



Bob's Office

The Office of Senator Robert Klitzkie

197 Hernan Cortes Ave., Suite A-1
Hagatna, Guam 96910

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October 20, 2006

The Honorable Speaker Mark Forbes
155 Hesler Place
Hagatna, Guam 96910

RE: Committee Report – Bill 353 (EC)

Mr. Speaker:

Transmitted herewith for your consideration and action is the committee report on **Bill 353 (EC) - An Act To Repeal Title 11 G.C.A., Division 1, Chapter 1, § 1106, Item (D) And To Add A New Title 11 G.C.A., Division 1, Chapter 1, § 1106.1 Relative To Creating The Office Of The Principal Guam Territorial Income Tax Attorney**, as substituted by the Committee on Judiciary, Governmental Operations, and Reorganization.

The Committee votes are as follows:

7 TO PASS
0 NOT TO PASS
0 TO REPORT OUT ONLY
0 ABSTAIN
0 INACTIVE FILE

A copy of the committee report and other pertinent documents are attached for your immediate reference.

Any questions on the report and the accompanying documents should be directed to my office via email at bob@bobsoffice.org or by phone at 472-9355.

Sincerely,

Bob

Senator Robert Klitzkie, Chairman
Committee on Judiciary, Governmental Operations & Reorganization



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The Office of Senator Robert Klitzkie

197 Hernan Cortes Ave., Suite A-1
Hagatna, Guam 96910

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October 18, 2006

Committee on Judiciary, Governmental Operations,
& Reorganization
155 Hesler Place
Hagatna, Guam 96910

RE: Voting Sheet for Bill 353 (EC)

Dear Members:

Transmitted herewith is the voting sheet and committee report on **Bill 353 (EC) - An Act To Repeal Title 11 G.C.A., Division 1, Chapter 1, § 1106, Item (D) And To Add A New Title 11 G.C.A., Division 1, Chapter 1, § 1106.1 Relative To Creating The Office Of The Principal Guam Territorial Income Tax Attorney**, as *substituted* by the Committee on Judiciary, Governmental Operations, and Reorganization, for your review and signature.

Your attention to this matter is greatly appreciated.

Sincerely,

Bob

Senator Robert Klitzkie, Chairman

Committee on Judiciary, Governmental Operations,
& Reorganization



Committee on Judiciary, Governmental Operations, and Reorganization

I Mina' Bente Ocho Na Liheslaturan Guahan

Bill 353 (EC) – As Substituted by the Committee on Judiciary, Governmental Operations, & Reorganization

An Act To Repeal Title 11 G.C.A., Division 1, Chapter 1, § 1106, Item (D) And To Add A New Title 11 G.C.A., Division 1, Chapter 1, § 1106.1 Relative To Creating The Office Of The Principal Guam Territorial Income Tax Attorney.

	Signature	To Pass	Not To Pass	Report Out of Committee	Abstain	Inactive File
Senator Robert Klitzkie, Chairman		✓				
Speaker Mark Forbes, Member		✓				
Senator Jesse Lujan, Member		✓ 10/12/06				
Senator Adolpho Palacios, Member		✓				
Senator Larry Kasperbauer, Ph. D., Member		X				
Senator Ray Tenorio, Member		✓				
Senator B.J. Cruz, Member		✓				

MINA'BENTE OCHO NA LIHESLATURAN GUÅHAN
2006 (SECOND) Regular Session

Bill No. 353 (EC)

Substitute by Committee on Judiciary
Governmental Operations, & Reorganization

R. Klitzkie
Mark Forbes
J. M. S. Brown
L. F. Kasperbauer
Ray Tenorio
Edward J. B. Calvo
A. R. Unpingco
Mike Cruz

**AN ACT TO REPEAL TITLE 11 G.C.A., DIVISION 1,
CHAPTER 1, § 1106, ITEM (d) AND TO ADD A NEW TITLE
11 G.C.A., DIVISION 1, CHAPTER 1, § 1106.1 RELATIVE
TO CREATING THE OFFICE OF THE PRINCIPAL
GUAM TERRITORIAL INCOME TAX ATTORNEY.**

- 1 **Section One.** *I Liheslaturan Guahan* finds:
- 2 1. 48 USC §1421i (c) (a section of the Organic Act) provides:
- 3 “(c) Enforcement of Tax. The administration and enforcement of the Guam Territorial
- 4 Income Tax shall be performed by or under the supervision of the Governor. Any function
- 5 needful to the administration and enforcement of the income tax laws in force in Guam pursuant
- 6 to subsection (a) of this section shall be performed by any officer or employee of the government
- 7 of Guam duly authorized by the Governor (either directly, or indirectly by one or more
- 8 redelegations of authority) to perform such function.”
- 9 2. 48 USC §1421i (d) (2) (a section of the Organic Act) provides in pertinent part:
- 10 “(2) The Governor or his delegate shall have the same administrative and enforcement powers
- 11 and remedies with regard to the Guam Territorial Income Tax as the Secretary of the Treasury,
- 12 and other United States officials of the executive branch, have with respect to the United States
- 13 income tax. ...”
- 14 3. On March 23 the District Court of Guam in Julie Babauta Santos, et al. v. Felix A

1 Camacho, et al., Civil Case No. 04-00006, stated, “The court finds that, at least in this context,
2 the Government of Guam’s representative should be the Governor. Moreover, the court
3 concludes, as matter of law, that the Governor has authority over the enforcement of tax matters,
4 and thus, may dictate the litigation strategy of this matter.”

5 4. Thirteen days after the decision in Santos the Attorney General sent a memo titled
6 “TRANSFER OF ALL CASES (LITIGATION/ NON-LITIGATION)” to the Director of
7 Revenue and Taxation telling the Director to coordinate the transfer of 111 files to his office.
8 There are 10 kinds of files to be transferred:

Guam Territorial Income Tax	19
Regulatory	26
Regulatory/Other	1
Liquid Fuel Tax	5
Division of Motor Vehicle	2
Gross Receipts	1
Gross Receipts/Sunshine Request	1
Gross Receipts/GEDA Rebate	21
Real Property Tax	2
Other	33
Total	111

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21 5. In the memo the Attorney General requested that the Director retain counsel to
22 represent his interests.

