

FILED

2014 JUN 17 PM 3:01

SUPREME COURT  
OF GUAM

**IN THE SUPREME COURT OF GUAM**

**IN RE REQUEST OF I MINA' TRENTAI DOS NA LIHESLATURAN  
GUÅHAN RELATIVE TO THE USE OF FUNDS FROM THE TAX  
REFUND EFFICIENT PAYMENT TRUST FUND**

**OPINION**

**Cite as: 2014 Guam 15**

Supreme Court Case No. CRQ14-001

Request for Declaratory Judgment pursuant to  
section 4104 of Title 7 of the Guam Code Annotated  
Argued and submitted on April 16, 2014  
Hagåtña, Guam

Appearing for Petitioner

I Mina' Trentai Dos Na Liheslaturan Guåhan:

John C. Terlaje, *Esq.*  
Law Offices of John C. Terlaje, P.C.  
194 Hernan Cortes Ave., Ste. 216  
Hagåtña, GU 96910

Appearing for *Amicus Curiae*

Office of the Attorney General:

Shannon J. Taitano, *Esq.*  
Assistant Attorney General  
Office of the Attorney General of Guam  
590 S. Marine Corps. Dr., Ste. 706  
Tamuning, GU 96913

Appearing for Respondent

I Maga'lahaen Guåhan:

Sandra Cruz Miller, *Esq.*  
Arthur B. Clark, *Esq.*  
Office of the Governor of Guam  
Ricardo J. Bordallo Governor's Complex  
Adelup, GU 96910

BEFORE: ROBERT J. TORRES, Chief Justice; F. PHILIP CARBULLIDO, Associate Justice; KATHERINE A. MARAMAN, Associate Justice.

**TORRES, C.J.:**

[1] Petitioner I Mina' Trentai Dos Na Liheslaturan Guåhan (“the Legislature”) requests a declaratory judgment from this court relating to alleged violations by I Maga'lahren Guåhan (“the Governor”) of Title 11 of the Guam Code Annotated, Chapters 50 and 51. These provisions establish the Income Tax Refund Reserve Fund (“Reserve Fund”) and the Income Tax Refund Efficient Payment Trust Fund (“Trust Fund”). The Legislature claims that the Governor has violated the provisions of Chapters 50 and 51 by unlawfully transferring funds out of the Trust Fund to pay General Fund obligations. It also requests a declaration that the statutes do not conflict with its Organic Act authority. The Governor contends that this court does not have jurisdiction to hear the declaratory judgment action, that Chapters 50 and 51 are inorganic and usurp his powers of administration and enforcement of the Guam Territorial Income Tax, and that his alleged actions do not violate Chapters 50 and 51.

[2] We find that jurisdiction is proper pursuant to 7 GCA § 4104 to resolve three narrow issues. First, as to the separation of powers, we hold that the Legislature’s passage of Chapters 50 and 51 is a valid exercise of its Organic Act powers, and does not impinge upon the Governor’s duty to administer and enforce the Guam Territorial Income Tax. Second, we hold that the Organic Act’s income tax provisions set forth in 48 U.S.C.A. § 1421i do not preclude the passage of Chapters 50 and 51. Finally, we hold that Chapters 50 and 51 prohibit the transfer of any funds, even if they are “advances,” from the Trust Fund for purposes other than those prescribed by the statutes.

**I.**

[3] Since the early 1990s, the Government of Guam has faced a series of controversies and lawsuits relating to its alleged inability to pay Guam Territorial Income Tax (“GTIT”) refunds in a timely manner. *Paeste v. Gov’t of Guam*, No. CV 11-00008 CBM, Doc. 196 at 3 (Finds. Fact & Concl. L. (D. Guam. Jan. 30, 2013)). In response to this issue, the Legislature amended Chapter 50 and enacted Chapter 51 of Title 11 of the Guam Code Annotated (“GCA”). *Id.* at 4; *see also* Guam Pub. L. 26-074 (Mar. 7, 2002). Section 1 of the legislation, “Legislative Findings and Intent,” emphasizes the purpose of the law:

[E]ach year, the Department of Revenue and Taxation (“DRT”) finds itself in a difficult situation, trying to find ways to promptly process Guam’s taxpayers’ income tax returns and timely pay the refunds due. . . .

Such problems in the delay of processing the income tax returns have greatly burdened Guam’s taxpayers financially, as they patiently wait for their income tax returns so critical to making ends meet.

Therefore, it is the intent of *I Liheslaturan Guåhan* to develop a program to provide the resources to DRT to promptly process income tax returns, and to issue the refunds to Guam taxpayers.

P.L. 26-074:1.

[4] Chapters 50 and 51 establish two separate funds to facilitate payment of tax refunds and credits to Guam taxpayers: the Income Tax Refund Reserve Fund (“Reserve Fund”), and the Income Tax Refund Efficient Payment Trust Fund. Essentially, these chapters require the Director of the Department of Administration (“DOA”) to deposit a certain portion of income tax payments into the Trust Fund. 11 GCA § 51102 (as amended by Guam Pub. L. 29-017:2 (Sept. 24, 2007)). Upon request of the Tax Commissioner, funds from the Trust Fund are transferred to the Reserve Fund in order to pay tax refunds and credits. *Id.*; 11 GCA § 50105 (2005). Chapters

50 and 51 limit the use of funds in the Trust Fund and Reserve Fund to income tax-related purposes. *See generally* 11 GCA §§ 50101-50107, 51101-51108.

[5] In spite of the changes made to the law, the government allegedly continued to fail to pay tax refunds in a timely matter. *Paeste*, No. CV 11-00008 CBM, Doc. 196 at 4. In January 2012, the United States District Court of Guam addressed a case brought by a group of Guam residents and taxpayers. *See id.* at 2. The plaintiffs claimed that over the course of several decades, the government failed to timely pay their refunds, and that the government illegally expedited payment for certain taxpayer refunds and not others. *Id.* In its Findings of Fact and Conclusions of Law, the court entered summary judgment in favor of the plaintiffs on both claims. *Id.* at 9-15. It also granted declaratory relief and a permanent injunction, which required the government to “bring the administration of the GTIT into compliance with the Organic Act and the Equal Protection Clause.” *Id.* at 16-18.

[6] For nine months following the District Court’s findings of fact, the Government of Guam did not withdraw or transfer funds from the Trust Fund for non-tax purposes. In re Request of I Mina' Trentai Dos Na Liheslaturan Guåhan Relative to the Use of Funds from the Tax Refund Efficient Payment Trust Fund, CRQ14-001 (Req. for Declaratory J. at 7 (Feb. 20, 2014)) (hereinafter “Request”). However, in 2013, the government allegedly resumed transferring funds from the Trust Fund to other government accounts, including the government’s General Fund and other operational bank accounts. *Id.*

[7] The Legislature filed a Request for Declaratory Judgment on February 20, 2014. *Id.* at 1. The Legislature alleges that during the first quarter of the 2014 fiscal year, over \$12 million was improperly diverted from the Trust Fund to fund Government of Guam operations, and that

approximately \$4 million of the amount required by 11 GCA § 51102 was not deposited into the Trust Fund. *Id.* at 7-8.

