 2-2-100, approved 2-19-60," is hereby prescribed for and shall be used by taxpayers in filing with the Tax Commissioner claims for refund or abatement of gross receipts tax believed to have been illegally, erroneously or excessively collected or assessed under Subchapter B, or for drawback of excise taxes paid under Subchapters C, D [E] or 11 GCA Chapter 26.

(b) All information required on the face of the form should be completely filled in by the taxpayer filing the claim, including the statement of the taxpayer's reasons for believing the claim should be allowed. Documentary evidence to support the claim should be attached to the form as required by the Tax Commissioner relating to the type of tax involved.

(c) The claim form, including the attachments must be verified by the signature of the taxpayer, or the duly authorized agent or officer of the taxpayer in accordance with the instructions printed on the form.

§ 2105. Incidence and Release of Liens.

The purpose of this Section [regulation] is to implement the provisions of 11 GCA § 26103, as amended by Public Law 5-114, approved August 8, 1960 and effective September 1, 1960, relative to the incidence of tax liens under the Business Privilege Tax Law, the filing of such liens of record, and the conditions under which, and manner in which, the Tax Commissioner may release a lien with respect to all or any part of property subject thereto:

(a)(1) Any tax levied, due and uncollected under 11 GCA Chapter 26 is a debt due the government of Guam, and under § 26104 is a lien upon any property, real or personal 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. The lien

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comes into existence simultaneously with the indebtedness but is not valid as against any purchaser, pledges or judgment creditor until assessment has been made and the Tax Commissioner has filed notice of the lien in the Department of Land Management.

(2) With regard to real property, the lien applies to both registered and unregistered property, and real property includes both the land and improvements on the land.

(3) Form FCN 2-2-106, approved 9-1-60, Notice of Guam Tax Lien Under Business Privilege Tax Law, is hereby prescribed for the purposes of Subsection (a) [Section 1] of this Section [regulation], and shall be filed for record in the Department of Land Management. This shall constitute the filing of the lien in accordance with 11 GCA '26103(a), but additional copies thereof may also be filed, when deemed advisable by the Tax Commissioner, with the District Court of Guam, Superior Court of Guam [Island Court of Guam] and Department of Revenue and Taxation [Department of Finance] in accordance with the practice heretofore.

(b)(1) Release of Lien - Under § 26103(c), the Tax Commissioner may issue a certificate of release of a Guam Business Privilege Tax Lien, notice of which has been filed if:

(A) The Tax Commissioner finds the liability accrued by the lien has been fully satisfied or has become unenforceable; or

(B) There is furnished to the Tax Commissioner a bond conditioned upon the payment of the liability secured by the lien within the time prescribed by the Tax Commissioner in a payment agreement with the taxpayer, and which is in accordance with the requirements of such payment agreement relative to terms, conditions and form of bond and sureties as are satisfactory to the Tax Commissioner.

(2) Form FCN 2-2-107, approved 9-1-60, Certificate of Release of Guam Business Privilege Tax Lien, is hereby prescribed for the purpose of Subsection (b) [Section 2] of this Section [regulation].

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(c)(1) Partial Discharge of Property From Lien - The Tax Commissioner is also authorized by § § 26103(d) and 26103(e) to issue a certificate of partial discharge from Guam Business Privilege Tax Lien respecting any part of the property subject to the lien, which has been filed, if:

(A) The Tax Commissioner finds that the fair market value of such property remaining subject to the lien is at least double the amount of the unsatisfied liability secured by the lien and the amount of all other liens upon such property which have priority to such lien; or

(B) 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

(C) 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.

(2) In determining the value of the interest of the government of Guam in the part to be so discharged 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.

(3) Form FCN 2-2-108, approved 9-1-60, Certificate of Partial Discharge from Guam Business Privilege Tax Lien, is hereby prescribed for the purposes of Subsection (c) [Section 3] of this Section [regulation]

2021 NOTE: Subsection designations altered pursuant to authority granted by 1 GCA § 1606.

§ 2106. Hearings, Appeals and Review Claims and Suits for Refund.

The purpose of this Section [regulation] is to set forth and explain the rights, legal remedies and procedures available to taxpayers seeking relief for taxes levied, assessed, collected or paid under the Business Privilege Tax Law, 11 GCA Chapter 26, in accordance with the provisions of Public Laws 5-116 and 5-132, both effective September 1, 1960:

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(a)(1) Any taxpayer or person required under the Business Privilege Tax Law to remit tax, against whom assessment has been made and who feels aggrieved thereby, may, within thirty (30) days of notice of such assessment, make written request to the Tax Commissioner for an informal hearing. The request must be in writing, addressed to the Tax Commissioner, and will be replied to, also in writing, by the Tax Commissioner notifying the taxpayer of the time and place at which the hearing will be held.

(2) At the hearing the taxpayer has the right to introduce, and should present, all the relevant data he has to offer on which he relies to sustain his position that the assessment made against him is erroneous. If his data consists of book entries, records or documents which are in his possession or under his control, they should be submitted in order that complete evidence may be before the Tax Commissioner for his decision. The hearing is conducted informally and it is not necessary for the taxpayer to have his attorney with him unless he so desires. If the taxpayer desires his attorney to represent him in the matter, he must provide him with a power of attorney authorizing him to do so. This is not required if the attorney is present with the taxpayer. However, subsequent representation by the attorney before the Tax Office will require the filing of the power of attorney.

(3) Within thirty (30) days from the completion of the informal hearing the Tax Commissioner is required to give his decision in writing to the taxpayer. If he decides that the tax was not assessed in accordance with the laws, rules and regulations relating to it, the Tax Commissioner is required in his decision, to make such adjustments as are necessary to correct the assessment, and then to:

(A) give written authority to the Deputy Director of Revenue and Taxation [Finance] to make any necessary refund if the tax has been overpaid; or

(B) assess the tax as determined to be correct; or

(C) abate the assessment if unpaid, whichever is necessary.

(4) It should be noted that the informal hearing reopens the entire question of the disputed tax liability, and that the decision of the Tax Commissioner may reassert it as

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previously assessed, or may increase, decrease or eliminate it completely.

(b) Under the provisions of law heretofore in effect, but now repealed by Public Law 5-132, effective September 1, 1960, the taxpayer was entitled to appeal from the Tax Commissioner's decision to the Tax Appeal Board. This can no longer be done. However, as to an appeal which was pending before the Tax Appeal Board at the effective date, the taxpayer has the option of continuing such appeal before the Tax Appeal Board according to the procedures theretofore provided, or, within thirty (30) days after the effective date of withdrawing such appeal and instituting an action in the District Court of Guam or Superior Court of Guam* [Island Court of Guam] pursuant to § 26107 as enacted by Public Law 5-132. There is this further provision that in all such appeals pending before the Tax Appeal Board on the effective date of Public Law 5-132 in which the taxpayer exercises his option to continue an appeal before the Board, both the taxpayer and the Tax Commissioner shall, within thirty (30) days of the Board's ruling, have the right to file an action for review in accordance with § 19506.01, as enacted.

(c) Public Law 5-132 repeals old § § 19506 through 19511 of the Government Code, abolishes the Tax Appeal Board except for the purposes stated above in Subsection (b) [Section 2] hereof, and enacts new § § 19506 and 19507 providing for court review assessments in the following manner:

(1) 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 District Court of Guam or the Superior Court of Guam [Island Court of Guam], such courts having concurrent jurisdiction of all causes of action arising under 11 GCA § 26107. 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

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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.

NOTE: Pursuant to Public Law 12-85, jurisdiction of the Island Court of Guam was transferred to the Superior Court.

(2) 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 11 GCA § 26102(b)(12), relating to refunds, where appropriate.

(3) 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.

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

(d) In the new 11 GCA 26107.1 contained in Public Law 5-132, it is provided that pending an informal hearing pursuant to 11 GCA § 26105, as described in Subsection (a) hereof, or pending a review pursuant to 11 GCA § 26107, as described in Subsection (c) hereof, 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, together with penalties and interest, as to which the stay is desired. If the taxpayer desires to avail himself of such stay of collection, he should advise the Tax Commissioner accordingly in order that an acceptable bond or other security may be agreed upon. Failure by the taxpayer to present his request for stay of collection or make the necessary arrangements for furnishing bond or other security will result in the pursuit of collection by the Tax Commissioner.

(e) The informal hearing before the Tax Commissioner provided for in Subsection (a) hereof is not a required preliminary to the institution of court action. The informal hearing may be

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waived by the taxpayer within thirty (30) days of notice of the assessment. Such waiver shall be by written notice to the Tax Commissioner and shall state that the informal hearing is waived. Within thirty (30) days from the date of such notice of waiver, the taxpayer may bring an action for review of the assessment in accordance with 11 GCA § 26107.

(f)(1) A claim for credit or refund of an overpayment of any tax imposed under the Business Privilege Tax Law in respect of which tax the taxpayer is required to file a return, may be filed on Form FCN 2 2 100 within the limitations prescribed in Public Law 5-116, which are, 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. Any claim for credit or refund of a tax imposed under the Business Privilege Tax Law which accrued prior to the effective date of Public Law 5-116 September 1, 1960), must 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; or within three (3) months after the effective date of Public Law 5-116, whichever of such periods expires the later; provided further that no claim shall be filed for credit or refund of a tax imposed under the Business Privilege Tax Law which was paid more than four (4) years prior to such effective date.

(2) Any claim for drawback authorized under the Business Privilege Tax Law 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.

(3) Title 11 Guam Code Annotated § 26108 added by Public Law 5-116 provides for suits for refund as follows:

(A) A taxpayer may file an action in the District Court of Guam, irrespective of the amount involved, for the refund of any tax imposed by the Business Privilege Tax Law, alleged to have been erroneously or illegally assessed and collected, or of any penalty claimed to

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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.

(B) No such action shall begin before the date expiration of three (3) months from the date of filing a claim for refund with the Tax Commissioner unless the Tax Commissioner renders a decision thereon within that time, nor after the expiration of one (1) year from the date of disallowance by the Tax Commissioner of the claim, or part thereof to which the suit relates.