23 6. The Governor’s administration and enforcement of the Guam Territorial Income Tax
24 requires the use of officers and employees of the Government of Guam. It is impracticable to
25 employ officers *e.g.* Director of Revenue and Taxation and the Principal Guam Territorial
26 Income Tax Attorney in the in the merit system. These officers’ authority is delegated or
27 redelegated from the Governor pursuant to 48 USC §1421i (c) therefore their performance can
28 not be the subject of the kinds of job protections applicable to employees in the classified
29 service.

30 7. In order to effect the administration and enforcement of the Guam Territorial Income
31 Tax it is necessary to create the **Office of the Principal Guam Territorial Income Tax**

1 **Attorney** headed by the **Principal Guam Territorial Income Tax Attorney** within the
2 Department of Revenue and Taxation.

3 **Section Two.** Title 11 G.C.A., Division 1, Chapter 1, § 1106, Item (d) is repealed.

4 **Section Three.** A new § 1106.1 is added to Title 11 G.C.A., Division 1, Chapter 1 to
5 read:

6 **§ 1106.1. Office of the Principal Guam Territorial Income Tax Attorney.** There is
7 within the Department of Revenue and Taxation the Office of the Principal Guam Territorial
8 Income Tax Attorney. The Director shall appoint the **Principal Guam Territorial Income Tax**
9 **Attorney** who shall be a member of the unclassified service who shall serve at his pleasure. The
10 Director of Revenue and Taxation shall, pursuant to Title 48 U.S.C. § 1421i, supervise the Office
11 the **Principal Guam Territorial Income Tax Attorney**. The Director shall appoint, as
12 members of the classified service, such Assistants to the **Principal Guam Territorial Income**
13 **Tax Attorney** as may be required to assist the **Principal Guam Territorial Income Tax**
14 **Attorney** in the performance of his duties. The **Principal Guam Territorial Income Tax**
15 **Attorney** and the Assistants Principal Tax Attorneys shall be compensated in accordance with
16 Title 4 G.C.A. § 6208.1. The **Principal Guam Territorial Income Tax Attorney** shall:

17 (1) Assist the Director and I Maga'lahi Guahan in administering and enforcing the Guam
18 Territorial Income Tax;

19 (2) Represent I Maga'lahi Guahan in all civil actions arising from or pertaining to the Guam
20 Territorial Income Tax, provided that the Principal Guam Income Tax Attorney may appear on
21 behalf of the Director in a criminal action for the sole purpose of seeking restitution of funds or
22 payment of overdue taxes ;

23 (3) Represent the Director of Revenue and Taxation in court and administrative proceedings
24 in legal matters in which the Department is interested;

25 (4) Diligently protect the rights and property of the government of Guam in matters under the
26 Director's purview;

27 (5) Perform such other tasks as the Director of Revenue and Taxation assigns to him;

28 (6) Nothing herein shall be construed to prevent the **Principal Guam Territorial Income**
29 **Tax Attorney** from assisting and representing the Director of Revenue and Taxation regarding
30 all legal matters in which the Department is interested, including tax, regulatory, licensing issues
31 and personnel matters and all other legal matters within the Director's purview.

MINA'BENTE OCHO NA LIHESLATURAN GUÅHAN
2006 (SECOND) Regular Session

Bill No. 353 (LS)

Introduced by:

R. Klitzkie
Mark Forbes
J. M. S. Brown
L. F. Kasperbauer
Ray Tenorio
Edward J. B. Calvo
A. R. Unpingco
Mike Cruz

**AN ACT TO REPEAL TITLE 11 G.C.A., DIVISION 1,
CHAPTER 1, § 1106, ITEM (d) AND TO ADD A NEW TITLE
11 G.C.A., DIVISION 1, CHAPTER 1, § 1106.1 RELATIVE
TO CREATING THE OFFICE OF THE PRINCIPAL
GUAM TERRITORIAL INCOME TAX ATTORNEY.**

1 **Section One.** *I Liheslaturan Guahan* finds:

2 1. 48 USC §1421i (c) (a section of the Organic Act) provides:

3 “(c) Enforcement of Tax. The administration and enforcement of the Guam Territorial
4 Income Tax shall be performed by or under the supervision of the Governor. Any function
5 needful to the administration and enforcement of the income tax laws in force in Guam pursuant
6 to subsection (a) of this section shall be performed by any officer or employee of the government
7 of Guam duly authorized by the Governor (either directly, or indirectly by one or more
8 redelegations of authority) to perform such function.”

9 2. 48 USC §1421i (d) (2) (a section of the Organic Act) provides in pertinent part:

10 “(2) The Governor or his delegate shall have the same administrative and enforcement powers
11 and remedies with regard to the Guam Territorial Income Tax as the Secretary of the Treasury,
12 and other United States officials of the executive branch, have with respect to the United States
13 income tax. ...”

14 3. On March 23 the District Court of Guam in Julie Babauta Santos, et al. v. Felix A

1 Camacho, et al., Civil Case No. 04-00006, stated, “The court finds that, at least in this context,
2 the Government of Guam’s representative should be the Governor. Moreover, the court
3 concludes, as matter of law, that the Governor has authority over the enforcement of tax matters,
4 and thus, may dictate the litigation strategy of this matter.”

5 4. Thirteen days after the decision in Santos the Attorney General sent a memo titled
6 “TRANSFER OF ALL CASES (LITIGATION/ NON-LITIGATION)” to the Director of
7 Revenue and Taxation telling the Director to coordinate the transfer of 111 files to his office.
8 There are 10 kinds of files to be transferred:

Guam Territorial Income Tax	19
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Gross Receipts/Sunshine Request	1
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Other	33
Total	111

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21 5. In the memo the Attorney General requested that the Director retain counsel to
22 represent his interests.