[8] The Governor, designated by this court as the Respondent, claims that he has placed into the Trust Fund approximately \$7 million more than required by law. Resp't's Br. at 26 (Mar. 21, 2014). He asserts that any payments made from the Trust Fund to the General Fund are "returns of advances" given by the General Fund to the Trust Fund. *Id.* The Director of DOA states that "Governor Calvo has never used his one-way transfer authority to withdraw any funds from either the Trust Fund or the Refund Reserve Fund. All funds withdrawn from the Trust Fund or the Reserve Fund have always been reimbursed." Decl. Benita A. Manglona at 6 (Mar. 21, 2014). In addition, the Governor states that all tax refunds are currently being paid on time. Decl. of John P. Camacho at 2 (Mar. 21, 2014) ("Since January, 2013, the Government of Guam has been and is completely up-to-date in paying tax refunds, no later than within six (6) months after a corresponding tax return was designated as 'Status A.'"). The Legislature has not disputed this latter fact.

[9] This court recognized the Attorney General of Guam ("OAG"), DOA, and the Department of Revenue and Taxation ("DRT") as interested parties. *In re Request of I Mina' Trentai Dos Na Liheslaturan Guåhan Relative to the Use of Funds from the Tax Refund Efficient Payment Trust Fund*, CRQ14-001 (Mins. Status & Disqual. Hr'g (Feb. 26, 2014)). Of these, only the OAG filed a brief in this matter as an *amicus curiae* and participated in oral argument.

## II.

[10] This court has jurisdiction over requests for declaratory judgment made by the Governor or the Legislature of Guam pursuant to 7 GCA § 4104 (added by Guam Pub. L. 29-103:2 (July 22, 2008)). *In re Request of Governor Carl T.C. Gutierrez, Relative to the Organicity &*

*Constitutionality of Pub. Law 26-35 ("In re Request of Governor Gutierrez II")*, 2002 Guam 1 ¶ 4. Because this case is a request for a declaratory judgment and not a taxpayer suit involving a specific tax controversy, this court, and not the District Court of Guam, has jurisdiction over the matter. See 48 U.S.C.A. § 1421i (Westlaw current through Pub. L. 113-93 (2014)); *In re Request of I Mina' Bente Sing'ko Na Liheslaturan Guåhan Relative to the Application of the Earned Income Tax Credit Program to Guam Taxpayers ("The EIC Question")*, 2001 Guam 3 ¶¶ 10-13.

[11] The Legislature must satisfy several jurisdictional requirements under 7 GCA § 4104, which limits the Supreme Court's jurisdiction over declaratory judgment actions to certain narrow questions. We discuss the requirements of section 4104 in detail below.

### III.

#### A. Jurisdictional Requirements for Declaratory Judgment under 7 GCA § 4104

[12] We have found that "grants of original jurisdiction, as over declaratory judgments in section 4104, should be read literally and construed narrowly." *In re Request of Governor Gutierrez II*, 2002 Guam 1 ¶ 12. Before this court may exercise jurisdiction over a declaratory judgment pursuant to 7 GCA § 4104, the requesting party must satisfy three requirements. *Id.* ¶ 9; 7 GCA § 4104. First, the subject matter of the issues must be appropriate under 7 GCA § 4104 – that is, it must involve "the interpretation of any law, federal *or* local, lying within the jurisdiction of the courts of Guam to decide," or "any question affecting the powers and duties of *I Maga'lahi* and the operation of the Executive Branch, or *I Liheslaturan Guåhan*, respectively." 7 GCA § 4104. Second, the issue or issues raised must be "a matter of great public interest." *Id.* Finally, "the issue must be such that its resolution through the normal process of law is

inappropriate as it would cause undue delay.” *In re Request of Governor Gutierrez II*, 2002 Guam 1 ¶ 9; 7 GCA § 4104.

### **1. Appropriate Subject Matter for 7 GCA § 4104 Review**

[13] The Legislature’s prayer for relief initially consisted of four requested declarations relating to the Trust Fund. *See Request* at 13-14. The Legislature in its Opening Brief rephrases its request as encompassing two basic issues: whether the Legislature properly exercised its Organic Act authority when it enacted Chapter 51; and whether the Governor may “violate [Chapters 50 and 51].” Pet’r’s Br. at 1-2 (Mar. 7, 2014). We will address only questions over which we have proper subject matter jurisdiction pursuant to section 4104.

[14] The language of section 4104 clearly states that the petitioning branch of government may only request a declaration of the powers and duties affecting that branch. *See 7 GCA § 4104* (discussing questions affecting the powers and duties of the Legislature and the Governor “respectively”). The 1985 comment to section 4104 clarifies that it “does not permit one Branch to request opinions as to the operation of the other where that operation does not impinge on the requesting branch’s operations. The purpose of this limitation is to avoid one branch trying to regulate the other through the courts.” 7 GCA § 4104, 1985 cmt.

[15] At the same time, issues involving separation of powers are “undoubtedly the type of matter that can be addressed in a request for declaratory judgment under section 4104.” *In re Request of Governor Gutierrez II*, 2002 Guam 1 ¶ 24. In *In re Request of Governor Gutierrez II*, the court found that there was section 4104 jurisdiction where the Legislature passed a budget bill pursuant to its appropriations powers that allegedly infringed upon or usurped various powers of the Governor. *Id.* ¶¶ 23-31. The court pointed to the language in the 1985 comment to section 4104, which states that the court may address questions where one branch’s activities

“impinge” on the other branch’s operations. *Id.* ¶ 25; 7 GCA § 4104, 1985 cmt. It concluded, “[b]ecause the Governor alleges that provisions of the Budget Bill impinge upon the Governor’s powers of appointment, removal, and general management of [the] executive branch, the separation of powers issues fall within the purview of section 4104.” *In re Request of Governor Gutierrez II*, 2002 Guam 1 ¶ 25.

[16] Section 4104 also grants jurisdiction over matters involving interpretation of a local or federal law. 7 GCA § 4104. Requests for the court to declare a statute unconstitutional differ from requests to interpret a statute. While the latter type of request is appropriate for section 4104 review, the former is not. *In re Request of Governor Gutierrez II*, 2002 Guam 1 ¶¶ 12-17 (declining section 4104 review where the Governor requested that the court declare a statute unconstitutional). This is because courts are reluctant to become involved “in a political struggle between the other two branches,” which could call into question judicial independence and infringe upon the responsibilities of the other branches. *Id.* ¶ 13. While interpretation of a statute involves “ascertainment of meaning” without altering the statute itself, declaration of a statute as unconstitutional renders it “as inoperative as though it had never been passed.” *Id.* ¶ 17 (citations and internal quotation marks omitted). Therefore, this court does not have section 4104 jurisdiction solely to declare a statute unconstitutional or inorganic. However, this court has declared statutes invalid and inorganic where the matter satisfies the other jurisdictional prong and affects balance of powers between branches. *Id.* ¶¶ 50, 55, 65. Moreover, this court can interpret a statute to the extent that it is *not* inorganic.

[17] We find that we have jurisdiction over three substantive issues presented to the court: (1) whether the Legislature’s enactment of Chapters 50 and 51 is a valid exercise of its powers set forth in the Organic Act, or whether it impinges upon the powers of the Governor, thus violating

the separation of powers; (2) whether the Organic Act's income tax provisions preclude the enactment of Chapters 50 and 51; and (3) whether the Governor may, pursuant to Chapters 50 and 51, withdraw payments from the Trust Fund for the General Fund, including prior "advances" made to the Trust Fund.

