

11 GCA FINANCE & TAXATION
CH. 51 INCOME TAX REFUND EFFICIENT
PAYMENT TRUST FUND ACT OF 2002

CHAPTER 51
INCOME TAX REFUND EFFICIENT PAYMENT
TRUST FUND ACT OF 2002

SOURCE: This entire Chapter was enacted by P.L. 26-74:2.

- § 51101. Creation of the Income Tax Return Efficiency Trust Fund.
- § 51102. Deposit of Funds.
- § 51103. Expenditures from the Trust Fund.
- § 51104. Contracts.
- § 51105. Prohibitions Against Encumbrances.
- § 51106. Reports.
- § 51107. No Transfer Authority.
- § 51108. Effective Date.

§ 51101. Creation of the Income Tax Refund Efficient Payment Trust Fund.

(a) There is hereby created, separate and apart from all other funds of the government of Guam, a trust fund known as the Income Tax Refund Efficient Payment Trust Fund (*Trust Fund*). The Trust Fund shall not be commingled with the General Fund or any other funds of the government of Guam, and it shall be maintained in a separate bank account, administered by the Tax Commissioner. The Trust Fund's interest and investment earnings shall be subject to legislative appropriation and shall be expended exclusively for the purposes set forth under § 51103 of this Act.

(b) The deposits made to the Trust Fund pursuant to § 51102 shall be invested or reinvested into interest bearing instruments, United States treasury notes, investment grade and insured corporate notes, and other like instruments which are readily convertible to cash needed to pay income tax refunds.

§ 51102. Deposit of Funds.

The Director of the Department of Administration (DOA) shall directly deposit, upon receipt of any payment of income tax, including, but *not* limited to, individual, corporate and withholding taxes, interest and penalties, to the Trust Fund a portion of the tax payment received to be calculated by multiplying the amount of the tax payment received by

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the quotient derived by the provision for tax refunds (the dividend) divided by the total income taxes, including, but *not* limited to, individual, corporate and withholding taxes, interest and penalties, (the divisor) amounts adopted in the pertinent government of Guam fiscal year budget, so that, at the end of the fiscal year, the total amount set aside in said budget for income tax refunds, the earned income tax credit and advanced child tax credits *shall* have been deposited in said Fund. The funds deposited in the Trust Fund by the Director of Administration *shall* immediately be transferred to the Income Tax Reserve Fund upon the written request of the Tax Commissioner for payments made pursuant to § 50105 of Chapter 50, Division 2 of Title 11 of the Guam Code Annotated. The interest earned by money in the Trust Fund *shall* be held in the Fund.

SOURCE: Amended by P.L. 28-068:IV:97 (Sept. 30, 2005), P.L. 29-017:2 (Sept. 24, 2007).

§ 51103. Expenditures from the Trust Fund.

In order for I Liheslaturan Guåhan to make the proper legislative appropriation pursuant to § 51101(a) of this Chapter, the Tax Commissioner shall submit to I Liheslaturan Guåhan [Guam Legislature] on the 15th day of January each year a detailed budget request of itemized cost of allowable expenditure, for an appropriation from the earnings of the Trust Fund. All interest and investment earnings from the Trust Fund pursuant to § 51101(b) of this Chapter shall be exclusively expended for the following purposes:

(a) Notwithstanding other provisions of law, the Department of Revenue and Taxation is hereby authorized to either enter into contracts with temporary income tax returns processors ('processors'), or to hire seasonal employees, as deemed necessary by the Tax Commissioner anytime during the period of filing dates established by the Internal Revenue Service for a period of not more than three (3) months to process income tax returns.

(1) The Department of Revenue and Taxation shall prioritize the processing of income tax returns according to their filing date.

(2) The Department of Revenue and Taxation shall submit to I Liheslaturan Guåhan [Guam Legislature] a monthly report on the status of the income tax processing, which shall

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include the following:

- number of income tax returns processed;
- number of income tax refunds issued and the total dollar amount;
- number of income tax returns waiting to be processed;
- expected date of completion for the processing of income tax returns pending; and
- any other pertinent information.

(b) Proper training of employees hired pursuant to Subsection (a) of this Section.

(c) Computers and other equipments necessary to quickly process the income tax returns.

§ 51104. Contracts.

If the Department of Revenue and Taxation chooses to enter into contracts with temporary income tax returns processors, the Department of Revenue and Taxation shall promulgate rules and regulations governing the contract. The processors under contracts shall be deemed independent contractors and not employees of the government of Guam, nor shall they be entitled to any benefits otherwise available to government of Guam employees, including, but not limited to, sick leave, annual leave, retirement, worker's compensation, group life insurance, group medical insurance, or periodic or other step increases in wages.

§ 51105. Prohibitions Against Encumbrances.

Any and all expenditures from the Trust Fund shall be for the payment outlined in § 51103, and for no other purpose. The Trust Fund shall not be subject to or permit *I Maga'lahaen Guåhan* to pledge the Trust Fund for payments or repayments of any government of Guam general fund obligations or obligations of any autonomous agency, public corporation or government instrumentality.

§ 51106. Reports.

(a) Monthly Reporting. The Tax Commissioner and the Director of Administration shall report to *I Maga'lahaen Guåhan* and *I Liheslaturan*

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Guåhan regarding the total deposits in each month and the current balance of the Trust Fund within fifteen (15) calendar days of the end of each month.

(b) Monthly Audit by the OPA. The Office of Public Accountability *shall* perform a monthly audit on the Income Tax Refund Efficient Payment Trust Fund and the compliance of the Director of the Department of Administration with § 51102 of Chapter 51 of Title 11, Guam Code Annotated. Said audit *shall* include, but is *not* limited to, auditing the amounts of income tax, including, but *not* limited to, individual, corporate and withholding, inclusive of interest and penalties, received by the Department of Revenue and Taxation and the deposits made on a daily basis by the Director of the Department of Administration and the Treasurer of Guam or any other government of Guam agency or instrumentality to the Income Tax Refund Efficient Payment Trust Fund.

Any bond proceeds or other deposits *not* related to daily revenue collection by the government of Guam *shall* be delineated separately and footnoted in said report in compliance with Internal Revenue Code Privacy Act provisions. The OPA *shall* prepare and provide a written report of compliance with § 51102 of Chapter 51, Title 11, Guam Code Annotated, within fifteen (15) calendar days of the end of each month for the preceding month to *I Maga'lahaen Guåhan*, to the Speaker of *I Liheslaturan Guåhan*, and to the Attorney General of Guam.

SOURCE: Amended by P.L. 29-017:3 (Sept. 24, 2007), P.L. 31-074:V:5 (June 6, 2011).

§ 51107. No Transfer Authority.

The money placed in the Trust Fund is not subject to any transfer authority of *I Maga'lahaen Guåhan*.

§ 51108. Effective Date.

The provisions of the Income Tax Refund Efficient Payment Trust Fund Act of 2002 shall be effective on October 1, 2002.