23 6. The Governor’s administration and enforcement of the Guam Territorial Income Tax
24 requires the use of officers and employees of the Government of Guam. It is impracticable to
25 employ officers e.g. Director of Revenue and Taxation and the Principal Guam Territorial
26 Income Tax Attorney in the in the merit system. These officers’ authority is delegated or
27 redelegated from the Governor pursuant to 48 USC §1421i (c) therefore their performance can
28 not be the subject of the kinds of job protections applicable to employees in the classified
29 service.

30 7. In order to effect the administration and enforcement of the Guam Territorial Income
31 Tax it is necessary to create the **Office of the Principal Guam Territorial Income Tax**

1 **Attorney** headed by the **Principal Guam Territorial Income Tax Attorney** within the
2 Department of Revenue and Taxation.

3 **Section Two.** Title 11 G.C.A., Division 1, Chapter 1, § 1106, Item (d) is repealed.

4 **Section Three.** A new § 1106.1 is added to Title 11 G.C.A., Division 1, Chapter 1 to
5 read:

6 **§ 1106.1. Office of the Principal Guam Territorial Income Tax Attorney.** There is
7 within the Department of Revenue and Taxation the Office of the Principal Guam Territorial
8 Income Tax Attorney. The Director shall appoint the **Principal Guam Territorial Income Tax**
9 **Attorney** who shall be a member of the unclassified service who shall serve at his pleasure. The
10 Director of Revenue and Taxation shall, pursuant to Title 48 U.S.C. § 1421i, supervise the Office
11 the **Principal Guam Territorial Income Tax Attorney**. The Director shall appoint, as
12 members of the classified service, such Assistants to the **Principal Guam Territorial Income**
13 **Tax Attorney** as may be required to assist the **Principal Guam Territorial Income Tax**
14 **Attorney** in the performance of his duties. The **Principal Guam Territorial Income Tax**
15 **Attorney** and the Assistants Principal Tax Attorneys shall be compensated in accordance with
16 Title 4 G.C.A. § 6208.1. The **Principal Guam Territorial Income Tax Attorney** shall:

17 (1) Assist the Director and I Maga'lahi Guahan in administering and enforcing the Guam
18 Territorial Income Tax;

19 (2) Represent I Maga'lahi Guahan in all civil actions arising from or pertaining to the Guam
20 Territorial Income Tax, provided that the Principal Guam Income Tax Attorney may appear on
21 behalf of the Director in a criminal action in which the Department seeks restitution of funds or
22 payment of overdue taxes ;

23 (3) Represent the Director of Revenue and Taxation in court and administrative proceedings
24 in legal matters in which the Department is interested, except for criminal prosecutions;

25 (4) Diligently protect the rights and property of the government of Guam in matters under the
26 Director's purview;

27 (5) Perform such other tasks as the Director of Revenue and Taxation assigns to him;

28 (6) Nothing herein shall be construed to prevent the **Principal Guam Territorial Income**
29 **Tax Attorney** from assisting and representing the Director of Revenue and Taxation regarding
30 all legal matters in which the Department is interested, including tax, regulatory, licensing issues
31 and personnel matters and all other legal matters within the Director's purview.

I. OVERVIEW

The Committee on Judiciary, Governmental Operations, and Reorganization held a public hearing on Bill 353 (EC) on October 4, 2006 at 9:00am in the Guam Legislature public hearing room in Hagatna, Guam. Notice of public hearing was disseminated throughout all local media.

Senators present:

Senator Robert Klitzkie, chairman
Senator Adolpho Palacios, member
Senator Ray Tenorio, member
Senator B.J. Cruz, member
Senator Larry Kasperbauer, member
Senator Joanne Brown

II. SUMMARY OF TESTIMONY

- **Steven Cohen**, member of the Guam Bar Association, presented written and oral testimony in support of Bill 353 (EC). Mr. Cohen stated that Bill 353 “satisfies the dictates of the Organic Act as interpreted by the District Court of Guam in the case of Julie Babauta Santos, et al. v. Felix A Camacho, et al., Civil Case No. 04-00006, an income tax case involving the Earned Income Tax Credit.” He also confirmed that his legal expertise consists of several years as legal counsel for the Guam Department of Revenue and Taxation and also for the CNMI Division of Revenue and Taxation.

- **George Bamba**, chief of staff for the governor’s office, presented oral testimony in favor of Bill 353 (EC). Mr. Bamba stated that he would be submitting written testimony at a later date on behalf of the governor. Mr. Bamba believes that Bill 353 will help with the day-to-day operations of the department and also assist in resolving pending cases. He provided one recommendation to the committee to add language that would give the governor the authority to hire a conflicts counsel. While he was not able to provide specific instances of when a conflicts counsel would be necessary, he did state that it would be an added safeguard for the director and the department. Attorney Steve Cohen rebutted, stating to the committee that he could not foresee conflicts arising that would grant the need for a conflicts counsel.

- **Art Ilagan**, director of Revenue and Taxation (DRT), presented oral and written testimony in favor of Bill 353 (EC). Mr. Bamba emphasized the need for a DRT in-house tax attorney based on the department’s tasks of administering and enforcing not just income tax matters, but also real property taxes, banking, insurance, securities, compliance, and business privilege taxes. He highlighted the court ruling in Julie Babauta Santos, et al. v. Felix A Camacho, et al., Civil Case No. 04-00006 and the transfer of 111 files by the Attorney General to the department as necessitating the need for Bill 353. Ilagan stated that Bill 353 will save money for the Government of Guam and help resolve many cases still pending with the department.

- **John Camacho**, deputy director of Revenue and Taxation, presented oral testimony in favor of Bill 353 (EC). Mr. Camacho stated his agreement with the sentiments of the Director of Revenue and Taxation.

- **Veronica Quan**, technical research and appeals administrator for the Department of Revenue and Taxation, testified in favor of Bill 353 (EC). Ms. Quan highlighted the critical need for a tax attorney in assisting the Department in resolving pending cases.