[18] The first issue falls within the "separation of powers" jurisdiction of section 4104. Essentially, the Legislature requests clarification of its powers to make appropriations and to enact law pursuant to 48 U.S.C.A. §§ 1423j(a) and 1423a, as they interact with the powers of the Governor arising from his duty to administer and enforce the GTIT pursuant to 48 U.S.C.A. § 1421i(c). We do not opine on the powers of the Governor to the extent that they are *not* in tension with those of the Legislature. Likewise, we do not frame this issue as whether the Governor overstepped his powers under the Organic Act in transferring money out of the Trust Fund. Instead, we address whether Chapters 50 and 51 are a valid exercise of the Legislature's authority, or if they impinge upon the Governor's authority. If they are not valid, then the Legislature has acted beyond its authority. Therefore, this court will rule on the *Legislature's* powers and duties, as well as the separation of powers between the branches with regard to the GTIT. This is proper subject matter for review under section 4104.<sup>1</sup>

[19] The second issue before this court, whether Chapters 50 and 51 violate the Organic Act, involves an interpretation of federal law. To resolve this issue, we must examine the income tax provisions of the Organic Act, and determine whether they prohibit the enactment of legislation

---

<sup>1</sup> The Governor argues that this court should not entertain this issue of whether the Legislature enacted valid legislation, because this amounts to a waste of judicial resources and "will only establish the undesirable precedent for future legislatures to bring declaratory actions to simply have this Court retrospectively approve legislation. . . ." Resp't's Br. at 13. However, unlike most laws, this law lies in a gray area where the Governor's and the Legislature's powers overlap, and this issue appears to be precisely the type of subject matter over which section 4104 intends to grant jurisdiction. Like in *In re Request of Governor Gutierrez II*, the law potentially infringes upon a power of the Governor and oversteps the Legislature's authority.

such as Chapters 50 and 51.<sup>2</sup> This question also involves the powers and duties of the Legislature.

[20] The third issue, whether Chapters 50 and 51 preclude the Governor from withdrawing payments from the Trust Fund for the General Fund, involves an interpretation of local law. Although the parties make opposing factual claims relating to whether or not the Governor violated the law by withdrawing, transferring, or advancing funds to and from the Trust Fund, this issue is properly framed as one of interpretation. Under section 4104, we will not engage in a factual inquiry to determine whether the Governor violated the law. For this reason, we limit our review to an interpretation of Chapters 50 and 51, and will not address the parties' competing factual allegations relating to this issue.

[21] Although the subject matter of each of these issues merits review under section 4104, a declaratory judgment may be issued by this court only where it is a matter of great public interest and the normal process of law would cause undue delay. We now examine these two additional requirements.

## **2. Matter of Great Public Interest**

[22] The Legislature states that the “[t]imely payment of income tax refunds is a matter of great public importance.” Request at 8. It asserts that the Trust Fund and the Reserve Fund were created in order to ensure that income tax refunds are paid on time, and that the Governor's current practice threatens this timely payment. *Id.* at 8-9. It points to the District Court's findings of fact, which state:

The public has an interest in the lawful administration of the GTIT as indicated by the Guam Legislature's two attempts to compel the Government to pay refunds on

---

<sup>2</sup> To the extent that this legislation is permitted by the provisions of the Organic Act, we may rule on this issue, as it falls short of declaring the statutes inorganic and instead interprets the parameters of the Organic Act.

time through the passage of legislation. Those laws have been largely ignored and the requested injunctive relief is needed to bring the administration of the GTIT into compliance with the Organic Act . . . .

*Id.* (quoting *Paeste*, No. CV 11-00008 CBM, Doc. 196 at 18). The Governor does not argue that the matter is not one of great public interest. *See* Resp't's Br. at 1-37.

[23] We have previously interpreted this requirement to mean that “the issue presented must be significant in substance and relate to a presently existing governmental duty borne by the branch of government that requests the opinion.” *In re Request of Governor Gutierrez for a Declaratory Judgment as to Organicity of Guam Pub. Law 22-42* (“*In re Request of Governor Gutierrez I*”), 1996 Guam 4 ¶¶ 4-5 (citing *In re Opinion of the Justices*, 105 N.E. 440, 441 (Mass. 1914); *In re Opinions of the Justices*, 49 N.E.2d 252, 255 (Mass. 1943)). The requirement of great public interest is satisfied where “separation of powers issues that the Governor presents involve allegations that the Legislature has either exceeded its power to appropriate and has usurped the Governor’s power to administer appropriated funds or impermissibly interfered with the operation of the executive branch.” *In re Request of Governor Gutierrez II*, 2002 Guam 1 ¶ 28; *see also In re Request of Governor Felix P. Camacho Relative to the Interpretation & Application of Sections 6 & 9 of the Organic Act of Guam* (“*In re Request of Governor Camacho II*”), 2004 Guam 10 ¶¶ 1, 18 (exercising jurisdiction where interpreting Organic Act provisions involving “the Governor’s powers of general supervision and control of all bureaus of the executive branch, his power to appoint and remove all heads of executive agencies . . . and his power to reorganize.”); *In re Request of Governor Felix P. Camacho Relative to the Interpretation of Section 11 of the Organic Act of Guam & the Educ. Facilities Constr. Initiatives Act of 2001* (“*In re Request of Governor Camacho III*”), 2006 Guam 5 ¶ 9.

[24] Here, the issues all involve the operations of the Governor and the Legislature, as well as several executive branch agencies. They also impact Guam taxpayers. Like in *In re Request of Governor Gutierrez II*, a separation of powers issue is presented between the powers of the Legislature and the Governor, respectively. This matter is clearly “significant in substance.” *In re Request of Governor Gutierrez I*, 1996 Guam 4 ¶ 4. It also relates to a presently existing governmental duty – the duty to make appropriations and enact laws – borne by the requesting branch, the Legislature. Therefore, the matter presented satisfies the second jurisdictional requirement of section 4104 as a matter of great public interest.

### **3. Resolution Through Normal Process of Law**

[25] A declaratory judgment may be issued only where “the normal process of law would cause undue delay.” 7 GCA § 4104. The Legislature argues that the budget for the Government of Guam is enacted annually and that a declaratory judgment is needed to “prevent[] the continual withdrawal and further irretrievable siphoning of funds from the Trust Fund.” Request at 10-11. The Governor argues that the normal process of law would *not* cause undue delay. He points to the administration’s consistent and prompt payment of income tax refunds, which are “being paid faster than they ever have in over 20 years.” Resp’t’s Br. at 22; *see also* Decl. of John P. Camacho at 2. The OAG takes the Governor’s position relating to the issue of undue delay. OAG’s Br. at 4-5 (Mar. 14, 2014).

[26] We have found that this “undue delay” factor “requires [the court] to estimate, as a practical matter, the relative difference in speed for an issue depending on whether it travels the ‘normal processes of law’ route, or that provided by 7 GCA § 4104.” *In re Request of Governor Gutierrez I*, 1996 Guam 4 ¶ 7. Next, the anticipated delay must be “excessive or inappropriate.” *Id.* When faced with a request for declaratory judgment, this court has found that the normal

process of law would cause undue delay where matters involved the separation of powers relating to the Legislature's budget bill and the Governor's management of the executive branch, *In re Request of Governor Gutierrez II*, 2002 Guam 1 ¶ 29, and where there was a possibility that an action may never be brought, *The EIC Question*, 2001 Guam 3 ¶ 16.

