

CHAPTER 71
THE CASH ECONOMY ENFORCEMENT ACT

SOURCE: Chapter added by P.L. 31-135:2 (Nov 17, 2011).

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§ 71101. Statement and Legislative Purpose.

I Liheslaturan Guåhan finds that in all tax systems, government administrators are continually working to reduce tax noncompliance known as the “tax gap.” In the United States, the tax gap, which is the difference between the amount of tax that is required to be reported and timely paid and the amount of tax that is actually reported and paid, is estimated to be almost Four Hundred Billion Dollars (\$400,000,000,000) per year. Of this tax gap, it is further estimated that about Two Hundred Billion Dollars (\$200,000,000,000), or half of the tax gap, is composed of what is known as the “cash economy”.

Cash-based transactions are a fundamental part of any economy. As the oldest form of payment, cash continues to dominate many facets of the local economy. Cash is inherently private, efficient, and predictable for both purchaser and seller. However, cash transactions are also the simplest means of underreporting or non-reporting for tax purposes, because *no* bank, *no* means of electronic oversight, and *no* intermediary

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maintains records of the movement of funds from one pocket to another.

The purpose of this Act is to provide the Department of Revenue and Taxation (DRT) with the necessary resources and tools to target high-risk, cash-based transactions to shore up confidence in Guam's tax system for those that do comply. More importantly, *I Liheslaturan Guåhan* intends that the enforcement resources provide focus on the civil collection and enforcement nature of Guam's business license laws. In an effort to demonstrate the targets of this undertaking, this Act defines "cash-based business" for enforcement purposes, and DRT is directed to focus on such businesses. At the same time, education is equally important as enforcement. Therefore, this Act requires the DRT to reach out to industry groups, specific demographics in the economy, and practitioners to educate taxpayers on their tax responsibilities.

§ 71102. Regulatory Division; Additional Special Functions, Powers and Duties.

Notwithstanding any other provision of law, there is provided within the Department of Revenue and Taxation, Regulatory Division, additional special functions, powers and duties to carry out civil enforcement efforts of this Act as directed by DRT. The Director of DRT (Director) may staff the Division as the exigencies of the public service may require.

In addition to the existing powers and duties already provided by law, the Regulatory Division *shall* also have the following additional powers pursuant to this Chapter:

- (a) investigate reported or suspected violations of business license laws for civil enforcement purposes, including through covert means allowable pursuant to the Internal Revenue Manual of the Internal Revenue Service, with a stated priority of investigating cash-based businesses as defined in this Chapter. Any criminal investigations originating as a result of information reported by a member of the general public *shall* require that the Department obtain the identity of the person providing the information;
- (b) enforce the business license laws by issuing, enforcing, or executing citations, fines, infractions and assessments;
- (c) serve as fraud referral specialists to assist in the development and review of fraud cases for appropriate disposition of potentially fraudulent activities, including referral to criminal investigators and assessment of civil fraud penalties; *provided*, that

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personnel assigned to the Regulatory Division may *not* participate in any criminal investigation;

(d) organize and hold public informational meetings on issues of business license laws, including compliance deficiencies in segments of the economy, and undertake any other activities to encourage taxpayers, practitioners, and others to maintain responsibility and compliance with their tax obligations;

(e) coordinate with other sections or divisions within DRT, other departments or branches of the government of Guam, or the federal government on matters relating to civil enforcement of the tax laws, including joint investigations, information-sharing arrangements, or concurrent collection efforts; *provided*, that personnel assigned to the Regulatory Division may *not* participate in any criminal investigation;

(f) compile information received by third parties, including taxpayers, competitors, government agencies, confidential sources, or public sources, and delegate this information within the Department for proper handling. Proper handling may include referral internally to other civil or criminal enforcement divisions;

(g) conduct investigations, research, and studies of matters relevant to the complex or sensitive civil enforcement of the business license laws; and

(h) perform such other acts as may be incidental to the exercise of the functions, powers, and duties set forth in this Section and existing law, *or* as otherwise directed by the Director of the DRT.

§ 71103. Identification of Cash-Economy Cases; Retention of Funds.

Notwithstanding any law to the contrary, each fiscal year the Regulatory Division may identify any taxpayer, assessment, investigation, or collection matter as a matter of the Regulatory Division. All revenues collected from Regulatory Division matters *shall* be deposited into the Better Public Service Fund.

§ 71104. Citations for Violations; Deposits.

(a) The Regulatory Division may issue cease and desist citations to any person if the Regulatory Division has cause to believe the person has violated, is violating, or evidences present intent to violate any provision of this Chapter or administrative rule adopted thereunder. Any person

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who violates this Chapter *shall* be subject to a fine *not* to exceed One Thousand Dollars (\$1,000) unless otherwise specified; *provided*, that if the person is a cash-based business, the fine *shall not* exceed Two Thousand Dollars (\$2,000).

(b) The Department may recommend legislation defining the circumstances and the civil monetary fines citable for unlawful actions under this Chapter.

(c) Any fines assessed under this Section *shall* be a matter of the Regulatory Division under this Chapter, and *shall* be retained and deposited into the Better Public Service Fund.