- **Andy Jordanou**, banking and insurance commissioner, presented oral testimony in support of Bill 353 (EC). Mr. Jordanou described instances when communication with the Attorney General was delayed when dealing with issues pertaining to Department of Revenue and Taxation. He believes Bill 353 resolves these issues.

- **Edward Cruz, M.D.**, presented oral and written testimony in support of Bill 353 (EC). Dr. Cruz suggested improving the legislation by deleting “except for criminal prosecutions” on page 3, line 24. He also highlighted the need to reconsider the use of “criminal action” on page 3, line 21. Dr. Cruz stated to the committee that the language as written limits the consistency of the bill.

III. FINDINGS AND RECOMMENDATIONS:

Bill 353 (EC) authorizes the creation of the Office of the Principal Guam Territorial Income Tax Attorney, legislation deemed necessary subsequent to the ruling of *Julie Babauta Santos, et al. v. Felix A Camacho, et al.*, Civil Case No. 04-00006 and the transfer of 111 files to the Director of Revenue & Taxation by the Attorney General. Both events prompted the need for a Principal Guam Territorial Income Tax Attorney.

Provisions in the Organic Act, as outlined in Section 1 of Bill 353, provide the framework for the administration and enforcement of the Guam Territorial Income Tax. Accordingly, it was stated in the *Santos* case ruling that, “The Court finds that, at least in this context, the Government of Guam’s representative should be the Governor. Moreover, the court concludes, as a matter of law, that the Governor has authority over the enforcement of tax matters, and thus, may dictate the litigation strategy of this matter.”

Bill 353 will provide the mechanism for the Governor to pursue tax collection as mandated in the Organic Act by authorizing the Director of Revenue and Taxation to appoint a Principal Guam Territorial Income Tax Attorney.

The public provided unanimous support for Bill 353 and stressed the critical need for an in-house tax attorney. Implementing the position of the Principal Guam Territorial Income Tax Attorney will result in:

- 1.) Assistance for the Director of Revenue and Taxation and the Governor in administering and enforcing the Guam Territorial Income Tax;
- 2.) Representation for the Governor in all civil actions arising from or pertaining to the Guam Territorial Income Tax;
- 3.) Appearances on behalf of the Director in a criminal action solely in cases in which the Department seeks restitution of funds or payment of overdue taxes;
- 4.) Representation for the Director of Revenue and Taxation in court and administrative proceedings in legal matters in which the Department is interested; and

5.) Protection of the rights and property of the government of Guam in matters under the Director's purview.

Recommendations were also discussed during the public hearing on Bill 353. The governor's chief of staff suggested giving the governor authorization to hire a conflicts counsel, but was unable to provide specific instances when one would be necessary. Attorney Steve Cohen stated to the committee that he could not foresee conflicts arising that would grant the need for a conflicts counsel.

The committee finds that the thrust of the bill is to make clear that the governor has the authority to enforce the Territorial Income Tax and that the Principal Income Tax Attorney shall serve at the pleasure of the governor. Therefore, the committee finds the addition of a sub-delegee superfluous.

It was also suggested to the committee that the use of 'criminal action' and 'except for criminal prosecutions' be reconsidered under the duties of the Principal Tax Attorney. It was reasoned that the language as written limits the consistency of the bill.

Therefore, the committee recommends a substitute bill amending Items (2) and (3) of Section 3 to adopt the recommendations proffered in the public hearing as follows:

- (2) Represent I Maga'lahi Guahan in all civil actions arising from or pertaining to the Guam Territorial Income Tax, provided that the Principal Guam Income Tax Attorney may appear on behalf of the Director in a criminal action for the sole purpose of seeking ~~in which the Department seeks~~ restitution of funds or payment of overdue taxes ;
- (3) Represent the Director of Revenue and Taxation in court and administrative proceedings in legal matters in which the Department is interested; ~~except for criminal prosecutions~~

The committee finds that Substitute Bill 353 (EC) is necessary legislation in light of the ruling in Julie Babauta Santos, et al. v. Felix A Camacho, et al., Civil Case No. 04-00006 and the subsequent transfer of 111 files to the Director of Revenue & Taxation by the Attorney General. The bill responds to the needs of the Department of Revenue and Taxation and adopts the recommendations of the public for the effective establishment of an Office of the Principal Guam Territorial Income Tax Attorney and the creation of the position of the Principal Guam Territorial Income Tax Attorney.

Accordingly, the Committee on Judiciary, Governmental Operations, and Reorganization, does hereby submit its findings and recommendations to **DO PASS, Bill 357 (EC), AN ACT TO REPEAL TITLE 11 G.C.A., DIVISION 1, CHAPTER 1, § 1106, ITEM (d) AND TO ADD A NEW TITLE 11 G.C.A., DIVISION 1, CHAPTER 1, § 1106.1 RELATIVE TO CREATING THE OFFICE OF THE PRINCIPAL GUAM TERRITORIAL INCOME TAX ATTORNEY, as substituted.**

I Mina' Bente Ocho Na Liheslaturan Guahan
Committee on Judiciary, Governmental Operations, & Reorganization

MINUTES

[Prepared by: Audreya Punzalan *10/11/2006]

Date: October 4, 2006

Location: Guam Legislature – Public hearing room
155 Hesler Street Hagatna, Guam

Called to order by Senator Robert Klitzkie, chairman, at 9:00am

Public hearing agenda: Bill 331 (LS), Bill 340 (EC), Bill 348 (EC), Bill 353 (EC), Bill 357 (LS)

Public hearing called to order at 9:00am.