[27] In this case, the Government of Guam is under a court order to pay all income tax refunds within six months of their filing date, or within six months from the due date for filing the claim for refund, whichever is earlier. *See Paeste v. Gov't of Guam*, No. CV 11-00008 CBM, Doc. 197 at 2-3 (Permanent Inj. & Final J. (D. Guam Jan. 30, 2013)). Failure to comply with this order could result in the appointment of a receiver or sequestration of government funds. *See id.* at 4-5; Fed. R. Civ. P. 66. Chapters 50 and 51 are relevant to this order because they were created to facilitate the timely payment of tax refunds, and requiring this case to go through the normal process of law could impede the government's ability to pay income taxes within six months. Therefore, we find that due to the District Court order, the normal process of law would cause undue delay.

[28] In addition, the fact that the Government of Guam has been timely paying tax refunds since January 2013 "for the first time in over 20 years" does not necessarily mean that there is no urgency in this matter. Resp't's Br. at 25. The Governor states that "Tax Year 2013 was the very first year since its establishment in 2002 that the Trust Fund was fully funded pursuant to 11 GCA Section 51102." *Id.* However, for most of Fiscal Year 2013, he also did not withdraw any money from the Trust Fund. Request at 7. The fact that the timely payment of tax refunds was only recently accomplished, and that it was while the government was *not* withdrawing any funds from the Trust Fund for non-tax purposes, raises the possibility that the failure to adhere to the strictures of section 51102 can impede the timely payment of tax refunds. For this reason,

combined with the government's past inability to pay tax refunds in a timely manner, we are not persuaded by arguments of the Governor and the OAG.

[29] Accordingly, we find that all jurisdictional requirements of 7 GCA § 4104 are satisfied with respect to three questions: (1) as to the separation of powers issue, whether the Legislature's enactment of Chapters 50 and 51 is a valid exercise of its powers set forth in the Organic Act, or impinges upon the powers of the Governor; (2) whether the Organic Act's income tax provisions preclude the enactment of Chapters 50 and 51; and (3) whether the Governor may, pursuant to Chapters 50 and 51, withdraw payments from the Trust Fund for the General Fund, including prior "advances" made to the Trust Fund.

**B. Whether the Legislature's Enactment of Chapters 50 and 51 is a Valid Exercise of its Powers Set Forth in the Organic Act, or Impinges Upon the Governor's Powers Arising from His Duty to Administer the GTIT**

[30] The Legislature asks this court to rule on whether it "properly exercise[d] its Organic Act authority when it passed the Income Tax Refund Reserve Fund." Pet'r's Br. at 1. In arguing that it has such authority, the Legislature points to its absolute power over appropriations, public finances, the setting of fiscal policy, and the direction and control of public funds. *Id.* at 2-3. The Governor argues that Chapters 50 and 51 do not involve "appropriations," and that as Tax Commissioner, he has "the exclusive authority to direct and supervise the execution and application of the internal revenue laws and the related Trust Fund/Refund Reserve Fund laws in order to control the government's cash flow." Resp't's Br. at 11, 18.

[31] We view this issue primarily as one of separation of powers. The legislative powers that are implicated include the power of appropriations set forth in 48 U.S.C.A. § 1423j(a), the power to enact legislation set forth in 48 U.S.C.A. § 1423a, and the power to levy a separate tax set forth in 48 U.S.C.A. § 1421i(a), which, together with the income tax laws imposed by 48

U.S.C.A. § 1421i(a) shall be known as the GTIT. 48 U.S.C.A. § 1421i(b). The Governor's powers at issue are his powers as Tax Commissioner to administer and enforce the GTIT as set forth in 48 U.S.C.A. §§ 1421i(c), (d)(2), and (e). We do not discuss the Governor's broader powers as set forth in 48 U.S.C.A. § 1422.<sup>3</sup>

[32] We first address the Governor's argument that provisions in Chapters 50 and 51 do not constitute "appropriations," but instead direct the use of income tax overpayments that are "set aside and kept separate from government appropriations." Resp't's Br. at 11. The OAG takes a similar position, stating that the funds belong to taxpayers, and not the government. OAG's Br. at 7.

[33] The Legislature's power of appropriations is codified in 48 U.S.C.A. § 1423j(a). This states that "[a]ppropriations, except as otherwise provided in this chapter, and except such appropriations as shall be made from time to time by the Congress of the United States, shall be made by the legislature." 48 U.S.C.A. § 1423j(a) (Westlaw current through Pub. L. 113-93 (2014)). We have defined the legislative power of appropriations as "the authority to set apart from the public revenue a certain sum of money for a specified object." *In re Request of Governor Gutierrez II*, 2002 Guam 1 ¶ 38 (quoting *Opinion of the Justices to the Senate*, 376 N.E.2d 1217, 1220-21 (Mass. 1978)) (internal quotation marks omitted). An appropriation must be made "in such manner that the executive officers of the government are authorized to use that money, and no more, for that object, and for no other." *Opinion of the Justices*, 79 N.E.2d 881, 882 (Mass. 1948) (citation and internal quotation marks omitted). The power of appropriations is absolute, encompassing the "principle . . . that it is for the Legislature, and not the executive

---

<sup>3</sup> We reserve judgment on whether Chapters 50 and 51 interfere with the Governor's broader powers of general supervision and control, or management of the budget and cash flow pursuant to 48 U.S.C.A. § 1422. The Governor has not cited to this provision, and no party has argued that Chapters 50 and 51 conflict with these powers. Accordingly, we focus only on the Governor's powers to administer and enforce the GTIT.

branch, to determine finally which social objectives or programs are worthy of pursuit.” *In re Request of Governor Gutierrez II*, 2002 Guam 1 ¶ 38 (omission in original) (quoting *Opinion of the Justices to the Senate*, 376 N.E.2d at 1221) (internal quotation marks omitted).

[34] The designation of a fund as a “Trust Fund” does not necessarily mean that it is held “in trust” and thus not subject to legislative appropriation.<sup>4</sup> *See, e.g., Goldston v. State*, 683 S.E.2d 237, 243 (N.C. Ct. App. 2009). When differentiating between non-public funds held in trust and public funds, courts examine the source of the funds, and whether they are levied subject to conditions or for a specific purpose. *See Opinion of the Justices to the House of Representatives*, 471 N.E.2d at 1275; *Opinion of the Justices to the Senate*, 378 N.E.2d 433, 436 (Mass. 1978). For example, funds raised by “levying special taxes for special purposes and allocating or appropriating all or specified percentages of the revenue to specific purposes” were not subject to legislative appropriation. *State ex rel. Hawkins v. Okla. Tax Comm’n*, 462 P.2d 536, 540 (Okla. 1969) (discussing trust fund created from gasoline excise tax levied for specific purpose set forth in law); *see also Mac Manus v. Love*, 499 P.2d 609, 610 (Colo. 1972) (“federal contributions are not the subject of the appropriative power of the [state] legislature”).