(C) Such suit shall be tried by the Court without a jury, and the taxpayer as plaintiff shall have the burden of proof.

(D) When the judgment of the Court has become final, or any appeal therefrom, the Tax Commissioner shall, upon presentation of a certified copy of the judgment of the Court, take action in accordance with 11 GCA § 26102(b)(12), where appropriate.

(E) The above provisions relating to suit for refund apply also to any claim for drawback authorized by the Business Privilege Tax Law, except that all drawbacks are limited in amount to the tax excluding any penalty or interest paid or collected.

(g) Each and every remedy or other provisions contained in this Section [regulation], as well as all others contained in 11 GCA Chapter 26, are expressly restricted in their application to grievances or causes of action arising under 11 GCA Chapter 26 only, which applies to the period July, 1953, to date. 11 GCA § 26108 specifically states that such remedies and provisions are not intended to be retroactive in effect or to apply to taxes levied, assessed, collected or paid under other or prior laws of the government of Guam.

(h)(1) No attorney or agent shall appear on behalf of any person before the tax office or be recognized in any matter connected with the presentation of such person's interest, including the preparation and filing of necessary written documents and correspondence relative to such interest, unless such attorney or agent presents and files with the Tax Commissioner a power of attorney, or certified copy thereof, from

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the taxpayer authorizing the attorney or agent to represent him in the matter in question. Only one power of attorney to represent the taxpayer shall be in effect in any one case, and there shall be included in such power of attorney the names and addresses of all attorneys or agents to whom the taxpayer has delegated authority to represent him in the case.

(2) The power of attorney shall be filed in duplicate in the office of the Tax Commissioner.

(3) The use of technical language in the preparation of a power of attorney is not necessary, but the instrument should clearly express the taxpayer's intention as to the powers granted to the attorney or agent, and the tax matters and the specific taxable years or taxable periods to which the power relates. A general power of attorney including future taxable years or taxable periods as to which returns are not yet due will not be accepted. If it is desired that a copy of any correspondence addressed to the taxpayer should be sent to the attorney or agent in connection with any matter in respect of which he is authorized to act under the terms of the power of attorney, the power of attorney should contain a request to that effect and designate the mailing address of such attorney or agent. A power of attorney enumerating specific acts which the attorney or agent is authorized to perform, and no other, will be considered to be limited to those acts. Express authority for the attorney or agent to delegate his authority or substitute another agent or attorney, must be granted in the power of attorney or such act will be considered beyond the scope of the authority of the attorney or agent.

(4) A power of attorney shall be signed as follows:

(A) In the case of individual taxpayer, by such individual.

(B) In the case of a partnership, either by all members, or in the name of the partners duly authorized to act.

(C) In the case of a corporation, by an officer of the corporation having authority to bind the corporation and attested by the secretary of the corporation under corporate seal. If the officer who signs the power of attorney is also secretary, another officer of the corporation, preferably the president, vice-president or

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treasurer, must also sign the authorization so that two (2) different individuals' signatures will appear thereon. If the corporation has no seal, a certified copy of a resolution duly passed by the Board of Directors of the corporation authorizing the execution of the power of attorney should be attached.

(D) The power of attorney must be acknowledged before a notary public.

In any case which a power of attorney has been filed and thereafter the taxpayer decides to authorize another or an additional attorney or agent to represent him with respect to the same matter, a new power of attorney must be filed which shall include the names of all attorneys or agents authorized to act for the taxpayer and shall contain a clause specifically revoking any and all powers of attorney previously filed with respect to the same matter. If the taxpayer decides to revoke the authority granted to an attorney or agent in a power of attorney previously filed and to authorize a new attorney or agent to act with respect to the same matter, the revocation of the power of attorney of the former attorney or agent shall in no case be effective so far as the Tax Commissioner is concerned prior to the giving of written notice to the Tax Commissioner that the authority of such attorney or agent has been revoked and that the former attorney or agent has been notified in writing by the taxpayer of such revocation.

2021 NOTE: Subsection designations altered pursuant to authority granted by 1 GCA § 1606. **§ 2107. Gross Income and Gross Proceeds of Sale.**

(a) The purpose of this Section [regulation] is to interpret the terms gross income or gross proceeds of sale referred to in 11 GCA § 26101(g), insofar as it relates to certain transactions connected with the sale of tangible personal property.

11 GCA § 26101(g) reads as follows:

“(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.

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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.”

(b) The term gross income or gross proceeds of sale when applied to the sale of tangible personal property, is construed to mean the total sale price of the property whether received in money or otherwise, and without deduction for salesman’s commission or expense of any kind whatsoever. If the sale is made under a conditional sale contract, the total sale price will be construed to exclude finance charges for insurance, registration and other fees, interest, etc., if such charges are shown separately and to the extent that the seller does not have a claim of right thereto or does not retain such charges in whole or in part for his own use and/or benefit.

If the conditional sale contract is sold, interest charges retained by the purchaser, for his benefit, are no includible in gross proceeds of sale to the seller. Amounts withheld by the purchaser of the contract for so-called dealer’s reserve, and amounts retained by the seller of the contract from the insurance and other charges for his own use and/or benefit are includible in the seller’s gross income.

§ 2108. Exemption from Gross Receipts Tax.

(a) The purpose of this regulation is to implement the provisions of 11 GCA § 26117 insofar as they apply to exemptions from Gross Receipts Tax under 11 GCA § 26203.

(b) Title 11 Guam Code Annotated § 26117 states that if any person (as defined in 11 GCA § 26101(k) desires to claim exemption from any tax levied under 11 GCA Chapter 26, he may be required to furnish the Tax Commissioner a statement under oath setting forth the information required by law and regulations.

With respect to the Gross Receipts Tax levied under 11 GCA Chapter 6 Article 2, it is hereby prescribed that any person included in any of the categories enumerated in 11 GCA § 26203(a) through (h) inclusive who desires to claim exemption shall file with Tax Commissioner an application in triplicate on Form FCN 2-2-110 (Revised 9-61) and furnish the complete

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information called for therein including any of the particular category indicated by check mark on the reverse side of the form.

Applications for exemption under 11 GCA § 26203(a) are not required with respect to the United States or Guam government and their instrumentalities as such: in the event there is a question as to whether the particular activity constitutes an instrumentality of government the application shall be filed and the Tax Commissioner's determination thereby obtained.

In any particular insurance the Tax Commissioner may require the applicant to submit specific information, in addition to the above, if deemed necessary to a proper determination of whether the particular applicant or organization is exempt, and may prescribe the form in which the proof to the right to exemption shall be furnished.

(c) In the event of the approval of the exemption application, two (2) copies of the approved application bearing the exemption certificate signed by the Tax Commissioner shall be returned to the applicant, one copy of which the applicant shall attach to his annual information return required by 11 GCA § 26110(c,) on Form FCN 2-2-111, approved 10-3-60, hereby prescribed for persons engaged in any business, or activity of a business nature, which has been declared exempt. Such annual information return shall be filed not later than ninety (90) days following the close of such person's tax year.

(d) The exemptions granted to persons qualifying under 11 GCA § 26203(b), (c) (d) and (e) are limited by § 26203 (i) to the gross income of such person received:

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

(2) from a lottery authorized under Chapter 64 (commencing with Section 64.10) [Section 324] of the Criminal and Correctional Code [the Penal Code]; 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; and shall be allowed only upon application to the Tax Commissioner in accordance with 11 GCA § 26117.

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The regular activities of an exempt organization (item (1), above) must be determined from the purpose and/or objectives which qualified the organization for its general exemption under the section also enumerated above. Fund raising events will not be deemed regular activities solely because fund raising activities are authorized in the chapter or by-laws of the organization.

With respect to any specific event, or continuing series of like events such as described in (2) or (3) above, for which exemption is sought, application on Form FCN 2-2-139, approved 10-6-61, shall be filed with the Tax Commissioner at least twenty (20) days prior to the initial particular event for which exemption is claimed.

NOTE: Subsection (d) [Section 4] of this Section [Reg. 13] has been amended pursuant to Public Law 13-187 (135).

§ 2109. Inspection of Returns and Disclosure of Information.

(a) The purpose of this Section [regulation] is to prescribe rules pertaining to the inspection of Business Privilege Tax returns and disclosure of other information filed or furnished by taxpayers relative thereto, and to prohibit disclosure thereof in any manner not provided by law.

(b) Title 11 Guam Code Annotated § 26119 authorizes the Tax Commissioner to 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.

Title 11 Guam Code Annotated § 26119(a), to effectuate the exchange of such information in connection with any matter relative to taxes, provides further that the Governor of Guam may, if deemed necessary or desirable, enter into reciprocal pacts and agreements, 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.

Title 11 Guam code Annotated § 26119(b) limits the furnishing of information pursuant to § 26119 to cases in which it is to be used solely for the administration of the tax laws of the requesting state, Federal government or other territory or

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possession of the United States, and only if such requesting taxing jurisdiction by law prohibits the unauthorized divulgence of such information and imposes penalties for the violation of such prohibition. Criminal penalties are provided in § 26110(c) for divulging such information 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 is a party.

(c) By Public Law 6-29, approved August 5, 1961, a new 11 GCA § 26120 was added to Article 1 providing that 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 be 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, is a party, and in which the government of Guam has an interest in the result, and 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 any such committee in executive session only.

(d) Applications to inspect Business Privilege Tax return or receive information relative thereto, as provided in 11 GCA § § 26119 261209532 and this Section [regulation], shall be made in writing for attention of the Commissioner of Revenue and Taxation, Agana, Guam, and shall set forth:

- (1) the name and address of the taxpayer;
- (2) the kind of tax and taxable period involved;
- (3) the section of the Government Code under which the application is made; and
- (4) a statement showing that the applicant is a person entitled under this regulation to make the request.

(e) Applications to inspect Business Privilege Tax returns or receive information relative thereto in accordance with and for the purposes specified in this Section [regulation] should be made by the governor of any state, territory or other possession of the United States; by the head of any executive department or independent establishment of the government of Guam; or by the chairman of any committee of the Guam Legislature, duly created and authorized by the Legislature. Such applications should be

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addressed to the Governor of Guam, except that with respect to departments or independent establishments of government of Guam, the application should be addressed to the Director of Revenue and Taxation [Director of Finance]. The Attorney General of Guam and attorneys in his office may inspect returns without written application. Officers and employees of the Department of Revenue and Taxation [Finance] whose duties necessitate inspection of returns may do so without written application.