Senators present:

Senator Robert Klitzkie, chairman
Senator Adolpho Palacios, member
Senator Ray Tenorio, member
Senator B.J. Cruz, member
Senator Larry Kasperbauer, member
Senator Joanne Brown

Bill 331(LS), An Act To Repeal Section 6 Of Chapter V (Administrative Provisions) Of Public Law 28-068 And To Make The Provisions Of This Act Retroactive To September 30, 2005, heard at 9:02 am

- No individuals presented oral or written testimony

Bill 340 (EC), An Act To Amend §3104 (A) Of Chapter 3 Of Title 17 Guam Code Annotated Relative To The Qualifications Of The Superintendent Of Education, heard at 9:03am

- No individuals presented oral or written testimony

Bill 348 (EC), An Act To Amend §3104 Of Title 17 Of The Guam Code Annotated, Relative To The Qualifications For The Superintendent Of Education And Deputy Superintendent Of Education, heard at 9:03am

- Judith Gutherz, presented oral testimony in her personal capacity, in support of Bill 348 (EC) at 9:42am. (Gutherz not present when chairman heard bill at 9:03am, committee entertained Gutherz testimony after Bill 353).

* Questions and comments presented to the panel by Senator Ray Tenorio, Senator Adolpho Palacios, Senator Larry Kasperbauer, and Senator Robert Klitzkie.

Bill 353 (EC), An Act To Repeal Title 11 G.C.A., Division 1, Chapter 1, § 1106, Item (D) And To Add A New Title 11 G.C.A., Division 1, Chapter 1, § 1106.1 Relative To Creating The Office Of The Principal Guam Territorial Income Tax Attorney, heard at 9:05am

- Steven Cohen, member of the Guam Bar Association, presented written and oral testimony in support Bill 353 (EC) at 9:05am.
- George Bamba, chief of staff for the governor's office, presented oral testimony in favor of Bill 535 (EC) at 9:06am. Mr. Bamba stated that he would be submitting written testimony at a later date.
- Art Ilagan, director of Revenue and Taxation, testified in favor of Bill 353 (EC) at 9:15am.
- John Camacho, deputy director of Revenue and Taxation, testified in favor of Bill 353 (EC) at 9:20am
- Veronica Quan, administrator of Technical Research at the Department of Revenue and Taxation, testified in favor of Bill 353 (EC) at 9:36am.
- Andy Giordano presented oral testimony on Bill 353 (EC) at 9:37am.
- Edward Cruz presented oral and written testimony in favor of Bill 353 (EC) at 9:38am.
- * Comments and questions presented to the panel by Senator Robert Klitzkie, Senator Adolpho Palacios, Senator B.J. Cruz, and Senator Ray Tenorio.

Committee stood in recess from 10:00am-10:30am

Bill 357 (LS), An Act To Approve The Guam Power Authority's And The Guam Waterworks Authority's Personnel Rules And Regulations Governing The Selection, Compensation, Promotion, Performance Evaluation, Disciplinary Action, And Terms And Conditions Of Employment For Certified, Technical And Professional Personnel, heard at 10:30am

- John Benavente, general manager of the Consolidated Utility Services, presented written and oral testimony in support of Bill 357 (LS) at 10:34am.
- Anthony Camacho, staff attorney for CCU, GWA, GPA, presented written and oral testimony in support of Bill 357(LS) at 10:42am.
- * Comments and questions presented to the panel by Senator Robert Klitzkie, Senator Joanne Brown, and Senator Adolpho Palacios.

Public hearing adjourned until 9:00am on Tuesday, October 10, 2006.



I Mina' Bente Ocho Na Liheslaturan Guahan
Committee on Judiciary, Governmental Operations, & Reorganization

AGENDA

October 4, 2006
Public hearing room

9:00am

Bill 331 (LS) - An Act To Repeal Section 6 Of Chapter V (Administrative Provisions) Of Public Law 28-068 And To Make The Provisions Of This Act Retroactive To September 30, 2005.

Bill 340 (EC) - An Act To Amend §3104 (A) Of Chapter 3 Of Title 17 Guam Code Annotated Relative To The Qualifications Of The Superintendent Of Education.

Bill 348 (EC) - An Act To Amend §3104 Of Title 17 Of The Guam Code Annotated, Relative To The Qualifications For The Superintendent Of Education And Deputy Superintendent Of Education.

Bill 353 (EC) - An Act To Repeal Title 11 G.C.A., Division 1, Chapter 1, § 1106, Item (D) And To Add A New Title 11 G.C.A., Division 1, Chapter 1, § 1106.1 Relative To Creating The Office Of The Principal Guam Territorial Income Tax Attorney.

Bill 357 (EC) - An Act To Approve The Guam Power Authority's And The Guam Waterworks Authority's Personnel Rules And Regulations Governing The Selection, Compensation, Promotion, Performance Evaluation, Disciplinary Action, And Terms And Conditions Of Employment For Certified, Technical And Professional Personnel.

For more information, please visit www.bobsoffice.org/judiciary.
Written testimony can be submitted via e-mail to judiciary@bobsoffice.org.
For ADA assistance, please contact the Office of Senator Robert Klitzkie at (671) 472-9355 ext. 3, or send request via email to judiciary@bobsoffice.org.

Declaration Under Penalty of Perjury of Audreya J.P. Taitano

- 1.) I am employed as a Legislative Aide at the Office of Senator Robert Klitzkie.
- 2.) I was assigned the duty of disseminating a "Notice of Public Hearing" (Appendix A) to each newspaper of general circulation and all broadcasting stations which air a regular local news program within Guam.
- 3.) In such notice I included all information (Appendix A) required by the Open Government Law, Title 5 GCA Sections 8108 thru 8106.
- 4.) I e-mailed notice to all local media (Appendix B: Media E-mail Listing) on 09/27/2006 (*5 working days prior to hearing*) in accordance with 5 GCA §8108.
- 5.) I e-mailed a "Notice of Public Hearing" to all local media (Appendix B: Media E-mail Listing) on 10/02/2006 (*48 hours prior to hearing*) in accordance with 5 GCA §8108.
- 6.) I e-mailed notice to members of the Committee on Judiciary, Governmental Operations, and Reorganization on 09/27/2006 & 10/02/2006.
- 7.) I e-mailed notice to Speaker Forbes on 09/27/2006 and 10/02/2006 for posting on the Legislature's calendar, which can be accessed at the official website of the Guam Legislature (www.guamlegislature.com), in accordance with 5 GCA § 10306.
- 8.) I e-mailed a "Notice of Public Hearing" to all senators on 09/27/2006 & 10/02/2006 (cc: Clerk of the Legislature, Legislative Counsel, and Sgt-at-Arms). Bounce backs were handled accordingly.
- 9.) I caused notice on www.bobsoffice.org, website for the Committee on Judiciary, Governmental Operations, and Reorganization, on 09/27/2006 in accordance with 5 GCA § 10306.
- 10.) Copies of all e-mail notices are on file at the Office of Senator Robert Klitzkie.