[35] In this case, Chapters 50 and 51 constitute a legislative appropriation, and not a fund held in trust. First, the Legislature has clearly “set apart . . . a certain sum of money for a specified

---

<sup>4</sup> Because only public revenue is subject to appropriation by the legislature, many courts find that funds held “in trust” by the government for a particular purpose or group of beneficiaries are not public funds, and thus not subject to legislative appropriation. *See, e.g., Opinion of the Justices to the House of Representatives*, 471 N.E.2d 1266, 1275 (Mass. 1984) (discussing funds held in trust as “exception” to legislative appropriation); *Navajo Tribe v. Ariz. Dep’t of Admin.*, 528 P.2d 623, 624-25 (Ariz. 1974) (“Only monies raised by the operation of some general law become public funds. Custodial funds are not state monies. The term ‘public funds’ refers to funds belonging to the state and does not apply to funds for the benefit of contributors for which the state is a mere custodian or conduit.” (citations omitted)).

object.”<sup>5</sup> *In re Request of Governor Gutierrez II*, 2002 Guam 1 ¶ 38 (citation and internal quotation marks omitted). Chapter 51 directs that a portion of tax payments shall be deposited in the Trust Fund according to a specified formula. 11 GCA § 51102. This sum is set apart for the payment of tax refunds and related administrative costs. *Id.*; 11 GCA § 51103 (2005). Executive officials, namely those in DOA, are directed to use the money for this purpose and for no other. 11 GCA §§ 51102-51103; 11 GCA § 51105 (2005).

[36] Furthermore, income taxes constitute public revenue, and are thus subject to appropriation by the Legislature. *Limtiaco v. Camacho*, 549 U.S. 483, 496 n.7 (2007) (“[Property tax] is not, of course, the only index of Guam’s capacity to pay its bills; *income taxation is an obvious source of revenue.*” (Souter, J., concurring in part and dissenting in part) (emphasis added) (citation omitted)); *Commonwealth v. Perkins*, 21 A.2d 45, 48 (Pa. 1941) (“As we understand the word ‘appropriation’, when used in the constitutional or legislative sense, it means a *designation of money raised by taxation to be withdrawn from the public treasury* for a specifically designated purpose.” (emphasis added)). The monies deposited into the Trust Fund are not levied for a specific purpose, but instead come from the total income tax received by the Guam government. *See* 31 U.S.C.A. § 1324(a)(2)(E) (Westlaw current through Pub. L. 113-93 (2014)) (stating that tax refunds are ordinarily paid out of the U.S. Treasury); 48 U.S.C.A. § 1421h (Westlaw current through Pub. L. 113-93 (2014)). Therefore, the Trust and Reserve Funds are not funds earmarked for a particular purpose at the time of collection. Rather, the legislation designates a specific source of funds from which the Trust and Reserve Funds receive monies (revenues from GTIT), and authorizes officials to use those funds for the intended

---

<sup>5</sup> Chapter 51 involves two separate sources of funds: first, the portion taken from total income taxes paid to the Government of Guam that are deposited into the Trust Fund; and second, the interest and investment earnings from these funds. 11 GCA § 51101(a). The latter funds are specifically stated to be “subject to legislative appropriation.” *Id.* We focus on the former, as those are the funds at issue in this case.

purpose. See 11 GCA §§ 50105, 51105. Chapters 50 and 51 fall squarely within our definition of a legislative appropriation.<sup>6</sup>

[37] Next, we address whether the appropriations in Chapters 50 and 51 overstep the Legislature's Organic Act authority, and violate the doctrine of separation of powers. See *Santos v. Calvo*, No. 80-0223A, 1982 WL 30790, at \*3 (D. Guam App. Div. Aug. 11, 1982) ("The doctrine of separation of powers . . . restricts the power of the legislature to legislative functions. As a general rule, the legislature cannot exercise executive power, and the executive branch cannot exercise legislative power. Legislative power extends to making laws, but not to enforcing them." (citations omitted)). The Governor argues that Chapters 50 and 51 interfere with his "exclusive authority to direct and supervise the execution and application of the internal revenue laws." Resp't's Br. at 18-19. These powers are set forth in 48 U.S.C.A. § 1421i.

[38] We have recognized that the powers of the Legislature and the Governor often overlap, and that such issues must be addressed on a case-by-case basis. See *In re Request of Governor Gutierrez II*, 2002 Guam 1 ¶ 40. "[T]he court must search for a usurpation by one department of the powers of another department . . . [from] the specific facts and circumstances presented." *Id.* (second alteration and omission in original) (quoting *State ex rel. Schneider v. Bennett*, 547 P.2d 786, 792 (Kan. 1976)). At the same time, "[a]n analysis of each issue raised . . . must begin with the general rule that legislative enactments are presumed to be constitutional." *Id.* ¶ 41. The

---

<sup>6</sup> The Governor argues that if Chapters 50 and 51 constitute appropriations of government funds, then they "must be declared invalid as they have unconstitutionally imposed appropriation requirements on future legislatures." Resp't's Br. at 12. He cites to the proposition that "[o]ne legislature cannot impose a legal obligation to appropriate money upon succeeding legislatures." *Id.* (quoting *Me. State Hous. Auth. v. Depositors Trust Co.*, 278 A.2d 699, 707 (Me. 1971)). However, this principle is inapplicable to this case. Chapters 50 and 51 do not purport to restrict the actions of a future legislature, such as by stating that future legislatures may not repeal the laws. Instead, future legislatures remain free to repeal or amend Chapters 50 and 51 if they so choose.

party alleging that a statute is unconstitutional bears the burden of proof. *Id.* “Courts should try to harmonize the legislature’s powers with the powers given to the executive.” *Id.*

[39] The Organic Act requires the Governor to “administer and enforce” the GTIT and grants him the power to do so. 48 U.S.C.A. § 1421i(c) states:

The administration and enforcement of the Guam Territorial income tax shall be performed by or under the supervision of the Governor. Any function needful to the administration and enforcement of the income-tax laws in force in Guam pursuant to subsection (a) of this section shall be performed by any officer or employee of the government of Guam duly authorized by the Governor (either directly, or indirectly by one or more redelegations of authority) to perform such function.

48 U.S.C.A. § 1421i(c). Moreover, “[t]he Governor or his delegate shall have the same administrative and enforcement powers and remedies with regard to the Guam Territorial income tax as the Secretary of the Treasury, and other United States officials of the executive branch, have with respect to the United States income tax.” 48 U.S.C.A. § 1421i(d)(2). The Organic Act also gives the Governor the same powers as the Commissioner of the IRS with respect to the GTIT. 48 U.S.C.A. § 1421i(e).

[40] In addition, the Governor shall prescribe “[n]eedful rules and regulations not inconsistent with the regulations prescribed under . . . [26 U.S.C.A. § 7654(e)] for enforcement of the Guam Territorial income tax . . . .” 48 U.S.C.A. § 1421i(d)(2). “The Governor or his delegate shall have authority to issue, from time to time, in whole or in part, the text of the income-tax laws in force in Guam pursuant to subsection (a) of this section.” *Id.* Each of these provisions reflects the Governor’s plenary power over *administration and enforcement* of the GTIT.<sup>7</sup>

---

<sup>7</sup> “Administration” is defined as “[t]he management or performance of the executive duties of a government,” or “[i]n public law, the practical management and direction of the executive department and its agencies.” *Black’s Law Dictionary* 46 (8th ed. 2004). “Enforcement” is defined as “[t]he act or process of compelling compliance with a law.” *Id.* at 569.