§ 2110. Tax on Soft Drinks.

(a) The purpose of this regulation is to conform previously existing regulations to the tax on soft drinks with the provisions of Public Law 6-45, approved August 23, 1961, effective August 24, 1961.

(b) Subchapter E of Chapter 6, relating to the tax on soft drinks, having been repealed by Public Law 6-45, Business Privilege Tax Regulation No. 5, approved May 20, 1959, is hereby superseded in its entirety, as of the effective date and Business Privilege Tax Regulation No. 8 is hereby amended by striking out in Section 1, the reference to Subchapter E as of the effective date except with respect to claims relating to excise taxes paid under Subchapter E prior to August 24, 1961.

(c) Effective August 24, 1961, vendors of soft drinks and syrups shall report their gross receipts from such sales subject to the four percent (4%) Gross Receipts Tax levied under Subchapter B, and shall pay the tax and file their monthly returns on Form 2-2-57, revised 9-59, disregarding the Schedule E included in the said return form and reporting their gross receipts on the applicable line under Schedule B thereof.

§ 2111. Beverage Tax.

(a) The purpose of this regulation is to prescribe rules and regulations to affect the purposes of Public Law 6-94, approved March 21, 1962 and effective April 1, 1962 with reference to the tax on alcoholic beverages. The law repeals Subchapter C as heretofore in effect, enacts a new Article 3 to 11 GCA Chapter 26 imposing an excise tax on the sale of alcoholic beverages in Guam, and increases the rates of tax.

The sections of Public Law 6-94 relating to taxes on liquid fuels, tobacco and tobacco products are the subject of separate

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regulations, and the provisions contained herein do not apply to liquid fuels, tobacco and tobacco products.

(b) In accordance with 11 GCA § 26302, an excise tax is imposed upon all alcoholic beverages sold in Guam by manufacturers, manufacturer's agents, rectifiers, 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:

(1) Malted Fermented Beverage. A tax in the amount of Two Cents (\$0.02) 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.

(2) Distilled Beverages. A tax in the amount of Nine Dollars (\$9.00) per wine gallon on all distilled 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 to units of measure less than one (1) gallon; provided further that any fraction of One Cent (\$0.01) shall be taken as a whole cent.

(3) Vinous Beverages. A tax at the rate of Two Dollars and Twenty-Five Cents (\$2.25) 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.

The above taxes are effective beginning April 1, 1962 and by Section 4 of the law are applicable also with respect to any alcoholic beverages in Guam on the effective date which are in the possession, or subject to the control of the manufacturer, producer, wholesaler or importer, notwithstanding that the tax at the former rate may have been paid; and any tax so paid shall be credited on the new rate.

(c) Every person subject to the tax is required to prepare a written physical inventory, signed and verified under the penalty of perjury, of all alcoholic beverages in Guam owned, possessed or subject to the control of such person as of April 1, 1962, and annually thereafter as of July 1, in each year, and to file the same with the Tax Commissioner, on or before April 20, 1962 as to the

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first inventory and annually thereafter on or before July 20 in each year. The inventory as of April 1, 1962 shall be broken down to show separately the alcoholic beverages on which no tax has been paid and those on which tax has previously been paid at the former rates. This is for the purpose of determining the credit to be allowed against payment of the tax at the new rates as provided in Section 4 of Public Law 6-94.

(d) Beginning with the month of April 1962, and each month thereafter, every person subject to payment of the tax shall file, on or before the twentieth (20th) day of the following month, a monthly return on Form FCN 2-2-57 (1) Revised 5/62, supported by Schedule 2 - Inventory Reconciliation and Tax Computation, (Form FCN 2-2-57 (2), Revised 5/62). The forms are available at the Tax Office and their use for this purpose is hereby prescribed.

Form FCN 2-2-57 (1), Revised 5/62, is the standard form of monthly return which is used for reporting all Chapter 6 Business Privilege Taxes. Schedule 2, pages 2 and 3, summarizes the inventory changes in unit quantities of alcoholic beverages sold or otherwise disposed of during the month. Column 4 on page 3 is the net total of the units to be accounted for; Column 5 is for the allowances and exemptions permitted by § § 26303 and 26304, which must be explained on page 4. Column 6 is the number of units sold during the month which are taxable at the rates in Column 7, resulting in the amount of tax shown in the amount of tax shown in Column 8.

The total of any tax previously paid at the former rates shall be deducted from the total of Column 8 to arrive at the total tax due, which should then be entered on the face of the return in the column headed "Total Tax." Any excess of the excise tax previously paid over the total of Column 8 shall be deducted on Schedule 2 for the following month or months until used up, and cannot be taken on the face of the return to reduce other taxes.

The following will be considered acceptable to the Tax Commissioner as the proof required by 11 GCA § 26303(a) to (f) and shall be attached to the monthly return whenever such proof is needed:

- (1) Schedule 2, summarizing the changes in inventory referred to in the preceding paragraph.

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(2) Copy of the invoice of sale to another licensed alcoholic beverage manufacturer, rectifier, importer or wholesaler. (Block A, page 4)

(3) Two (2) copies of the carrier's Bill of Lading showing the description and quantity of the alcoholic beverages Laden for export, or the original and one copy of the Export Certificate properly completed in accordance with the instructions contained in the certificate form. (Block B, page 4)

(4) The written sworn statement of the taxpayer setting forth the facts under penalty of perjury as to the unintentional destruction. (Block C, page 4)

(5) The written sworn statement of the taxpayer setting forth the facts under the penalty of perjury with respect to the amount and circumstances of the unaccounted for loss. The tolerance permitted shall not exceed one-tenth (1/10th) of one percent (1%) of taxable sales of same type of beverage (distilled, vinous or malted fermented) for the month in which claimed. (Block D, page 4)

(6) Copy of the invoice of sale to the purchaser entitled to exemption. (Block E, page 4).

(e) As the tax is imposed on the sale of alcoholic beverages in Guam, the definition of sale is important. Section 19561 states that it shall be presumed that all alcoholic beverages acquired by any taxpayer have been sold in Guam by him unless contrary proof to the satisfaction of the Tax Commissioner is furnished in reports on forms prescribed by the Tax Commissioner. The proofs referred to may be supplied in the manner indicated above.

Title 11 Guam Code Annotated § 26301(f) defines sale to include any transaction whereby for any consideration, title to alcoholic beverages is transferred from one person to another, and includes the delivery of alcoholic beverages pursuant to an order placed for the purchase of such beverages, but does not include the return of alcoholic beverages by a licensee to another licensee from whom such beverages were purchased.

Thus, delivery pursuant to an order for purchase, and the soliciting or receiving of such order for purchase are considered to be sales within the meaning of the act and are taxable, subject to provisions of § 26303.

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Title 11 Guam Code Annotated § 26301 has broadened the definition of wholesaler to mean any consignee of alcoholic beverages brought into Guam 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; person selling alcoholic beverages to non-licensees within an area over which the United States government exercises jurisdiction, when delivery of the alcoholic beverages is made to the nonlicensee by a common carrier transporting alcoholic beverages from a point outside Guam; and any person bringing alcoholic beverages into Guam from without Guam which are not consigned to any person and which are for delivery or use within Guam.

All persons coming under the above definitions are therefore considered to be subject to payment of tax.

§ 2112. Liquid Fuel Tax.

(a) The purpose of this Section [regulation] is to prescribe rules and regulations to effect the purposes of Public Law 6-94, approved March 21, 1962 and effective April 1, 1962 with reference to the tax on liquid fuels. The law amends 11 GCA § 26403 but the provisions of Article 4 revision in effect as heretofore.

(b) In accordance with § 26403 of Article 4 as now amended the following rates shall apply in computing, assessing and collecting the liquid fuel tax:

A tax at the rate of Five Cents (\$0.05) per gallon on diesel fuel;

A tax at the rate of Six Cents (\$0.06) per gallon on all other liquid fuel as defined in the law.

The above tax rates are effective beginning April 1, 1962 and by Section 4 of the law are made applicable also with respect to any liquid fuels on which tax may have been paid at the former rates, but any tax so paid shall be credited on the new rate.

(c) Beginning with the month of April 1962, and each month thereafter, every person subject to payment of the tax shall file, on or before the twentieth (20th) day of the following month, a monthly return on Form FCN 2-2-57 (1) Revised 5/62, supported by Schedule 3 - Liquid Fuel Tax (Form FCN 2-2-57 (3) Revised

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5/62). The forms are available at the Tax Office and their use for this purpose is hereby prescribed.

Form FCN 2-2-57 (1) Revised 5/62 is the standard form of the monthly return which is used for reporting all Chapter 6 Business Privilege Taxes.

Schedule 3 reflects the quantity sold, shown in Column C by comparison of the meter readings for the beginning and end of the month. Column D of Schedule 3 is for listing allowances or exemptions which are to be further explained and documented at the bottom of the form. Column E is the quantity taxable in gallons which multiplied by the rate of tax results in Column F, the amount of tax. If any tax thereon has previously been paid at the former rates, the total of such prepaid tax shall be deducted from the total of Column F to arrive at the total tax due which should then be entered on the face of the return in the column headed "Total Tax." Any excess of the tax previously paid over the total shown in Column F of Schedule 3 shall be carried forward and deducted on Schedule 3 for the following month or months until used up, and cannot be taken on the face of the return to reduce other taxes.

§ 2113. Tobacco Taxes.

(a) The purpose of this Section [regulation] is to prescribe rules and regulations to effect the purposes of Public Law 6-94, approved March 21, 1962, and effective April 1, 1962 with reference to the tax on tobacco and tobacco products.

(b) The law amends 11 GCA § 26603 of Article 6 to make the following rates applicable in computing, assessing and collecting the tobacco tax.

Cigarettes: Tax at the rate of Thirty Cents (\$0.30) per one hundred (100) cigarettes to be prorated in accordance with the number of cigarettes contained in the individual package taxed.