Declaration Under Penalty of Perjury

6 GCA Section 306

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

Executed on October 17, 2006 on Guam by



Audreya J.P. Taitano (audi)

APPENDIX A: NOTICE OF PUBLIC HEARING



I Mina' Bente Ocho Na Liheslaturan Guahan **Committee on Judiciary, Governmental Operations, & Reorganization**

NOTICE OF PUBLIC HEARING

A public hearing will be held on Wednesday, October 4, 2006 in the Guam Legislature's public hearing room located at 155 Hesler Place in Hagatna. The public is invited to present oral and/or written testimony. The following bills will be heard:

9:00am

Bill 331 (LS) - An Act To Repeal Section 6 Of Chapter V (Administrative Provisions) Of Public Law 28-068 And To Make The Provisions Of This Act Retroactive To September 30, 2005.

Bill 340 (EC) - An Act To Amend §3104 (A) Of Chapter 3 Of Title 17 Guam Code Annotated Relative To The Qualifications Of The Superintendent Of Education.

Bill 348 (EC) - An Act To Amend §3104 Of Title 17 Of The Guam Code Annotated, Relative To The Qualifications For The Superintendent Of Education And Deputy Superintendent Of Education.

Bill 353 (EC) - An Act To Repeal Title 11 G.C.A., Division 1, Chapter 1, § 1106, Item (D) And To Add A New Title 11 G.C.A., Division 1, Chapter 1, § 1106.1 Relative To Creating The Office Of The Principal Guam Territorial Income Tax Attorney.

Bill 357 (EC) - An Act To Approve The Guam Power Authority's And The Guam Waterworks Authority's Personnel Rules And Regulations Governing The Selection, Compensation, Promotion, Performance Evaluation, Disciplinary Action, And Terms And Conditions Of Employment For Certified, Technical And Professional Personnel.

For more information, please visit www.bobsoffice.org/judiciary.

Written testimony can be submitted via e-mail to judiciary@bobsoffice.org.

For ADA assistance, please contact the Office of Senator Robert Klitzkie at (671) 472-9355 ext. 3, or send request via email to judiciary@bobsoffice.org.

APPENDIX B: MEDIA E-MAIL LISTING

<p align="center">Notice to all media : Outlet Managers, Publishers, Producers</p>	<p align="center">Notice to all media : News Directors, Editors, Reporters</p>
<p><u>PRINT</u> Marianas Variety – Amier Younis, Ops Mgr, amier@mvguam.com Directions – Jerry Roberts, Publisher, jroberts@directionsguam.com Guam Business – Steve Nygard, Publisher, snygard@glimpses.guam.net Pacific Daily News – Government Meetings Section life@guampdn.com Marianas Business Journal – Steve Nygard, Publisher, snygard@glimpses.guam.net Guahan Magazine – Carlene Cooper-Nurse, Publisher, carlene@guahanmagazine.com Mabuhay News – Ritchie Lim, Publisher, paciwire@ite.net Mariana’s Variety – Ad Section , ads@mvguam.com</p> <p><u>TV</u> KUAM Ch. 8 – generalmanager@KUAM.com KUAM Ch. 11 – generalmanager@KUAM.com ABC 14 – David Larson, Gen Mgr, david@go14.tv KGTF – kgtf12@ite.net</p> <p><u>RADIO</u> K57 – Ray Gibson, General Mgr, rgibson@k57.com Power98 – Roque Aguon, General Mgr, raguon@power98.com 105 Rock – Albert Juan, General Mgr, ajuan@105therock.com I-94 FM – Fredalynn Mortera Hecita, fredalynn@kuam.com 610 AM – Ryan San Nicolas, ryan@kuam.com K-StereO – Ed Poppe, General Mgr, ksto@ite.net KISH (102.9 FM) – Ed Poppe, General Mgr, ksto@ite.net Hit Radio 100 – Vince Limuaco, Sales Mgr., marketing@hitradio100.com KPRG (89.3 FM) – General Manager, kprg@guam.net Harvest Family Radio – khmg@harvestministries.net KTKB – ktkb@ktkb.com KOLG 90.0 FM – Contact, chuck@kolg.org KTWG 800 AM – Ops Mgr , Kleilani63@hotmail.com</p>	<p><u>PRINT</u> Pacific Daily News –Rindraty Limtiaco, Exec. Editor, rlimtiaco@guampdn.com Marianas Variety – Mar-Vic Cagurangan, marvic@mvguam.com Directions – Gennette Quan, Editor, editor@directionsguam.com Guam Business – Maureen Maratita, Editor, mmaratita@glimpses.guam.net Marianas Business Journal – Maureen Maratita, Editor, mmaratita@glimpses.guam.net Guahan Magazine – Jayne Flores, Editor, jayne@guahanmagazine.com Mabuhay News – Ritchie Lim, Editor mabuhaynews@yahoo.com Mariana’s Variety – Ad Section, ads@mvguam.com</p> <p><u>TV</u> KUAM Ch.8 – Sabrina Matanane, News Dir, Sabrina@KUAM.com KUAM Ch. 11 – Sabrina Matanane, News Dir, Sabrina@KUAM.com ABC 14 News – John Anderson, News Director, jontalk@k57.com</p> <p><u>RADIO</u> I-94 FM – Fredalynn Mortera Hecita, News (Radio) fredalynn@kuam.com 610 AM – Ryan San Nicolas, ryan@kuam.com K57, Power98, 105 Rock – Patty Arroyo, News Director, parroyo@k57.com K-StereO – Jean Hudson, News Director, kstonews@ite.net KISH (102.9 FM) – Jean Hudson, News Director, kstonews@ite.net Hit Radio 100 – Trina San Agustin, News Director, news@hitradio100.com</p>