[41] On the other hand, the legislative power “shall extend to all rightful subjects of legislation not inconsistent with the provisions of this chapter and the laws of the United States applicable to Guam.” 48 U.S.C.A. § 1423a (Westlaw current through Pub. L. 113-93 (2014)). “Taxes and assessments . . . may be imposed for purposes of the government of Guam as may be uniformly provided by the Legislature of Guam . . . .” *Id.* The Legislature’s power to pass laws and impose taxes reflects a general authority to set overall fiscal policy. *United States v. Standard Oil Co. of Cal.*, 332 U.S. 301, 314 (1947) (“Congress . . . is the custodian of the national purse. By the same token it is the primary and most often the exclusive arbiter of federal fiscal affairs.”); *Opinion of the Justices*, 892 So. 2d 332, 335 (Ala. 2004).

[42] In addition, the Legislature’s power of appropriation “includes the power to impose ‘conditions upon the expenditure of appropriated funds.’” *In re Request of Governor Gutierrez II*, 2002 Guam 1 ¶ 44 (quoting *Santos*, 1982 WL 30790, at \*3). Accordingly, we have held that the Legislature may designate positions and salaries within the government, or set a “deadline” for spending funds. *Id.* ¶¶ 44, 62. Legislative limitations are also proper if “legislative action . . . [is] necessary to further a statutory scheme requiring cooperation between the two branches, and such action offers no substantial potential to interfere with exclusive executive functions or alter the statute’s purposes.” *Id.* ¶ 55 (omission in original) (quoting *Commc’ns Workers of Am., AFL-CIO v. Florio*, 617 A.2d 223, 232-33 (N.J. 1992)). Impermissible conditions are those which “purport to reserve to the legislature powers of close supervision that are essentially executive in character.” *Id.* ¶ 45 (citation and internal quotation marks omitted). We have found legislative conditions to violate the separation of powers where they dictate the entire staffing structure of the executive branch or the exact terms of a contract. *Id.* ¶¶ 46, 54.

[43] Other courts that have discussed similar separation of powers issues have found that bills or appropriations will usurp executive powers if they give the legislature continuing authority or supervision, endow legislative actors with discretion in administering a bill's provisions, or set conditions that otherwise usurp the executive's power. *See, e.g., Bowsher v. Synar*, 478 U.S. 714, 726 (1986); *Springer v. Gov't of the Philippine Islands*, 277 U.S. 189, 203 (1928); *McInnish v. Riley*, 925 So. 2d 174, 182 (Ala. 2005); *Colo. Gen. Assembly v. Owens*, 136 P.3d 262, 268 (Colo. 2006); *Colo. Gen. Assembly v. Lamm*, 700 P.2d 508 (Colo. 1985); *State ex rel. Schneider*, 547 P.2d at 797-98; *In re Opinion of the Justices*, 532 A.2d 195, 198 (N.H. 1987); *Fent v. Contingency Review Bd.*, 2007 OK 27, 163 P.3d 512, 522.

[44] The mere act of appropriating funds which the Governor ultimately has the power to administer and enforce cannot, in itself, violate the separation of powers doctrine. Otherwise, most legislative appropriations would be invalid. The Governor's powers of administration and enforcement are subject to the Legislature's policymaking authority and its power of appropriation. *See Swallow v. United States*, 325 F.2d 97, 98 (10th Cir. 1963) ("Congress alone has the power to appropriate [federal income tax] money to promote the general welfare and its determination that certain projects are in furtherance of general welfare is decisive." (citation and internal quotation marks omitted)); *Opinion of the Justices to the Senate*, 376 N.E.2d at 1222 n.2 ("[T]he Governor, or other members of the executive branch, cannot use funds appropriated for one purpose to augment funds earmarked for a second purpose. To allow such a transfer of funds effectively would be to supplant the executive for the legislative branch as the authority for determining the relative merits of competing social programs." (citation omitted)). Therefore, the appropriations in Chapters 50 and 51 must impose invalid conditions or otherwise overstep the Legislature's powers in order to violate the separation of powers.

[45] We do not find any conditions attached to the appropriations at issue that threaten the Governor's duty and ensuing powers to "administer or enforce" the GTIT. Chapters 50 and 51 do not require or appoint any legislative officials with potentially administrative or managerial authority. They do not create any supervisory authority for the Legislature, by which it may prevent the Governor from executing the GTIT. Moreover, the laws do not alter the substance of the GTIT, but rather set aside funds in order to facilitate compliance with its income tax refund provisions. Subject to the injunction imposed by the U.S. District Court, the executive branch retains the authority to calculate the amount of funds to be set aside, *see* 11 GCA § 51103, actually disburse the funds, and choose how and when to disburse them. In other words, once the money is appropriated to be used for income tax refunds and related expenses, the Governor has full authority to expend those funds for the payment of tax refunds as appropriated.

[46] For these reasons, we find that Chapters 50 and 51 are a valid exercise of the Legislature's appropriations powers under the Organic Act. They do not interfere with the Governor's duty and power to "administer and enforce" the GTIT, and do not violate the separation of powers doctrine in this respect.<sup>8</sup>

//

//

//

---

<sup>8</sup> We recognize that beyond setting aside money for the payment of tax refunds, Chapters 50 and 51 provide for several other actions which arguably go beyond appropriation and limit the Governor's powers with respect to the GTIT. The provisions include: requirements of monthly reports to the Legislature on all expenditures from and deposits into the Reserve Fund and the Trust Fund (sections 50107 and 51106); requirements of monthly reports to the Legislature on the status of income tax processing (section 51103); requirements that the money in the Trust Fund be invested into interest bearing instruments (section 51101); authorization of the use of the interest earned on Trust Fund monies for certain limited purposes (section 51103); and classification of hired income tax return processors as contractors and not employees (section 51104). The Governor has not challenged the validity of these specific provisions, and no party has argued that they are an invalid exercise of the Legislature's power. Therefore, we address only the provisions of Chapters 50 and 51 that involve the corpus of the funds that is set aside for tax refunds.

**C. Whether the Organic Act's Income Tax Provisions Preclude the Enactment of Chapters 50 and 51**

[47] The Organic Act requires that the GTIT “mirror” the Internal Revenue Code (“IRC”), substituting “Guam” for the word “United States” and “Governor of Guam” for the words “Secretary of the Treasury” and “Commissioner of the IRS.” 48 U.S.C.A. § 1421i(e). The Governor argues that Chapters 50 and 51 violate 48 U.S.C.A. § 1421i, because there is no counterpart to Chapters 50 and 51 in the IRC. Resp’t’s Br. at 15, 19-20.

[48] When interpreting statutes, “the plain language of a statute must be the starting point.” *Amerault v. Intelcom Support Servs., Inc.*, 2004 Guam 23 ¶ 14 (quoting *In re Request of Governor Felix P. Camacho Relative to the Interpretation & Application of Section 11 of the Organic Act of Guam* (“*In re Request of Governor Camacho I*”), 2003 Guam 16 ¶ 17, *rev’d on other grounds*, *Limtiaco*, 549 U.S. 483). “In determining the plain meaning of a statutory provision, we look to the meaning of the entire statutory scheme containing the provision for guidance.” *Id.* We also construe statutes in light of legislative intent. *Carlson v. Guam Tel. Auth.*, 2002 Guam 15 ¶ 46 n.7. “[I]n determining legislative intent, a statute should be read as a whole, and therefore, [we are to] construe each section in conjunction with other sections.” *Sumitomo Constr. Co. v. Gov’t of Guam*, 2001 Guam 23 ¶ 17 (citation omitted).