Cigars: Tax at the rate of thirty percent (30%) of the value of all cigars. The term "value" means the landed cost with respect to cigars imported into Guam, and the wholesale market value with respect to cigars manufactured or produced in Guam.

Other tobacco products: Tax at the rate of Thirty Cents (\$0.30) per pound for all other tobacco products, to be prorated in accordance with the size of the package to be taxed.

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The above taxes are effective beginning April 1, 1962 and by Section 4 of Public Law 6-94 are made applicable also with respect to any tobacco or tobacco products in Guam on the effective date notwithstanding that the tax at the former rate may have paid; and any tax so paid shall be credited on the new rates.

(c) Every person subject to the tax is required to prepare a written physical inventory, signed and verified under the penalty of perjury of all tobacco and tobacco products in Guam owned, possessed or subject to the control of such person as of April 1, 1962 and shall file such physical inventory with the Tax Commissioner on or before April 20, 1962. The inventory shall be broken down to show separately the tobacco and tobacco products on which no tax has been paid and those on which tax has previously been paid at the former rates. This is for the purpose of determining the credit to be allowed against payment of the tax at the new rates as provided in Section 4 of Public Law 6-94.

(d) Beginning with the month of April 1962 and each month thereafter every person subject to the payment of the tax shall file, on or before the twentieth (20th) day of the following month, a monthly return on Form FCN 2-2-57 (1) Revised 5/62, supported by Schedule 4 - Tobacco Tax (Form FCN 2-2-57 (4) Revised 5/62). The forms are available at the Tax Office and their use for this purpose is hereby prescribed.

Form FCN 2-2-57 (1) Revised 5/62 is the standard form of monthly return which is used for reporting all Chapter 6 Business Privilege Taxes.

Schedule 4 summarizes the units received less any allowances to arrive at the taxable quantity or value shown in Column D of Schedule 4. These multiplied by the rates of tax result in the amount of tax shown in Column F. Any allowances claimed in Column C must be explained on the lower portion of the form and the proper documentation attached as heretofore required.

The total of any tax previously paid at the former rates shall be deducted from the total of Column F of Schedule 4 to arrive at the net amount of tax, which should then be entered on the face of the return in the column headed "Total Tax." Any excess of tax previously paid over the total shown in Column F of Schedule 4 shall be carried forward and deducted in Schedule 4 for the

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following month, months until used up, and cannot be taken on the face of the return to reduce other taxes.

§ 2114. Interim Joint Regulations for Annual Excise and Admissions Taxes and Associated Gross Receipt Taxes.

The purpose of § § 2115 through 2118 of this regulation is to prescribe, on an interim basis, regulations and procedures to assist in the administration of the provisions of Public Law 6-44, approved August 23, 1961, effective October 1, 1961, (repealing Subsection 19541.02 of Chapter 6, and enacting new Chapter 3, Title XX, Government Code of Guam, entitled Annual Excise and Admission Taxes), as well as gross receipts taxes under the Business Privilege Tax Law applicable to the business activities concerned. Business Privilege Tax Regulation No. 4, approved January 14, 1957, and No. 4, (Revised), approved February 9, 1960, are hereby superseded, effective October 1, 1961.

2021 NOTE: Subsection designation removed pursuant to authority granted by 1 GCA § 1606.

§ 2115. Same: Tax on Amusement Devices.

(a) Subchapter A of Chapter 3 relates to amusement devices, and beginning on the effective date, October 1, 1961, and annually thereafter on July 1 of each year, imposes excise taxes at specified rates on coin-activated amusement devices operating or operated to produce revenue in Guam, or thereafter manufactured or constructed in, imported into Guam, maintained or permitted in Guam and operated to produce revenue in Guam. The devices subject to the tax are defined in §§ 19200 and 19200.1. The term coin-activated amusement device does not include any machine used primarily for the sale of merchandise, as determined by the Tax Commissioner.

(b) Every amusement device is required to be registered with the Commissioner of License and Registration as delegate for the Tax Commissioner, and be assigned a permanent registration number. This is for identification only and is required whether or not the amusement device is, at the date of registration, being operated to produce revenue. Each owner or lessee of such amusement devices is required to prepare a written inventory signed and verified by the owner or lessee under the penalty of perjury, as of October 1, 1961, and annually thereafter as of July 1 in each year, of all such amusement devices owned or possessed by him as of such dates, and file the inventory with the

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Commissioner of License and Registration as delegate for the Tax Commissioner within twenty (20) days following such date or dates. This inventory is for the purpose of enabling the delegate to ascertain whether or not such amusement devices have been registered as required by law. Registration will be without charge and will be made upon submission by the owner or lessee of an application for registration on Form BPT-6. The registration will be evidence by a serially numbered metal tag permanently and visibly affixed to the amusement device. The application on Form BPT-6 for each amusement device to be registered shall be submitted in quintuplicate, one copy of which bearing the registration number assigned shall be returned to the owner for his record, and the original and other copies shall be retained in the License and Registration Division for reference purposes and to constitute a register of the applications received and registration numbers assigned. All amusement devices owned or possessed as of October 1, 1961, shall be registered on or before October 20, 1961; all those subsequently manufactured or constructed in, or imported into Guam shall be registered on or before twenty (20) days following the date of such manufacture, construction or importation. It is provided in § 19200.2 that it is a misdemeanor for any person to own, lease, operate or be in possession of any such amusement device, or for any person owning, leasing or occupying any premises, to have or permit thereon any such amusement device which is not registered.

(c) Commencing as of October 1, 1961, and as of the first of each month thereafter, the taxpayer shall file with the Tax Commissioner a return, signed and verified by him under the penalty of perjury, listing the description, location and registration numbers of all amusement devices which were in a revenue-producing status as of the first of such month, the locations and registration numbers of those placed in or withdrawn from revenue-producing status during the month, and the amount of excise tax due that month, if any. Such returns shall be filed on or before the twentieth (20th) day of the month following the month to which the return relates, shall be accompanied by payment in full of the excise tax due, if any, and shall be made on "Monthly Excise Tax Return - Amusement Devices and Recreation Facilities." If no changes in status have occurred during the month, Blocks A, B and C of the return may show only "No Change" and no tax due. However, Blocks A, B and C must be completed in the

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return if changes in status have occurred during the month, and in all cases in the return for the month of July each year.

Payment of the excise tax on each registered amusement device operated or operating to produce revenue, at the rates and in accordance with the definitions specified in § § 19200 and 19200.1, shall be evidenced by the taxpayer's validated Treasurer's Receipt for such payment, which shall be affixed or posted by the taxpayer within, upon or in the immediate proximity of the amusement device to which it relates, in such position as to be readily visible for purposes of inspection.

(e) The tax imposed by Subchapter A is stated by § 19200.3 to be the liability of any owner or lessee, or any officer, manager or representative of any person operating or managing any business enterprise at which such amusement device is offered for patronage. The term "taxpayer" as used in this Section [regulation] with respect to such amusement devices means any person liable for the tax as stated above, but the tax shall not be imposed more than once on any single amusement device in a single tax year beginning July 1 and extending to the following June 30.

(f) In accordance with 11 GCA § 22207, when the tax attaches subsequent to July 1 in any tax year, it shall apply on the basis of one twelfth of the annual rate for each full month or fraction thereof remaining in the tax year. However, no part of the tax paid shall be refunded if the amusement device is not offered for patronage or operated to produce revenue during any subsequent portion of the tax year.

(g) Whenever a registered amusement device is moved from one operating location to another, or is placed in, or removed from a revenue producing status, the owner or lessee, as the case may be, shall within five (5) days report such change to the Commissioner of License and Registration as delegate for the Tax Commissioner on Form BPT-8 in quintuplicate.

(h) Whenever a registered amusement device is sold, leased or otherwise transferred, report thereof shall be made within five (5) days to the Commissioner of License and Registration as delegate for the Tax Commissioner on Form BPT-9, in quintuplicate. The report may be prepared by either the transferor or the transferee, but both shall sign the report.

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(i) Whenever any amusement device operated to produce revenue is opened and the gross receipts therefrom withdrawn, the person making the withdrawal shall prepare a collection report on Form BPT-10, showing the total cash withdrawn before any deductions for taxes, pay-offs or any other purpose. One copy of each such Form BPT-10 shall be attached to support the monthly gross receipts tax return of the person liable for the tax. Nothing contained in 11 GCA Chapter 22 Article 2 regulations shall be construed as authorizing any pay-off or any form of gambling in connection with amusement devices.

§ 2116. Same: Admission Tax.

(11 GCA Chapter 22 Article 3 Admission Tax was repealed by P.L. 22-17:1.) Subchapter B of Chapter 3 imposes a tax, effective October 1, 1961, upon the amount paid for admission to any place at the rate of One Cent (\$0.01) for each Ten Cents (\$0.10) or major fraction thereof, including admission by season ticket or subscription. The tax is imposed upon the person paying for the admission. Section 19201 states that no tax shall be imposed on the amount paid for admission:

(a) If the amount paid for admission is Twenty-Five Cents (\$0.25) or less; or

(b) In the case of a season ticket or subscription, if the amount which would be charge to the holder or subscriber for a single admission is Twenty-Five Cents (\$0.25) or less.

Section 19201.1 defines amount paid for admission to any place to include charges made for seats and tables, reserved or otherwise, and other similar accommodations, but shall not include charges made for participating in any activity, other than as a spectator, using recreational facilities taxed under Subchapter C of Chapter 3. Thus the admission tax would apply to the admission charged by a cabaret offering a floor show or similar entertainment, but would not apply to a restaurant or bar having a small area for dancing by patrons, but charging no admission and offering no entertainment.

(b) In accordance with § 19201.2, the admission tax does not apply to admissions received by any person or organization entitled to an exemption under Subsections 19543.02, 19543.03, 19543.04 or 19543.05 of Chapter 6, subject to the compliance by such person or organization with the conditions set forth in Subsection 19543.09 and provided that all profits from such

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operation shall be exclusively for, or in furtherance of, the regular activities of such person or organization and shall not accrue in whole or in part to the benefit of any private stockholder or individual.