APPENDIX C: COMMITTEE MEMBER E-MAILS

Senator Robert Klitzkie, Chairman
 Speaker Mark Forbes, Ex-Officio
 Senator Jesse A. Lujan, Member
 Senator Larry Kasperbauer, Ph.D., Member
 Senator Ray Tenorio, Member
 Senator Benjamin J.F. Cruz, Member
 Senator Adolpho B. Palacios, Sr., Member

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Dipåttamenton Kontribusion yan Adu'ånå

DEPARTMENT OF

REVENUE AND TAXATION

GOVERNMENT OF GUAM

Gubetnamenton Guåhan

FELIX P. CAMACHO, Governor Maga'låhi
KALEO S. MOYLAN, Lt. Governor Tiñente Gubetnadot

ARTEMIO B. ILAGAN, Director
Direktot
JOHN P. CAMACHO, Deputy Director
Segundo Direktot

October 4, 2006

The Honorable Senator Robert Klitzkie
Chairman
Committee on Judiciary, Governmental Operations
& Reorganization
Twenty-Eighth Guam Legislature
Hagatna, Guam 96910

**RE: BILL NO. 353(LS). AN ACT TO REPEAL TITLE 11 G.C.A.,
DIVISION 1, CHAPTER 1, §1106, ITEM (d) AND TO ADD A NEW
TITLE 11 G.C.A., DIVISION 1, CHAPTER 1, §1106.1 RELATIVE
TO CREATING THE OFFICE OF THE PRINCIPAL GUAM
TERRITORIAL INCOME TAX ATTORNEY.**

Dear Senator Klitzkie:

The Department of Revenue & Taxation (DRT) fully supports Bill 353(LS) and anxiously awaits its passage into law. DRT has been in dire need of an in-house attorney for the past several years and has dealt with critical tax law issues without one.

DRT is charged not only with the administration and enforcement of income tax matters, but also with real property taxes, banking, insurance, securities, compliance and business privilege taxes. Everyday DRT is tasked to interpret many laws on a daily basis and an in-house attorney can guide its employees in the interpretation and administration of these laws while ensuring that disclosure guidelines are adhered to. In addition to the interpretation of laws, an in-house tax attorney can review criminal tax cases before they are referred to the Attorney General's office to ensure prosecution readiness and to provide guidance of prosecutors before trial.

The creation of the **Office of the Principal Guam Territorial Income Tax Attorney** within the Department of Revenue and Taxation is necessary in light of the court's decision on the Julie Babauta Santos, et al. v Felix A Camacho, et al., Civil Case No. 04-00006 wherein the court stated, "The court finds that, at least in this context, the Government of Guam's representative should be the Governor. Moreover, the court concludes, as matter of law, that the Governor has authority over the enforcement of tax matters, and thus, may dictate the litigation strategy of this matter." After the decision of the above civil case, the Attorney General sent a memo to the Director of Revenue & Taxation telling the Director to coordinate the transfer of 111 files to the

DRT. In addition, the Attorney General also requested the Director to retain counsel to represent his interest.

The Principal Guam Territorial Income Tax Attorney will be administering and enforcing the Guam Territorial Income Tax laws and will be delegated or redelegated from the Governor pursuant to 48 USC §1421i (c); therefore, his performance cannot be the subject of the kinds of job protections applicable to employees in the classified service. The Principal Guam Territorial Income Tax Attorney shall be appointed by the Director and shall be a member of the unclassified service and will supervise the Office of the Principal Guam Territorial Income Tax Attorney. The Director will also appoint assistants to the Principal Guam Territorial Income Tax Attorney as may be required who will be members of the classified service. The Principal Guam Territorial Income Tax Attorney and the assistants shall be compensated in accordance with Title 4, G.C.A. §6208.1.

The creation of the Office of the Guam Territorial Income Tax Attorney will save the Government of Guam money for DRT will not have to employ the services of outside counsel. Several tax and regulatory cases are pending and an in-house attorney is needed to take care of these cases. The immediate passage of this bill is of utmost importance to the Department of Revenue & Taxation.

Sincerely,


ARTEMIO B. ILAGAN
DIRECTOR

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Attorney at Law
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E-mail: sac@guam.net

October 3, 2006

Senator Bob Klitzkie
28th Guam Legislature
Hagåtña, Guam 96910

Re: Bill No. 353

Dear Senator Klitzkie:

I am writing to you to express my support for Bill No. 353, relative to the creation of the Office of Principal Guam Territorial Income Tax Attorney in the Department of Revenue and Taxation. Bill No. 353 provides that the Director of the Department of Revenue and Taxation, as the Governor of Guam's delegate, shall appoint the principal income tax attorney for the Department of Revenue and Taxation, and that such attorney shall also represent the Director in all other tax and regulatory matters falling under the Director's jurisdiction except for the prosecution of criminal cases. Bill No. 353 satisfies the dictates of the Organic Act of Guam, as interpreted by the District Court of Guam in the case of *Julie Babauta Santos v. Felix A. Camacho, et al*, Civil Case No. 04-00006, an income tax case involving the Earned Income Tax Credit.

Pursuant to the Organic Act, "[t]he administration and enforcement of the Guam Territorial Income Tax shall be performed by or under the supervision of the Governor" and "[a]ny function needful to the administration and enforcement of the income tax laws in Guam ... shall be performed by any officer or employee of the government of Guam duly authorized by the Governor (either directly or indirectly by one of more redelegations of authority) to perform such function." 48 U.S.C. §1421i(c).