[49] This issue calls for a closer examination of 48 U.S.C.A. §§ 1421i and 1423a. Title 48 U.S.C.A. § 1423a states that “[t]he legislative power of Guam shall extend to all rightful subjects of legislation not inconsistent with the provisions of this chapter and the laws of the United States applicable to Guam. Taxes and assessments . . . may be imposed for purposes of the government of Guam as may be uniformly provided by the Legislature of Guam.” 48 U.S.C.A. §

1423a. Thus, section 1423a grants the Legislature a general power to impose laws relating to taxation and fiscal policy that are not inconsistent with the Organic Act.

[50] Title 48 U.S.C.A. § 1421i provides that the Legislature may levy a separate territorial tax on all taxpayers in an amount not to exceed 10 per centum of their annual income tax obligation to the Government of Guam, which, together with the income tax laws of the United States, is the GTIT. 48 U.S.C.A. § 1421i(a)-(b). The GTIT shall “include but [is] not limited to” specified provisions of the Internal Revenue Code of 1986, where not manifestly inapplicable or incompatible 48 U.S.C.A. § 1421i(d)(1).<sup>9</sup> We recognize that the Legislature has not yet levied a separate tax authorized by 48 U.S.C.A. § 1421i.

[51] Title 48 U.S.C.A. § 1421i(e) contains the requirement that the GTIT “mirror” certain portions of the IRC. It states:

In applying as the Guam Territorial income tax the income-tax laws in force in Guam pursuant to subsection (a) of this section, except where it is manifestly otherwise required, the applicable provisions of the Internal Revenue Codes of 1986 and 1939, shall be read so as to substitute “Guam” for “United States”, “Governor or his delegate” for “Secretary or his delegate”, “Governor or his delegate” for “Commissioner of Internal Revenue” and “Collector of Internal Revenue”, “District Court of Guam” for “district court” and with other changes in nomenclature and other language, including the omission of inapplicable language, where necessary to effect the intent of this section.

48 U.S.C.A. § 1421i(e).

[52] The provisions of section 1421i appear to reflect the same balance of powers discussed above. While the Legislature has the power to enact law, the administration and enforcement of that law is solely the province of the Governor. The Governor cites to *Government of Guam v. Koster*, 362 F.2d 248 (9th Cir. 1966), to argue that the Government of Guam may not alter the

---

<sup>9</sup> These provisions are: Subtitle A (not including chapter and section 931); chapters 24 and 25 of subtitle C, with reference to the collection of income tax at source on wages; and all provisions of subtitle F which apply to the income tax. 48 U.S.C.A. § 1421i(d)(1).

GTIT in any way without authorization from the U.S. Congress. Resp't's Br. at 21. However, *Koster* and related cases which hold that the Government of Guam may not alter the GTIT without permission from Congress, *see Bank of Guam v. United States*, 578 F.3d 1318 (Fed. Cir. 2009); *Bank of Am., Nat'l Trust & Sav. Ass'n v. Blaz*, 539 F.2d 1226 (9th Cir. 1968), are not applicable to this case. These cases focus on the powers of executive branch officials to modify the GTIT pursuant to its powers of administration and enforcement. *Bank of Guam*, 578 F.3d at 1327; *Bank of Am.*, 539 F.2d at 1227-28; *Koster*, 362 F.2d at 249. They do not implicate the Organic Act powers of the Legislature. Moreover, these cases focused on substantive changes to the GTIT, such as the definition of "gross income" as provided in the IRC. *See Koster*, 362 F.2d at 249; *The EIC Question*, 2001 Guam 3 ¶¶ 24-27 (distinguishing between actions relating to the "mere administration" of the GTIT and substantive modification of the GTIT, the latter of which is not valid under the Organic Act).

[53] Here, Chapters 50 and 51 do not affect or even involve the substance of the GTIT. They do not change the amount of tax to be paid or refunded, the definition of a material term, or any calculation relating to income taxes or credits. As we have stated, they simply give effect to the GTIT and facilitate the Governor's compliance with its provisions. The Legislature has the authority to enact such laws that are not inconsistent with the Organic Act. 48 U.S.C.A. § 1423a. For these reasons, the income tax provisions of the Organic Act do not preclude the passage of Chapters 50 and 51.<sup>10</sup>

---

<sup>10</sup> The remaining statutes cited to by the Governor as indicative of the Legislature's usurpation of his Organic Act powers as Secretary and Commissioner are not applicable. Title 26 U.S.C.A. § 7803, which sets forth the duties of the Commissioner of the IRS (and by substitution, the Governor), simply reiterates the Governor's powers of administration and enforcement, as opposed to the Legislature's power to pass laws and appropriations. *See Resp't's Br.* at 17; 26 U.S.C.A. § 7803 (Westlaw current through Pub. L. 113-93 (2014)). Likewise, 31 U.S.C.A. § 1324(a)(2)(E) is not part of the IRC and does not apply to Guam through the Organic Act. 48 U.S.C.A. § 1421i(d)(1). As the Governor concedes, the Organic Act does not provide the Governor with *all* powers granted to

**D. Whether the Governor May, Pursuant to Chapters 50 and 51, Withdraw Payments from the Trust Fund for the General Fund, Including Prior “Advances” Made to the Trust Fund**

[54] Finally, the parties dispute whether the Governor’s alleged actions violate the provisions of Chapters 50 and 51 in the first place. The Legislature and the Governor differ in their interpretations of the statute, and in whether the Governor’s alleged actions constitute “expenditures,” “pledges,” or an exercise of his “transfer authority.” Again, we do not opine on whether the Governor has violated these provisions in fact, but instead interpret the statute as it relates to the alleged actions of the Governor.

[55] Chapter 50 establishes the Reserve Fund. It provides that the Reserve Fund shall be maintained in a separate bank account, and not commingled with the General Fund. 11 GCA § 50102 (2005). Pursuant to Chapter 50, the Director of DOA must set aside all money reserved for income tax refunds and credits pursuant to a formula established by the Directors of DRT, DOA, and the Bureau of Budget and Management Research. 11 GCA § 50103 (as amended by Guam Pub. L. 31-214:2 (June 5, 2012)); 11 GCA § 50104 (2005). Section 50105 places limits on the uses of the Reserve Fund:

Any and all expenditures from the Fund shall be for the payment of income tax refunds, earned income tax credits, child tax credits, tax rebate relief and for no other purpose. The fund is not subject to the provisions of 5 GCA § 22414, which provisions would otherwise permit *I Maga’lahen Guåhan* [Governor of Guam] to pledge the Fund.

11 GCA § 50105. In addition, “[t]he money placed in the Income Tax Refund Reserve Fund is not subject to any transfer authority of the Governor.” 11 GCA § 50106 (2005).

[56] The provisions of Chapter 51 set forth the Trust Fund. Like the Reserve Fund, the Trust Fund is a separate fund, not to be commingled with the General Fund or any other government funds. 11 GCA § 51101 (2005). Section 51102 provides that upon request, “[t]he funds deposited in the Trust Fund by the Director of Administration shall immediately be transferred to the Income Tax Reserve Fund . . . for payments made pursuant to § 50105 . . . .” 11 GCA § 51102. Section 50105 requires that all “expenditures” from the Reserve Fund “be for the payment of income tax refunds, earned income tax credits, child tax credits, tax rebate relief and for no other purpose.” 11 GCA § 50105.