NOTE: Public Law 14-63 states "The tax imposed by this Subchapter shall not apply with respect to admissions which are taxed pursuant to § 59007 of Title LXIV of this Code. (c) In accordance with § 19201.3, the admission tax shall apply to complimentary admissions, and admissions at a reduced rate, when and under circumstances under which an admission charge is made to other persons, and in an amount equivalent to the tax on the amount paid by such other persons for the same or similar accommodations. An exception is hereby made in the case of bona fide employees of the place, performers and other persons whose duties are the sole reason for their presence and free admission.

(d) Every person receiving any taxable payment for admission on which the tax is imposed upon the payer thereof is required by § 19201.4 to collect the amount of the tax from the person making such payment, and to hold the amount so collected and pay it over to the Tax Commissioner, at the time, and by such means as the Tax Commissioner shall by regulation prescribe. The person receiving the taxable payment shall, on or before the twentieth (20th) day of the month following the month in which the taxable payment is received, file an Admission Tax Return on Form FCN 2-2-137, approved 9-27-61, the use of which for that purpose is hereby prescribed, and pay over to the Tax Commissioner in full the tax due. For the purposes of administration and enforcement, such person is deemed a "taxpayer" with regard to 11 GCA Chapter 26 Article 1, as made applicable by 11 GCA § 22101. The Admission Tax Return shall have attached thereto a box office check sheet for each day of operation, reflecting the numbers of the tickets sold and tax collected thereon, including complimentary and reduced rate tickets and passes, and any additional tax collected as the result of exchanges for higher priced accommodations. The tax once collected shall not be refunded.

In his discretion, the Tax Commissioner may require any person required to collect, account for and pay over the admission tax to furnish an adequate bond in such sum as he may determine to insure payment.

(e) Any person who, having the obligation to collect the tax imposed by Subchapter B, fails to do so, shall, in accordance with

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§ 19201.5, be personally liable therefor and shall account to the Tax Commissioner therefor as if he had collected the tax.

Any person required under Subchapter B to collect, account for and pay over the admission tax who willfully fails to collect or truthfully account for and pay over such tax, shall in accordance with § 19201.6, in addition to other penalties provided by law, be guilty of a felony, and upon conviction thereof, shall be fined not more than Ten Thousand Dollars (\$10,000.00), or imprisoned not more than five (5) years, or both, together with the costs of prosecution. The Section further states that evidence of personal use of any such tax so collected by the person charged with collection, either in his business or otherwise, shall constitute prima facie evidence of willful failure to truthfully account for any pay over such tax in violation of § 19201.6, referred to above.

(f) In accordance with § 19201.7, the following rules are prescribed for the printing and registration of admission tickets or admission cards:

(1) All admission tickets or admission cards shall be numbered consecutively and the numbers registered with the Commissioner of License and Registration as delegate for the Tax Commissioner prior to sale, including colors of tickets registered, beginning and ending numbers of each series of tickets, price per ticket, excluding the tax and the tax per ticket stated separately. Form FCN 2-2-136, approved 9-17-61, Registration of Tickets is hereby prescribed for this purpose and shall be filled in duplicate. One copy signed by the delegate to evidence the registration will be returned to the taxpayer applying for the registration and shall be retained in his records.

(2) Each admission ticket or admission card shall bear upon its face or back, upon the end, stub or portion to be taken up by the person collecting the tax, its consecutive number, name of the vending activity, the price paid for admission exclusive of the tax and the amount of the tax separately stated, conspicuously and indelibly printed, stamped or written thereon.

(3) The portion taken up by the person collecting the tax shall be retained by such person for reconciliation with the taxpayer's box office check sheet but need not be forwarded with the monthly Admission Tax Return.

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As stated in § 19201.7, any person who sells an Admission Ticket or Admission Card on which the name of the vendor and the price and tax are not printed, stamped or written, or which has not been registered prior to sale, or is not numbered consecutively, as required in this Section, or at a price in excess of the price so printed, stamped or written, is guilty of a misdemeanor.

§ 2117. Same: Tax on Recreation Facilities.

(a) Title 11 Guam Code Annotated Chapter 22 Article 4 imposes, effective October 1, 1961, an excise tax on each of certain specified recreation facilities in Guam on the effective date, or thereafter manufactured or constructed in Guam, imported into Guam maintained or permitted in Guam and used in connection with any commercial business enterprise engaged in for profit where in such facility is offered for patronage and annually thereafter on July 1, at rates stated in 11 GCA § 22401.

(b) Every person who, on October 1, 1961, owns, leases, operates or is in possession of any recreation facility as defined in 11 GCA § 22401, shall register it with the Commissioner of License and Registration as delegate for the Tax Commissioner on or before October 20, 1961, and annually thereafter on or before July 20 with respect to recreation facilities owned, leased, operated or in possession of such person on July 1; or if manufactured or constructed in Guam or imported into Guam subsequent to October 1, 1961, such recreation facility shall be registered as above on or before twenty (20) days following the date of manufacture or construction in Guam or importation into Guam. The application for registration of each such recreation facility shall be filed in quintuplicate on "Application for and Certificate of Registration" Form FCN 2-2-138, approved 9-27-61, the use of which is hereby prescribed for this purpose. The registration will be made without charge. One copy of the form with the Certificate of Registration completed by the Commissioner of License and Registration as delegate for the Tax Commissioner, shall be returned to the person applying for the registration and shall be posted conspicuously, as evidenced of the registration, on the premises occupied by the recreation facility.

As provided in 11 GCA § 22402. it shall be a misdemeanor for any person to own, lease, operate or be in possession of any such facility which has not been registered in accordance with the regulation. Separate metal identification tags will be affixed to each billiard or pool table registered.

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(c) Commencing as of October 1, 1961, and as of the first of each month thereafter, the taxpayer shall file with the Tax Commissioner a return, signed and verified under the penalty of perjury, listing the description, location and registration numbers of all recreation facilities offered for patronage as of the first of such month, those offered additionally for patronage or withdrawn from patronage during the month, and the amount of Excise Tax due thereon for that month, if any. Such returns shall be filed on or before the twentieth (20th) day of the month following the month to which the return relates, shall be accompanied by payment in full of the Excise Tax due, if any, and shall be made on "Monthly Excise Tax Return - Amusement Devices and Recreation Facilities." If no changes in status have occurred during the month, Blocks A, B and C of such return may show only "No Change" and no tax due. However, Blocks A, B and C must be completed in the returns if any change in status has occurred during the month, and in all cases in the return for the month of July each year.

Payment of the Excise Tax on each registered recreation facility at the rates and in accordance with the specifications contained in 11 GCA § 22401, shall be evidenced by the Taxpayer's Treasurer's Receipt for the tax paid, which shall be affixed or posted by the taxpayer in a conspicuous place in proximity to the Certificate of Registration on the premises occupied by the recreation facility.

(d) The tax imposed by 11 GCA Chapter 22 Article 4 is stated by § 22403 to be the liability of any owner or lessee of the facility, or any commercial business enterprise where such facility is offered for patronage. The term "taxpayer" as used in this Section [regulation] with respect to recreation facilities means any person liable for the tax as stated above, but the tax shall not be imposed more than once on any such facility in a single tax year beginning July 1 and ending the following June 30.

(e) In accordance with 11 GCA § 22404, when the tax attaches subsequent to July 1 in any tax year, it shall apply on the basis of one-fourth of the annual rate for each full quarter and fraction thereof remaining in the tax year. However, no part of the tax shall be refunded if the facility is not offered for patronage during any subsequent portion of all the tax year.

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§ 2118. Same: General Provisions.

(a) For the purpose of making the return and paying the four percent (4%) Gross Receipts Tax imposed by 11 GCA § 26202(h), beginning with the month of October 1961, every person deriving gross receipts from any of the activities taxable under 11 GCA Chapter 22, who is not exempted from Gross Receipts Tax under § § 26117 and 26203, shall file monthly Gross Receipts Tax returns with the Tax Commissioner in accordance with 11 GCA § 26110 on Form FCN 2-2-57 (approved 9-59), and pay the tax due in full. Until such taxes imposed by 11 GCA Chapter 22, except as otherwise provided therein, all of the provisions of 11 GCA Chapter 26 Article 1. The principal exception is to the penalties imposed by 11 GCA § 26111, which do not apply to the taxes imposed under 11 GCA Chapter 22. In lieu thereof, 11 GCA § 22104 imposes a penalty at the rate of twenty-five percent (25%) of the amount of any tax imposed by 11 GCA Chapter 22 for each quarter or fraction of a quarter year that any such tax remains unpaid after the due date. taxes imposed by Chapter 22, except as otherwise provided therein, all of the provisions of 11 GCA Chapter 26 Article 1 of any tax imposed by Chapter 22 for each quarter or fraction of a quarter year that any such tax remains unpaid after the due date. This penalty is for assertion by the Tax Commissioner.

Criminal penalties are provided in 11 GCA § 22105, which state that any person required under Chapter 22 to pay any tax, or by regulations made under authority thereof to make a return, keep any records, or supply any information, who willfully fails to pay such tax, keep such records or supply such information, at the time or items required by law or these regulations, shall, in addition to other penalties provided by law, be guilty of a misdemeanor; and that any person convicted of a misdemeanor under Chapter 3 shall be fined not more than One Thousand Dollars (\$1,000.00) or imprisoned not more than one (1) year or both, together with the costs of prosecution.

With reference to the Admission Tax, (Repealed by 22-17:1) § 19201.6 states that any person required to collect, account for and pay over the Admission Tax, who willfully fails to collect, or truthfully account for and pay over such tax shall, in addition to other penalties provided by law, be guilty of a felony, and, upon conviction thereof, shall be fined not more than Ten Thousand Dollars (\$10,000.00) or imprisoned not more than five (5) years

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or both, together with the costs of prosecution; and that evidence of personal use of any such tax so collected by the person charged with collection, either in his business or otherwise, shall constitute prima facie evidence of willful failure to truthfully account for and pay over such tax in violation of the subsection.