Moreover "[t]he Governor of Guam 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. §1421i(d)(2).

The District Court of Guam, in its decision in the *Santos* case, stated "[t]he court finds that, at least in this context, the Government of Guam's representative should be the Governor" and "the court concludes, as a matter of law, that the Governor has authority over the enforcement of tax matters, and thus, may dictate the litigation strategy of this matter".

It is my understanding that in conformity with the Court's decision in the *Santos* case, the Attorney General of Guam has turned-over numerous tax matters he was handling to the Director of the Department of Revenue and taxation, and requested the Director to obtain his own legal counsel.

For your information, I served as legal counsel to the Department of Revenue and Taxation as an Assistant Attorney General for a period of eight years under a Memorandum of Understanding entered into between the Attorney General and the Director of the Department of Revenue and Taxation. Thereafter, for a period of 11 months, I represented the Department as an Assistant Attorney General without a Memorandum of Understanding. Previously, for a period of four years, I served as legal counsel to the CNMI Division of Revenue and Taxation as a Special Assistant Attorney General under the employ of the Director of the Department of Finance, the parent organization of the Division of Revenue and Taxation.

With Regards,

/s/ SAC

STEPHEN A. COHEN

October 4, 2006

Dear Senator Robert Klitzke (Bob):

I am reviewing your Bill 353. The following provisions can be improved by deleting ", except for criminal prosecutions" as follows:

- (1) Represent I *Maga'lahi Guahan* in all civil actions arising from or pertaining to the Guam Territorial Income Tax, provided that the Principal Guam Income Tax Attorney may appear on behalf of the Director in a criminal action in which the Department seeks restitution of funds or payment of overdue taxes ;
- (2) Represent the Director of Revenue and Taxation in court and administrative proceedings in legal matters in which the Department is interested, ~~except for criminal prosecutions~~;

I support this legislation.

Thank you,

Ed

Edward J. Cruz, MD
688-9655 cell phone

Bureau of Budget & Management Research
Fiscal Note of Bill No. 353 (LS)

Bill Title (Preamble): AN ACT TO REPEAL TITLE 11 G.C.A., DIVISION 1, CHAPTER 1, § 1106, ITEM (D) AND TO ADD A NEW TITLE 11 G.C.A., DIVISION 1, CHAPTER 1, § 1106.1 RELATIVE TO CREATING THE OFFICE OF THE PRINCIPAL GUAM TERRITORIAL INCOME TAX ATTORNEY.

Department/Agency Appropriation Information

Dept./Agency Affected: Dept. Rev & Tax		Dept./Agency Head: Art Ilagan, Director	
Department's General Fund (GF) appropriation(s) to date:		\$8,473,228	
Department's Other Fund (specify): _____ appropriation(s) to date:		\$0	
Total Department/Agency Appropriation(s) to date:		\$8,473,228	

Fund Source Information of Proposed Appropriation

	General Fund:	Other (specify):	Total:
FY 2007 Adopted Revenues	\$456,347,922	\$0	\$456,347,922
FY Appro. to P.L. 28-149/28-150	(\$456,347,922)	\$0	(\$456,347,922)
Sub-total:	\$0	\$0	\$0
Less appropriation in Bill	\$0	\$0	\$0
Total:	\$0	\$0	\$0

Estimated Fiscal Impact of Bill

	One Full Fiscal Year	For Remainder of Current FY (if applicable)	Second Year	Third Year	Fourth Year	Fifth Year
General Fund	\$0	\$0	\$0	\$0	\$0	\$0
Other Fund:	\$0	\$0	\$0	\$0	\$0	\$0
Total	\$0	\$0	\$0	\$0	\$0	\$0

1. Does the bill contain "revenue generating" provisions? // Yes /X/ No
If Yes, see attachment
2. Is amount appropriated adequate to fund the intent of the appropriation? /X/ N/A // Yes // No
If no, what is the additional amount required? \$ _____
3. Does the Bill establish a new program/agency? /X/ Yes // No
If yes, will the program duplicate existing programs/agencies? // N/A // Yes /X/ No
Is there a federal mandate to establish the program/agency? // Yes /X/ No
4. Will the enactment of this Bill require new physical facilities? // Yes /X/ No
5. Was Fiscal Note coordinated with the affected dept/agency? If no, indicate reason: /X/ Yes // No
/X/ Requested agency comments not received by due date // Other: _____

Analyst: M. Quinata Date: _____ Director: Carlos P. Bordallo Date: Oct 18 2006

Footnotes: 1/ Please see attached comments.

COMMENTS TO BILL 353 (LS)

Bill 353 (LS) creates the Office of the Principal Guam Territorial Income Tax Attorney within the Department of Revenue and Taxation. This bill may require the Department of Revenue and Taxation to provide additional staffing of not only a Guam Territorial Income Tax Attorney but also assistant attorneys to assist with the tax cases for the department.

The Office may be established as a division within the Department of Revenue and Taxation. Additional costs will be incurred from the General Fund and/or other funds of the department such as the Tax Collection Enhancement Fund for the personnel and incidental costs involved in its operations.

With the complexity of income tax issues, the DRT may desire to hire the most experienced person in this field. P.L. 27-106, Chapter IV, Section 20 lists the salaries of Government attorney ranging from \$40,352 to \$80,580 for an Attorney I through an Attorney IV, respectively. Pay may also be determined by the years of experience coupled with credits for specialized skills. If the Department of Revenue and Taxation determines the need for two assistant attorneys, personnel cost could be at the minimum of \$203,000 for a Guam Territorial Income Tax Attorney and two assistant attorneys.

We are unable to determine the additional costs the department may incur for administration cost, court appearances/cases and other incidentals involved in operating such a division.

The creation of the Office of the Guam Territorial Income Tax Attorney may be beneficial for the Department of Revenue and Taxation as it will have representation for matters regarding tax issues and for ensuring that tax laws are complied with in order to collect the tax amounts due to the Government of Guam, and for all other departmental legal issues that may occur.