[57] In addition, the money deposited into the Trust Fund earns interest, which is subject to legislative appropriation. 11 GCA §§ 51101-51102. Section 51103 provides the purposes for which this interest shall be used, including hiring seasonal employees to process income tax returns and purchasing equipment necessary to “quickly process the income tax returns.” 11 GCA § 51103(c).

[58] Finally, similar to section 50105, section 51105 states that:

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.

11 GCA § 51105. Again, “[t]he money placed in the Trust Fund is not subject to any transfer authority of *I Maga'lahaen Guåhan*.” 11 GCA § 51107.

[59] The Governor argues that Chapters 50 and 51 do not prohibit expenditures of the corpus of the Trust Fund, because section 51105 only restricts expenditures of the *interest earned* from the Trust Fund. We disagree. The plain language of section 51105 uses the unqualified

language “any and all” when referring to expenditures of the Trust Fund. While section 51105 refers to section 51103, which governs only expenditures of the Trust Fund’s interest, it does so because no expenditures from the corpus of the Trust Fund are permitted at all – funds must first be transferred to the Reserve Fund. Therefore, the corpus of the Trust Fund is not subject to any “expenditures” until after it is transferred to another account. With this understanding, section 51105 clearly prohibits *all* expenditures of Trust Fund monies, except for the expenditures of the interest permitted under section 51103. Any expenditure of the Trust Fund for purposes not permitted by Chapters 50 and 51 is in violation of the law.

[60] The parties also dispute whether the Governor may withdraw funds from the Trust Fund as “advances.” The Governor argues that Chapters 50 and 51 allow him to withdraw monies from the Trust Fund if the withdrawal is an “advance” to be repaid at a later date. Resp’t’s Br. at 26, 33-35. Alternatively, he claims that he may withdraw funds as repayment for advances or overpayments previously made to the Trust Fund. *Id.* The Legislature maintains that Chapters 50 and 51 prevent all withdrawals from the Trust Fund for purposes other than those authorized by the statute. Pet’r’s Br. at 7-8.

[61] Chapters 50 and 51 do not use the word “withdrawal.” However, as discussed, they clearly prohibit any *expenditure* of monies in the Trust Fund for non-income tax purposes. An expenditure is defined as a “disbursement” or “a sum paid out.” *Black’s Law Dictionary* 617 (8th ed. 2004). Chapter 51 also clearly states that the money in the “Trust Fund” may not be “pledge[d] for payments or repayments of any government of Guam general fund obligations.” 11 GCA § 51105. A plain reading of this statute makes clear that no part of the Trust Fund may be committed to pay other obligations, including those of the General Fund.

[62] Lastly, section 51107 provides that “[t]he money placed in the Trust Fund is not subject to any transfer authority of [the Governor].” 11 GCA § 51107. The phrasing of the statute – money placed in the fund – designates the corpus of the fund, and not just the earnings. *See* 11 GCA § 51101. The term “transfer authority” traditionally refers to the Governor’s power to transfer or assign appropriated funds to other purposes within the executive branch’s budget. To the extent that the Governor “advances” funds to and from the Trust Fund without actually assigning them to or spending them for another purpose, he does not exercise his “transfer authority” in the traditional sense.

[63] However, even if the Governor were to transfer funds out of the Trust Fund without running afoul of the prohibition on the use of his transfer authority, he inevitably must expend or pledge the funds for a purpose other than those authorized by Chapters 50 and 51. The Governor does not argue that the “advances” he makes remain in another account, unspent and unpledged for other obligations. The Governor likewise could not articulate any circumstance in which money is withdrawn from the Trust Fund, but not transferred, pledged, or expended. Even if the funds are advances or withdrawals of advances, any disbursement still constitutes an “expenditure,” and any commitment for another purpose constitutes a “pledge” under the plain meaning of the statute’s text. Therefore, the Governor’s argument is foreclosed by the plain language of the statute.

[64] Moreover, the Governor’s position contradicts the general intent of Chapters 50 and 51. The Trust Fund is to be maintained in a separate bank account, apart from all other funds. 11 GCA § 51101. The money in the Trust Fund may only be transferred to the Reserve Fund upon written request of the Tax Commissioner to make tax refund payments. 11 GCA § 51102. Any expenditure from the Reserve Fund must be for income tax-related purposes. 11 GCA § 50105.

No money in the Trust Fund or the Reserve Fund is subject to transfer or pledging by the Governor. 11 GCA §§ 50105-50106, 51105, 51107. Clearly, the Legislature intended to restrict the use of Trust Fund monies.

[65] The legislative history and background reinforces this intent, which was stated as “to provide the resources to DRT to promptly process income tax returns.” P.L. 26-074:1. The Trust Fund was created in response to the government’s chronic failure to pay tax refunds in a timely manner. To adopt the Governor’s interpretation, allowing “withdrawals” from the Trust Fund for advances or returns of advances, would be an overly technical reading that would contradict the Legislature’s intent to insulate funds and ensure timely payment of income tax refunds.

[66] Therefore, the language of Chapters 50 and 51 clearly prevents transfers, expenditures, or pledges from the Trust Fund for *any* purpose other than those prescribed. Although the statute does not mention withdrawals, we cannot imagine any relevant situation in which the Governor would withdraw funds without pledging, expending, or transferring them. The fact that the Governor may have advanced money to the Trust Fund in the past, or plans to repay the Trust Fund in the future, is immaterial. For these reasons, Chapters 50 and 51 prohibit withdrawals from the Trust Fund used as “advances” or return of advances for purposes other than those they authorize.<sup>11</sup>

//

//

---

<sup>11</sup> The record is not clear as to whether the Governor’s “advances” from the General Fund would be placed into the Trust Fund before paying tax refunds, or whether the Governor would pay tax refunds directly out of the General Fund because the funds in the Trust Fund are insufficient. If the advances were placed in the Trust Fund, the statute prohibits later withdrawals of these advances. If the Governor paid tax refunds directly out of the General Fund, then Chapters 50 and 51 are not implicated.

IV.

[67] We find that this court has jurisdiction over the matters discussed because they satisfy all of the requirements of 7 GCA § 4104. We hold that 11 GCA, Chapters 50 and 51 constitute a valid exercise of the Legislature's power of appropriations, and do not interfere with the Governor's authority to administer and enforce the GTIT as set forth in 48 U.S.C.A. § 1421i. We also hold that the Organic Act does not prohibit the Legislature from enacting tax-related legislation, such as that in Chapters 50 and 51, which does not alter the substance of the IRC provisions applicable to Guam. Finally, we hold that Chapters 50 and 51 do not permit the Governor to withdraw monies from the Trust Fund for purposes other than those prescribed, regardless of whether they are "advances" to or from the Trust Fund.

Original Signed: **F. Philip Carbullido**

By  
F. PHILIP CARBULLIDO  
Associate Justice

Original Signed: **Katherine A. Maraman**

By  
KATHERINE A. MARAMAN  
Associate Justice

Original Signed: **Robert J. Torres**

By  
ROBERT J. TORRES  
Chief Justice