Section 19201.7, also with reference to the Admission Tax, states that any person who sells any admission ticket or admission card on which the name of the vendor and the price and tax are not printed, stamped or written or which has not been registered prior to sale, or is not numbered consecutively or at a price in excess of the price so printed, stamped or written thereon, is guilty of a misdemeanor.

§ 2119. Exemption of Amounts Received from Engaging or Continuing in Business as a Wholesaler.

(a) The purpose of this Section is to implement 11 GCA § 26202(a)(2), as amended by Public Law 18-2, and § 19543.1022 of the Government Code, as enacted by Public Law 18-2.

Title 11 Guam Code Annotated § 26202(a)(2) provides as follows:

“(2) Provided, that any person engaging or continuing in business as a retailer and 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.”

11 GCA § 26203(k)(22) provides an exemption from tax for amounts described as follows:

“(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.” (March 2004)

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(b) The exemption from tax applies only to amounts received from sales of tangible personal property by a wholesaler to another wholesaler or to a retailer for the purpose of resale. For a sale to qualify for the exemption from tax, it is necessary that the following three (3) requirements be satisfied:

(1) That the sale of tangible personal property was made by a “wholesaler”. For purposes of this requirement, a “wholesaler” means a person doing a regularly organized wholesale business, known to the trade as such, and licensed to do business in Guam as such.

(2) That such sale was made to another “wholesaler” or to a “retailer”. For purposes of this requirement, the definition of “wholesaler” is the same as in paragraph (1) above. A “retailer” means either (a) a person doing a regularly organized retail business, known to the trade as such, and licensed to do business in Guam as such, or (b) a person engaged in carrying on a service business and licensed to do business in Guam as such, provided that the resale of such tangible property in essentially the same form as when purchased is a necessary function of the service business, as for example, the sale of food beverages by a restaurant.

(3) That such sale was made for the purpose of resale in the regular course of the purchaser’s business. A sale shall be so treated if either (A) the seller timely takes or has taken a certificate from the purchaser that property of the kind purchased is purchased for resale in the regular course of the purchaser’s business and the taking of the certificate and the certificate meet the requirements stated in section (e); or (b) the seller presents other satisfactory evidence meeting the requirements stated in section (f) that the sale was made for the purpose of resale in the regular course of the purchaser’s business.

(c) The burden of establishing that the three (3) requirements stated in subsection (b) are satisfied with respect to any sale is upon the seller.

(d) In order to be entitled to the exemption, any person engaging or continuing in business both as a retailer and a wholesaler must keep his books so as to show separately and accurately the gross proceeds of each business. If the books are kept in this manner, the tax shall not apply to amounts received

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from sales which meet the requirements stated in section (b). If books are not kept in this manner, the exemption described in this section shall not apply to any sales proceeds of the wholesale business.

(e)(1) The seller's burden of proving that a sale of tangible personal property is made for the purpose of resale in the regular course of the purchaser's business is met if the seller timely takes or has taken a good sufficient certificate from the purchaser that the property of such kind is purchased for resale. If timely taken in good faith from a person who is engaged in the business of selling tangible personal property and who holds a license to do business as a wholesaler or retailer in Guam, the certificate relieves the seller from liability for the gross receipts tax and the duty of collecting the use tax. A certificate will be considered timely if it is taken at any time before the seller bills the purchaser for the property, or any time within the seller's normal billing and payment cycle, or any time at or prior to delivery of the property to the purchaser.

(2) If a purchaser who gives a resale certificate for property makes any storage or use of the property other than retention, demonstration, or display while holding it for sale in the regular course of business, the storage or use is taxable as of the time the property is first so stored or used. The use tax must be reported and paid by the purchaser with the purchaser's tax return for the period in which the property is first so stored and used. The purchase cannot retroactively rescind or revoke the resale certificate and thereby cause the transaction to be subject to gross receipts tax rather than use tax.

(3) Property shall not be regarded as purchased for resale if it is not resold by the purchaser in essentially the same form as when purchased by the purchaser. Property which is subjected by the purchaser to any manufacturing process, or becomes a component of other property before its sale by the purchaser does not qualify for the exemption from tax, as for example, building materials purchased by a building contractor. On the other hand, property which is divided or cut into smaller units for purposes of sale, as for example, a side of beef into smaller cuts of beef, shall be regarded as essentially in the same form as when purchased by a retail food store. Similarly, food dishes and beverages

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sold by a restaurant shall be regarded as essentially in the same form as when purchased.

(4) Property shall not be regarded as purchased for resale if it is sold in connection with a service provided by the purchaser to a customer, and the price of the property is not separately identified to the customer. For example, a medication furnished by a physician to his patient shall not be regarded as purchased by the physician for resale if the charge for the medication is not identified to the patient in a bill or receipt of the physician. On the other hand, charges for food and beverages sold by a restaurant need not be separately identified since such are indistinguishable from restaurant service.

(5) Any document, such as a letter or purchase order, timely provided by the purchaser to the seller will be regarded as a resale certificate with respect to the sale of the property described in the document if it contains all of the following essential elements:

(A) The signature of the purchaser or an agent or employee of the purchaser.

(B) The name and address of the purchaser.

(C) The number of the seller's Guam business license held by the purchaser.

(D) A statement that the property described in the document is purchased for resale in the same form purchased without alteration of any kind. The document must contain the phrase "for resale". The use of phrases such as "nontaxable", "exempt", or similar terminology is not acceptable.

(E) Date of execution of document. (An otherwise valid resale certificate will be considered invalid solely on the ground that it is undated.)

(6) A document containing the essential elements described in (5) above is the minimum form which will be regarded as resale certificate. However, in order to preclude potential controversy, the seller should timely obtain from the purchaser a certificate substantially in the following form:

GUAM RESALE CERTIFICATE

(Name of Purchaser)

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(Address of Purchaser)

I HEREBY CERTIFY: That
_____, the purchaser, holds
Guam Business License No. _____
issued pursuant to the Business License Law;
That I am authorized to execute this certificate
in behalf of the purchaser; That the purchaser
is engaged in the business of

_____;
that the tangible person property described
herein which purchaser shall purchase from:

will be resold by purchaser to a customer or
customers in essentially the same form
purchased by purchaser in the regular course
of purchaser's business and at a price which
will be identified to the customer or
customers; provided, however, that in the
event any of such property issued for any
purpose other than retention, demonstration,
or display while holding it for sale in the
regular course of business, or the property is
not sold by the purchaser in the manner stated
herein, it is understood that the purchaser is
required by the Use Tax Law to report and pay
tax, measured by the purchase price of such
property or other authorized amount.

Description of property to be purchased:

_____. I declare under penalty of perjury that
the foregoing is true and correct.

Executed on Date:
_____ 19____.

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(Signature of Purchaser or Authorized Agent)

(Title)

Under "Description of property to be purchased" there may be appear:

(A) Either an itemized list of the particular property to be purchased for resale, or

(B) A general description of the kind of property to be purchased for resale. (A certificate, thus describing the property is good until revoked in writing.)

The foregoing form may be altered to the form of an affidavit under oath taken before a notary public or other person qualified to administer oaths in Guam.

(7) If a purchaser issues a general (blanket) resale certificate which provides a general description of the items to be purchased at one or more times in the future, and subsequently issues a purchase order which indicates that the transaction covered by the purchased order is taxable, the resale certificate does not apply with respect to that transaction. In such case, the gross receipts tax with respect to the sale to the purchaser must be reported and paid by the seller with the seller's tax return for the period in which the purchase order is first received by the seller.

(8) If a purchaser wishes to designate on each purchase order that the property is for resale, the seller should obtain a qualified resale certificate, i.e., one that states "see purchase order" in the space provided for a description of the property to be purchased. Each purchase order must then specify whether the property covered by the order is purchased for resale or whether tax applies to the order. If each purchase order does not so specify, it will be assumed that the property covered by that purchase order was purchased for use, and not for resale. If the purchase order includes both items to be resold and items to be used, the purchase order must specify which items are purchased for resale and which items are purchased for use. For example, a purchase order issued for produced parts for resale and also for tooling used to produce the parts should specify that the parts are purchased for resale and that the sale of the tooling is subject to tax.

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(9) If the seller does not timely obtain a resale certificate, the fact that the purchase provides the purchaser's business license number to the seller, or informs the seller that the transaction is "not taxable" does not relieve the seller from liability for the tax nor from the burden of proving the sale was for resale.

(f) Other Evidence to Rebut Presumption of Taxability. A sale meeting the requirements of section (b) is not subject to the gross receipts tax. However, a resale certificate which is not timely taken is not retroactive and will not relieve the seller of the liability for the tax. Consequently, if the seller does not timely obtain a resale certificate, the seller will be relieved of liability for the tax only if the seller presents satisfactory evidence that the specific property sold:

(1) Was in fact resold by the purchaser and was not used by the purchaser for any purpose other than retention, demonstration, or display while holding it for sale in the regular course of business, or

(2) Is being held for resale by the purchaser and has not been used by the purchaser for any purpose other than retention, demonstration, or display while holding it for sale in the regular course of business, or

(3) Has been used or consumed by the purchaser and the purchaser has paid the use tax directly to the Department of Revenue and Taxation.

(g) Good Faith. A seller will be presumed to have taken a resale certificate in good faith in the absence of evidence to the contrary. If the purchaser insists that the purchaser is buying for resale property of a kind not normally resold in the purchaser's business, the seller should require a resale certificate containing a statement that the specific property is being purchased for resale in the regular course of business.

(h) Improper Use of Certificate. Except when a resale certificate is issued in accordance with the terms of section (e) of this regulation:

(1) A purchaser may be guilty of committing one or more misdemeanors if the purchaser gives a resale certificate for property which the purchaser knows at the time of

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purchase will be used rather than resold. See 11 GCA § 26113; 9 G.C.A. § 52.20; and 6 G.C.A. § 4308.

(2) Any person who gives a resale certificate for property which he knows at the time of purchase is not to be resold by him in the regular course of business is liable to the Government of Guam for the use tax and any penalties that may apply with respect to such purchase.

