

PUBLIC LAW 27-41
“AN ACT TO AMEND SECTION 26201 OF ARTICLE 2 OF CHAPTER 26
OF DIVISION 2 OF TITLE 11, GUAM CODE ANNOTATED, RELATIVE
TO GROSS RECEIPTS TAX”

REGULATION

Reg. §26201-1. Purpose.

On November 14, 2003, Bill 63 was signed into law as Guam Public Law No. 27-41 allowing a business to elect to visibly pass-on the gross receipts tax to customers and to obtain GRT free gross receipt tax (GRT) reimbursement from customers in the manner provided in P.L. 27-41. Through the passage of Public Law 27-41, a taxpayer is given the benefit of excluding the GRT portion of gross income or gross receipts from the computation of GRT.

Prior to Public Law 27-41, the amount of gross income or gross receipts reported by a taxpayer is compounded by the inclusion of the applicable amount of GRT imposed. This naturally created a form of double taxation (i.e., a tax on the tax).

With the recent passage of Public Law 27-05 the rate of GRT was increased from 4% to 6%. Public Law 27-41 was created to allay the fears among local consumers of a sharp price increase due to the increase in GRT through the visible separation of the tax from the price of the item on invoices, sales slips, and other receipts. The creation of Public Law 27-41 also gives retailers an incentive to choose to make the GRT visible to its customers.

The purpose of this regulation is to promulgate administrative procedures for Public Law 27-41.

Reg. §26201-2. Definition.

- (a) “Person” shall mean an individual or entity, as listed in Section 26101(k), Article 2, Chapter 26, Title 11 of the Guam Code Annotated, engaging in, transacting, conducting, continuing, doing, or carrying on a business in Guam, who is required to pay taxes levied under Chapter 26 of Title 11.
- (b) “Return” shall include, but is not limited to, the Guam Gross Receipts and Use Tax Return (Form BRQ).
- (c) “Item” shall include property, services, or property and services combined.
- (d) “Annual” or “annually” shall mean any period of twelve (12) consecutive months.
- (e) “Invoice” shall include, but is not limited to, a sales slip, receipt, bill, ticket, statement of account, purchase order, contract, agreement, label, sticker, sign or poster

Reg. §26201-3. Levy, Assessment and Collection of Monthly Gross Receipts Tax.

- (a) **General Rule.** There is hereby levied and shall be assessed and collected monthly privilege taxes against the persons on account of their businesses and other activities in Guam measured by the application of rates against values, gross proceeds of sales or gross income, as the case may be.
- (b) **Exclusion.** A person who opts to show to each customer the amount that will be transmitted to the government of Guam as a result of the customer's transaction, may exclude GRT reimbursement collected from the measure of taxable gross receipts.

(1) ~~A person shall be allowed the exclusion under this subsection if~~

- (A) a tax levy exists at the time of the exclusion;
- (B) he indicates that he is taking the exclusion under "Section 26202(b)" and reports the Taxable Gross Receipts and GRT Reimbursement for each quarterly return as prescribed under paragraph (2) of this subsection;
- (C) the amount of the GRT collected from the customer or customers must be paid over to the government of Guam as prescribed under this Chapter.
- (D) he first absorbs all his allowable tax exemptions and exclusions, aside from the exclusion under this subsection, under the Guam Code Annotated; and
- (E) he separately indicates on each customer invoice --
- (i) the price of the item or items sold, leased, rented or charged to each customer, and
- (ii) the amount of gross receipts tax to be transmitted to the government of Guam as a result of the customer's transaction.

(2) A person who has made an election under subsection (c) of this section shall report on each return as follows:

- (A) On the front-side of the return in Column A (Gross Receipt Value), on the ~~appropriate line or lines, there shall be included for the reporting quarter the amount, received or accrued, of GRT separately shown to customers as the amount transmitted, or to be transmitted, to the government of Guam. This amount to be included in Column A shall be referred to as GRT Reimbursement. The amount of GRT Reimbursement to be included in~~ Column A shall be in addition to such other amounts as are properly includible in Column A for the reporting quarter pertaining to gross income or gross proceeds of sale received or accrued by a person for any activities subject to an election and for any activities not subject to any election.

(B) On the front-side of the return in Column B (Exemption or Deduction), on the appropriate line or lines, there shall be included for the reporting quarter the amount, received or accrued, of GRT Reimbursement. The amount of GRT Reimbursement to be included in Column B shall be in addition to such other amounts as are properly includible in Column B for the reporting quarter pertaining to exemptions or deductions applicable to a person for any activities subject to an election and for any activities not subject to an election.

~~(C) On the front-side of the return in Column C (Taxable Amount Value), on the appropriate line or lines, there shall be included for the reporting quarter an amount determined by subtracting the amount shown in Column B from the amount shown in Column A. The Total Taxable Amount shown in Column C shall also be known as the amount of Taxable Gross Receipts.~~

(D) On the back-side of the return, in the Summary of Monthly Gross Receipts and Use Tax, there shall be included in the monthly itemization the amounts referred to in subparagraph (A), (B) and (C) of this paragraph.

(E) On the back-side of the return, in the Schedule of Deductions Claimed, the Basis for Exemption insofar as an election is concerned shall be "11 GCA Section 26201(b)", and the Amount shall include the total amount indicated in Column B on the front-side of the return.