2021 NOTE: Subsection designations altered pursuant to authority granted by 1 GCA § 1606. **§ 2120. Gross Receipts Tax on Gross Income from Coin-Activated Amusement Devices.**

(a) For the purpose of making returns and paying Gross Receipts Tax, the operator of any coin-activated amusement device (as defined in GC § 19200.1(d)) shall include in gross income subject to tax all coins deposited in the device less the amount of winnings, payouts or malfunction refunds reported in the manner prescribed by § 2120(b). In reporting and computing the tax, the operator shall not be entitled to deduct any amount received by the owner or lessee of the premises in which the device is situated as rent or other consideration for the location of the device on the premises, nor shall an operator who leases the device from its owner be entitled to deduct rent or other consideration for the location of the device on the premises, nor shall an operator who leases the device from its owner be entitled to deduct rent or other consideration for the use of the device, whether or not such amount in either case is paid from the coins deposited in the device.

(b) The amount of winnings, payouts or malfunction refunds to any player shall be exempt from the Gross Receipts Tax if reported accurately on a completed Schedule A to Form BR20. Copies of Form BR20 and Schedule A are attached as exhibits to this regulation. A separate Schedule A is required for each player to whom one or more payments is made during the month. In lieu of Schedule A, the operator may attached to Form BR20 another form of his or her selection which reports all of the information required by Schedule A. The Schedule A or substitute therefor shall report the name of the payee, the identifying number of the amusement device, and the date, amount and nature (whether winning, payout or malfunction refund). In order to establish a means for the Department of Revenue and Taxation to verify that the payment was actually made, the operator shall, prior to making payment to the player, make reasonable efforts to ascertain the

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address and social security number (if the player has one) of the player, through inspection of his or her driver's license or other appropriate identification, and shall report such information on Schedule A or a substitute therefor. The deduction shall not be disallowed on the ground of a failure to report the address or social security number of the player if the player refuses to provide such information after the operator has made reasonable efforts to obtain the information. It shall be presumed that the operator has made reasonable efforts to obtain the information if he informs the player that such information has been requested by the Department of Revenue and Taxation for the substantiation of the operator's deduction for payment, and prominently displays a notice to that effect at the establishment in which the device is located.

(c) The owner or lessee of the premises in which a device is located shall include in his gross income any rent or other consideration for the location of the device at the premises, subject to any exemption available under § 2101. The owner of the device shall include in his gross income any rent or other consideration received by him from the operator for the use of the device.

(d) The owner of the device shall be deemed to be its operator, except where the device is leased to another person in which case the lessee shall be deemed to be the operator.

(e) This regulation shall be effective with respect to Business Privilege Tax returns due to be filed on or after August 1, 1985.

ARTICLE 1A
CIGARETTE TAX STAMPS

SOURCE: Article 1A added by P.L. 35-129:2 (Dec. 29, 2020).

- § 21A01. Definitions.
- § 21A02. Conformity with Statute(s).
- § 21A03. Collection of Taxes Imposed on Licensees Purchasing and Importing Cigarettes into Guam.
- § 21A04. Preparation and Sale of Cigarette Tax Stamps.
- § 21A05. Method and Manner of Affixing Stamps.
- § 21A06. Adherence of Stamps.
- § 21A07. Purchase of Stamps, Refund, or Credit for Unused Stamps.

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- § 21A08. Cigarettes Shipped Outside of Guam for Sale or Use Outside of Guam.
- § 21A09. Refund or Credit for Mutilated Stamps.
- § 21A10. Refund or Credit for Stamps Destroyed.
- § 21A11. Claim Forms.
- § 21A12. Unsalable Cigarettes.
- § 21A13. Authorization of Designee to Purchase Stamps for Licensee; Revocation of Authorization.
- § 21A14. Reporting Requirement for Missing Shipment of Stamped Cigarettes and Damaged or Otherwise Unusable Stamps.

§ 21A01. Definitions.

(a) *Cigarette package* means an individually sealed pack of cigarettes originating from the manufacturer and bearing the health warning required by law.

(b) *Department* means the Department of Revenue and Taxation.

(c) *License* means a license granted by Guam law that authorizes the holder to engage in the business of a wholesaler or retailer of cigarettes or tobacco products in Guam.

(d) *Licensee* means the holder of a license granted as a wholesaler or retailer under 11 GCA Chapter 6.

(e) *Minor* means a person under the age of twenty-one (21).

(f) *Sale* includes every act of selling and includes any sale or act of selling that originates from any order that is placed or submitted by means of a telephonic or other method of voice transmission, the mail or any other delivery service, or the internet or other online service.

(g) *Stamp* means a stamp printed, manufactured, or made by authority of the Department, as provided in 11 GCA Chapter 6, that is issued, sold, circulated, or authorized to be issued, sold, or circulated by the Department, that is placed on the bottom of a cigarette package wrapping up to the front of the package, and by the use of which designates that the tax levied under 11 GCA §§ 26602 and 26603(a) has been paid.

(h) *Traffic* means importing and exporting for commercial purposes or the business of bartering or buying and selling.

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§ 21A02. Conformity with Statute(s).

(a) These rules and regulations are in conjunction with 11 GCA §§ 26601 through 26609, and all other rules and regulations of tobacco products. These rules and regulations are passed into law by the Legislature. Any discrepancy between these rules and regulations and the statutes they interpret should be resolved in favor of the statute(s). To the extent these rules and regulations contain discrepancies with other regulations, the discrepancies should be harmonized to give the broadest possible effect to the relevant rules and regulations evidencing a discrepancy.

(b) The Department may amend or adopt additional rules and regulations in accordance with the Administrative Adjudication Law.

2021 NOTE: Subsection designations added pursuant to authority granted by 1 GCA § 1606.

§ 21A03. Collection of Taxes Imposed on Licensees Purchasing and Importing Cigarettes into Guam.

(a) The Department shall aggressively seek to collect all tobacco taxes imposed by Article 6 of Chapter 26, 11 GCA, and use the information submitted in the reports filed with the Department pursuant to 11 GCA § 6708; and the Department shall make all reasonable efforts to collect all taxes due under 11 GCA Chapter 26. To administer the cigarette tax stamp system codified at Article 7 of Chapter 6, 11 GCA, the Department shall either partner with a stamp provider and purchase stamps or, within ninety (90) days of enactment of these rules and regulations, issue a Request for Proposal (RFP), in compliance with the Guam Procurement Law, for the purpose of a local company procuring stamps to be sold.

(b) The Department, or its agent, shall, every six (6) months, submit a report to the Speaker of the Legislature on the steps taken to enforce this Section and the amounts collected pursuant to collection activities mandated by this Section. The amounts collected from each individual licensee shall be public records as defined by 5 GCA § 10102(d).

§ 21A04. Preparation and Sale of Tax Stamps.

Within ninety (90) days of enactment of these rules and regulations, the Department shall prescribe, prepare, and furnish stamps, or procure a company to do so, of such design,

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specifications, denominations, and quantities as may be necessary for the payment of the tax imposed by 11 GCA §§ 26602 and 26603(a), and may provide for the issuance and exclusive use of stamps of a new design and forbid the use of stamps of any other design.

§ 21A05. Method and Manner of Affixing Stamps.

(a) Stamps shall be securely affixed to the bottom of each cigarette package in such a manner that the stamps are clearly visible from at least five (5) feet away, legible, and complete. How the stamps become affixed shall be the concern of the persons importing the cigarettes so long as they adhere to these rules and regulations.

(b) It shall be illegal to sell cigarettes on Guam after one (1) year from enactment of this Act without a stamp as contemplated by these rules and regulations.

2021 NOTE: Subsection designations added pursuant to authority granted by 1 GCA § 1606.

§ 21A06. Adherence of Stamps.

Stamps shall be affixed in such manner as to adhere securely to the bottom of each cigarette package. If the cigarette packages are wrapped in or covered by some substance to which the stamps do not readily adhere, such wrapper or covering must be roughened or treated so that stamps will adhere securely thereto.

§ 21A07. Purchase of Stamps, Refund, or Credit for Unused Stamps.

(a) Cigarette stamps for packages of twenty (20) or fewer cigarettes shall be sold in rolls of fifteen thousand (15,000) or thirty thousand (30,000) or sheets of one hundred fifty (150) with a minimum order of one thousand five hundred (1,500) stamps. Cigarette stamps for packages of twenty-five (25) cigarettes are sold in rolls of three thousand six hundred (3,600) or sheets of one hundred fifty (150) with a minimum order of one thousand two hundred (1,200) stamps. The total amount of tax, postage, and handling charges must be submitted with each purchase order.

(b) The Department, or its agent, will refund or credit to a licensee who purchased stamps the denominated value of any unused stamps which are returned to the Department; provided, that the stamps were lawfully purchased, and the licensee provides a receipt for the purchase of the stamps.

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§ 21A08. Cigarettes Shipped Outside of Guam for Sale or Use Outside of Guam.

(a) All claims for tax exemption on any shipment of unstamped, cartoned cigarettes consigned for export from Guam shall be presented to the Director of the Department in a monthly report. The report shall be on a form and in the manner prescribed by the Director. This monthly report is a public record as defined by 5 GCA § 10102(d).

(b) All invoices or delivery tickets supporting the export claims shall be preserved by the wholesale cigarette dealer for three (3) years. Each invoice or delivery ticket shall detail the following information:

- (1) the name and address of the consignee;
- (2) the date of sale;
- (3) the quantity of cigarettes sold; and

(4) if the invoice or delivery ticket includes other merchandise, a separate list of the cigarettes sold by brand at the top or bottom of the invoice or delivery ticket. The invoices or delivery tickets filed for preservation shall be signed by the consignee to whom delivery was made or by the common carrier making the delivery.

(c) If sealed cartons of cigarettes have not been stamped and are not detailed on invoices or delivery tickets showing them to be consigned to out-of-territory dealers or authorized persons or a government military post, each wholesale cigarette dealer shall furnish the driver of the vehicle transporting these sealed cartons of cigarettes with a memorandum detailing the quantity of unstamped, cartoned, and not consigned cigarettes to be transported.

(d) The driver of the vehicle transporting the cartons of cigarettes that have not been stamped or consigned shall have in the driver's possession at all times the quantity of cigarettes outlined in the memorandum or receipted invoices or delivery tickets showing to whom the cigarettes were sold, delivered, or disposed of, so that the total number of cartons of cigarettes shown by the signed invoices and delivery tickets and the number of cartons of cigarettes on hand balance with the memorandum described. All claims for the tax exemption on any sales or

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deliveries made in this manner shall be procured as outlined in these rules and regulations.

§ 21A09. Refund or Credit for Mutilated Stamps.

The Department, or its agent, will refund or credit to a licensee who purchased stamps the denominated value of any stamps when the stamps have become no longer legible or recognizable as stamps issued by the Department; provided, that the stamps were lawfully purchased, and the licensee provides a receipt for the purchase of the stamps.

§ 21A10. Refund or Credit for Stamps Destroyed.

(a) The Department, or its agent, will refund or credit to a licensee the denominated value of any stamps when the stamps have been destroyed by fire, flood, or other casualty prior to the affixation of the tax stamps to packages of cigarettes.

(b) The licensee must establish by clear and convincing evidence that the stamps were destroyed by fire, flood, or other casualty, and the denominated value of the stamps.

(1) Theft or mysterious disappearance of unaffixed stamps shall not constitute a casualty for which refund or credit will be given.

(2) However, theft or mysterious disappearance of unaffixed stamps must be reported to the police, and the Department must be notified in writing within forty-eight (48) hours of the discovery that the unaffixed stamps were stolen or mysteriously disappeared.

2021 NOTE: Subsection designations added pursuant to authority granted by 1 GCA § 1606.

§ 21A11. Claim Forms.

A claim for refund or credit made pursuant to §§ 21A09 and 21A10 of these rules and regulations must be made on a form prescribed by and filed with the Department.

§ 21A12. Unsellable Cigarettes.

(a) The Department, or its agent, will refund or credit to a licensee the denominated value, less the purchase discount, of identifiable stamps affixed to packages of cigarettes which have become unfit for use or unsellable before distribution, or after distribution if the cigarettes have been returned for credit or have

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been replaced and proof is submitted to the Department showing that the cigarettes have not been used for smoking in Guam.

(b) A claim for refund or credit must be made on a form prescribed by the Department and shall be accompanied by a properly executed receipt and a copy of the credit memorandum of the manufacturer for returned stock, or by proof of destruction of the cigarettes with the tax stamps thereon in the presence of an employee of the Department authorized to witness the destruction.

2021 NOTE: Subsection designations added pursuant to authority granted by 1 GCA § 1606.

§ 21A13. Authorization of Designee to Purchase Stamps for Licensee; Revocation of Authorization.

(a) The Department, or its agent, shall sell stamps only to persons holding licenses as required by the wholesaler or their designee. A designee may purchase stamps, provided that:

(1) written authorization is made naming the designee and identifying the designee by means of a signature or any other means of identification the Department or designated bank may require;

(2) the written authorization and means of identification as required in Subsection (a)(1) is delivered by certified mail or hand delivery to the stamp sales location at which the designee will be purchasing the stamps; and

(3) only a person who is not a minor is eligible to be a designee to purchase the stamps.

(b) The written authorization shall continue in effect until written notice of revocation of the authority by the licensee is delivered by certified mail or by hand delivery to the stamp sales location at which the designee has been purchasing the stamps.

§ 21A14. Reporting Requirement for Missing Shipment of Stamped Cigarettes and Damaged or Otherwise Unusable Stamps.

(a) Licensees must, within twenty-four (24) hours, report to the Office of the Attorney General and the Department, and its agent, if any, information on missing shipments of stamped cigarettes and damaged stamps or stamps which have become unusable, within twenty-four (24) hours of the discovery that the

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shipments are missing, or the stamps have been damaged or have become unusable.

(b) Licensees shall report the following information to the appropriate division of the Attorney General's Office, which is responsible for investigating missing shipments of stamped cigarettes and damaged or otherwise unusable stamps:

- (1) name and address of licensee;
- (2) serial numbers of the stamps involved;
- (3) number of stamps involved, and the dollar amount of the stamps involved;

(c) in the case of missing shipments, the name and address of the entity to whom the stamped cigarettes were shipped to; and

(d) any other information the Department or the Attorney General may require.

**ARTICLE 2
REAL PROPERTY TAX**

(No rules filed.)

NOTE: Rule-making authority cited for formulation of real property tax regulations on assessment, collection, correction of errors and the making of refunds by the Assessor- Tax Commissioner, 11 GCA § 24323. The Real Property Tax Law is found in 11 GCA Chapter 24.

**ARTICLE 3
USE TAX**

(No rules filed.)

NOTE: Rule-making authority cited for formulation of the use tax regulations by the Tax Commissioner, 11 GCA § § 128108, 28109 and 28110.

**ARTICLE 4
TAX CREDIT IN LIEU OF CASH PAYMENT**

§ 2401. Definitions.

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- § 2402. Application for Tax Credit, Where.
- § 2403. Revocation of Election, How.
- § 2404. Maximum Amount of Tax Credit Allowed or Allowable.
- § 2405. Requirements.

NOTE: Rule-making authority cited for formulation of tax credit in lieu of cash payment regulation by the Director of Revenue and Taxation, 11 GCA § 34102.

The regulations of tax credit in lieu of cash payment are reprinted here in form as exact as possible to those filed with the Legislative Secretary. The substance of the regulations has not been changed. However, for the purpose of uniformity and ease of use, a new system of numbering has been adopted by the Editor. It is hoped that the revised numerical system will eventually be substituted for that formulated by the Director of Revenue and Taxation.

§ 2401. Definitions.

(a) The following definitions shall govern the construction of these regulations:

(1) Owner means a person or persons entitled to just compensation for the taking of said person's real property, and shall include corporations and any other entity entitled to compensation.

(2) Agent means a person(s) or a corporation, with a duly executed power-of-attorney, empowered to act on behalf of a real property owner and who is capable of exercising the rights and liabilities of the owner in making application for a tax credit under this Chapter.

(3) Approving Officer means the person designated by the government, department, agency, board, committee or any form of governmental body created for the purpose of land acquisition, who is responsible for approving the payment or payments to the owner for the acquisition.

(4) Director means the Director of Revenue and Taxation or his delegate.

(5) Taxes means all types of taxes, except income taxes and shall include penalties, interest and any other additions thereto made applicable by law.

§ 2402. Application for Tax Credit, Where.

(a) Any owner whose land has been acquired by the government of Guam, and where the government of Guam cannot

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make cash payment due to the unavailability of funds or for other reasons, may make application for tax credit to the Department of Revenue and Taxation on a form prescribed by the Director.

(b) Application form, a valid election to take tax credit in lieu of cash payment. The owner's application for tax credit shall constitute a valid election under this Chapter to take tax credit in lieu of cash payment for land acquisition.

§ 2403. Revocation of Election, How.

Notwithstanding a revocation by operation of law, the owner or his agent may revoke the election by a written notice to the approving officer.

2021 NOTE: Subsection designations altered pursuant to authority granted by 1 GCA § 1606.

§ 2404. Maximum Amount of Tax Credit Allowed or Allowable.

(a) The maximum amount of tax credit allowed or allowable shall be an amount equivalent to the authorized cash compensation for the property. The tax credit shall be allowed on taxes other than the Guam Territorial Income Tax, payable to the government of Guam on or after October 20, 1977.

(b) The amount in excess of the correct taxes due may be carried over to the next succeeding tax month or year whichever the case may be.

Example:

(1) Real Property tax in arrears and outstanding October 20, 1977.	\$700.00
(2) Gross Receipts for the month of September 1977.	\$200.00
(3) Total taxes due	\$900.00
(4) Tax credit allowable \$3,000.00	
Tax credit allowed (\$ 900.00)	(\$900.00)
Total taxes due after credit	\$ - 0 -
(5) Tax Credit Allowable	\$2,100.00
- Carryover to next succeeding tax month or year.	

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§ 2405. Requirements.

(a) A tax credit shall not be allowed unless a completed certified statement to be prescribed by the Director is signed by the approving officer.

(b) If the owner applying for the tax credit is other than a natural person, a copy of the agent's duly executed power-of-attorney shall accompany the application form.

(c) The approving officer's certified statement for purposes of the tax credit shall be valid for the full amount payable for land acquisition and until fully paid through tax credits. Provided, however, that the approving officer shall notify the Director in writing of any changes, owner's revocation of election or for any other reasons, in owner's status affecting the amount of allowable tax credits.

(d) A yearly reconciliation statement of owners and tax credits allowed shall be prepared and forwarded to the approving officer by the Director no later than January 20 of each year.

CERTIFICATE

To: Director, Revenue and Taxation
From:
Subject: Certification of Real Property Acquired for
Government Use
Document No. _____
Date _____

This is to certify that the property of _____
_____,
described as _____,
has
been acquired for government use under authority of _____
_____ and filed under
Document No. _____ with the _____.
The gross amount payable to the property owner is: \$
_____. The amount outstanding as of
_____ is: \$ _____.

Date _____
I understand that the purpose of this statement is for the Real
Property owner to elect tax credit in lieu of cash for the taking of
real property for government use, as authorized by Public Law
14-69.

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Signature

Title

Date

FORM DRT 12/21/77-B

DEPARTMENT OF REVENUE AND TAXATION
P.O. BOX 2796,
HAGÁTÑA, GUAM 96910

APPLICATION FOR TAX CREDIT
GOVERNMENT OF GUAM
TITLE XX, CHAPTER XI

NOTE: Read carefully, information and instruction on reverse

1) NAME OF APPLICANT: _____
LAST FIRST MIDDLE

2) _____
S.S. or E.I. NO.

3) _____
Resident Address

4) _____
Mailing Address

5) _____
Phone No.

6) TAX CREDIT ON: _____

7) _____
Specify type of tax

8) \$ _____
Period ending Amount

Specify type of tax

\$ _____
Period ending Amount

Specify type of tax

\$ _____
Period ending Amount

9) TAX CREDIT ALLOWABLE: \$ _____

10) TOTAL TAX CREDIT

CLAIMED: \$ _____.

Under penalty of perjury, I certify the information given above is true and correct.