(3) Tips, Gratuities, and Other Service Charges. Tips, gratuities, and other service charges are not considered a part of the computation of gross receipts tax unless the person includes the tips, gratuities, and other service charges in the computation of his total gross income or gross receipts to be reported on his return.

(4) Example. Mike is the sole proprietor of an auto repair shop that reports gross receipts of over \$350,000 annually. On February 14, 2004, a customer takes his car to Mike's shop to replace his old air conditioning unit with a new unit at a total cost of \$1,643 (\$1,550 for the air condition unit and \$93 in gross receipts tax). For Mike opts to take the benefit of the exclusion under Section 26201(b), the invoice he gives to the customer must separately state the price of the unit and the amount of applicable gross receipts tax.

At the end of each quarter, Mike must report the total amount of gross receipts tax paid or to be paid to the government of Guam in order to qualify for the exclusion under 11 GCA Section 26201(b).

(5) Apportionment. If any person engages in any business where a portion of the gross income or gross receipts is later distributed to another business, or other businesses, the amount of gross receipts tax collected shall also be proportionately distributed to that other business or businesses.

For example: Alan is a general contractor licensed to do business on Guam. He reports annually over \$500,000 in gross receipts. Alan was contracted to build a house for the total price of \$106,000. In compliance with 11 GCA §26201, Alan shows on the contract \$100,000 for materials and labor plus \$6,000 of gross receipts tax for a total price of \$106,000. Alan later decides to subcontract BC Corporation to perform a portion of the project for a total price of \$74,200 (\$70,000 for materials and labor plus \$4,200 gross receipts tax). BC Corporation also elects the exclusion under 11 GCA §26201. The contract was completed during the third calendar quarter of 2004 at which time the contract was earned, received and proportionately distributed to BC Corporation.

Alan shall report the following on his third quarter return:

Total Gross Receipts	\$106,000
Less: Deduction under Section 26202(e)	74,200
Exclusion under Section 26201(b)	<u>1,800</u>
Taxable Gross Receipts	\$ 30,000
Gross Receipts Tax (@ 6%)	<u>\$ 1,800</u>

BC Corporation shall report the following on its third quarter return:

Total Gross Receipts	\$ 74,200
Less: Exclusion under Section 26201(b)	<u>4,200</u>
Taxable Gross Receipts	\$ 70,000
Gross Receipts Tax (@ 6%)	<u>\$ 4,200</u>

(c) Annual Election. A person shall annually notify the Department of Revenue and Taxation of its election pursuant to this subsection if the person opts to participate under subsection (b) of this section.

(1) A person shall make an annual election for the first calendar quarter in which he opts to show to each customer the amount of GRT that will be transmitted to the government of Guam, and no further election need be made for any other calendar quarters while the election is in effect. A person shall notify the department of his election as prescribed in paragraph (2) of this subsection. The election shall be effective as of the beginning of the calendar quarter provided, however, in the case of the 4th Quarter 2003, the election shall be effective as of December 5, 2003. An election, once made, may be implemented by the person at any time during the effective period of the election.

(2) Check-in-the-box. A person makes a annual election as prescribed under this subsection by –

(A) Checking or marking the box entitled “Election under 11 GCA Section 26201(c)” as provided on the return, and if the election is applicable to only specific activities, by attaching a list to the return of all those activities, and

(B) disclosing the exclusion amount on the person’s quarterly gross receipts tax return.

~~The election under this subsection shall remain in full force and effect unless the election is terminated as provided under paragraph (4) of this subsection.~~

(3) Election Deemed Renewed Annually. Once an election is made under this subsection, the election is deemed automatically renewed annually without further action being taken by the person, unless the person, or such person’s assignee or successor in interest, formally terminates the election as provided under paragraph (4) of this subsection.

(4) Termination of Election. A person who has in effect an election under this subsection may terminate the election, in whole or in part, prior to the expiration of the annual period to which said election applies. No one other than such person, or such person’s assignee or successor in interest, may terminate the election.

(A) An election may be terminated effective the first day of any calendar quarter to which the election applies. The termination shall remain in effect until a new election is made.


(B) An election shall be terminated by filing a notification of termination with the Department. No termination shall be effective for a calendar quarter commencing before the date the notification is filed with the Department.

(C) A notification of termination shall be in writing, shall be signed by the authorized representative of the person whose election is being terminated and shall state as follows: (i) the true and correct name of the person; (ii) the mailing address and telephone number of the person; (iii) the taxpayer identification number of the person; (iv) the GRT account number of the person; (v) the effective date of the election being terminated; (vi) the activity or activities to which the notification of termination applies; (vii) the effective date of the termination; and (viii) that the notification terminates the election previously made under P.L. 27-41 as of the effective date of the termination.

(d) Amendments. Subsequent changes to this regulation shall be pursuant to the Administrative Adjudication Law or by statute.

Reg. §26201-4. Effective Date. This regulation shall be effective beginning December 5, 2003

SIGNED AND DATED THIS 5th DAY OF DECEMBER, 2003.

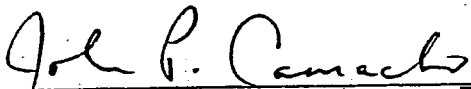


ARTEMIO B. ILAGAN

Director

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ATTEST:



JOHN P. CAMACHO
Deputy Tax Commissioner
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