(d) Any fines assessed *shall* be due and payable thirty (30) days after issuance, subject to appeal rights provided under Subsection (e); *provided*, that if payment of the fine is determined to be in jeopardy, such fine *shall* be payable immediately, and *shall* be immediately collected. A finding of jeopardy *shall* be made in writing, setting forth the specific reasons for the finding. The finding of jeopardy *shall* be subject to immediate appeal under Subsection (e), and at the taxpayer's request the appeal *shall* be expedited and heard as soon as reasonably practicable. Any amount of fine collected under jeopardy *shall only* be returned upon a finding by the Director of DRT or the Superior Court of Guam that there was no violation under this Chapter.

(e) Cease and desist citations may be appealed to the Director or the Director's designee, and the determination of the Director may be appealed to the Superior Court of Guam under this Chapter.

§ 71105. Cash-Based Businesses; Injunction.

The Regulatory Division, with the Director's approval, may bring civil actions in the Superior Court of Guam to enjoin any unlawful act under this Chapter, including any administrative rule adopted thereunder, by a cash-based business. To the extent provided by statute, the Regulatory Division may include in any action an assessment of a monetary fine.

§ 71106. Cash-Based Businesses; Defined.

For the purposes of this Chapter, *cash-based business* means any person who operates a business, including for-profit or not-for-profit, where transactions in goods or services are exchanged substantially for cash and where the business is found, based upon reasonable cause including observation or evidence, to have met one (1) of the following

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factors:

(a) is found to have substantially underreported or misrepresented the proper amount of tax liability on any return or other submission to the Department. For purposes of this Section, an amount has been substantially underreported if the amount properly includible on the return or submission is in excess of twenty-five percent (25%) of the amount stated on the return or submission;

(b) is required to be licensed, registered, or permitted under Title 11, Guam Code Annotated, and is in fact *not* so licensed, registered, or permitted;

(c) has a past pattern of noncompliance of obligations under Title 11, Guam Code Annotated;

(d) does *not* have a fixed and permanent principal place of business;

(e) has *not* obtained any required tax clearance;

(f) has failed to maintain adequate books and records, or those records required to be maintained by law or administrative rule;

(g) does *not* accept checks or electronic payment devices for business transactions; *provided*, that a business may establish reasonable criteria for accepting personal checks;

(h) offers price differentials or otherwise deviates from usual business practices when the business transaction substantially involves payment of cash, *except* where there is a *bona-fide* business reason for a price differential, such as the avoidance of merchant fees imposed by credit card companies; or

(i) any other factor relevant to describing a cash-based business capable of noncompliance, as determined by the Director of Revenue and Taxation, and issued pursuant to a tax information release; *provided*, that a business *shall not* be deemed to have met any of these factors while a genuine dispute as to that factor is pending in a contested case before any administrative agency or in any court.

§ 71107. Failure to Produce License Upon Demand.

Every person required to be licensed or permitted under Title 11, Guam Code Annotated, whether or *not* so licensed or permitted, *shall* be required to publically display, and *shall* produce the license or permit upon demand by the Regulatory Division. Failure to produce the license

or permit upon demand *shall* be unlawful. Any person who violates this Section *shall* be subject to a fine *not* to exceed Five Hundred Dollars (\$500); *provided*, that if the person is a cash-based business, the fine *shall not* exceed One Thousand Dollars (\$1,000). It *shall* be an absolute defense to this Section if the person produces a license or permit number on file with the Department, and the Department confirms that the person associated with the number is true and accurate.

§ 71108. Failure to Keep Adequate Books and Records.

It *shall* be unlawful for any person required under Title 11, Guam Code Annotated, to keep books or records to fail to produce the books or records upon demand by the Regulatory Division, or as soon thereafter as is reasonable under the circumstances. Any person who violates this Section *shall* be subject to a fine *not* to exceed One Thousand Dollars (\$1,000); *provided*, that if the person is a cash-based business, the fine *shall not* exceed Two Thousand Dollars (\$2,000).

§ 71109. Failure to Record Transaction by Receipt.

It *shall* be unlawful to conduct more than ten (10) taxable business transactions per day in cash, and fail to provide a receipt or other record of the transaction when the means for issuing a receipt or recording the transaction are available. Each day a person is in violation of this Section *shall* be treated as a separate violation. Any person who violates this Section *shall* be subject to a fine *not* to exceed One Thousand Dollars (\$1,000); *provided*, that if the person is a cash-based business, the fine *shall not* exceed Two Thousand Dollars (\$2,000).

§ 71110. Failure to Record Transaction by Register.

It *shall* be unlawful to conduct more than ten (10) taxable business transactions per day in cash, and fail to record the transaction in a cash register when the means for recording the transaction in a cash register are available. Each day a person is in violation of this Section *shall* be treated as a separate violation. Any person who violates this Section *shall* be subject to a fine *not* to exceed One Thousand Dollars (\$1,000); *provided*, that if the person is a cash-based business, the fine *shall not* exceed Two Thousand Dollars (\$2,000).

§ 71111. Tax Avoidance Price Fixing.

It *shall* be unlawful for any person to sell, offer to sell, or otherwise convey *more than* one (1) price for any business to be transacted when the lower price is offered if the transaction is paid for in cash. It *shall*

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not be an offense under this Section if a business charges a higher price for legitimate business purposes, such as for the purpose of recovering any charges assessed the business, including for facilitating electronic payment. Any person who violates this Section *shall* be subject to a fine *not* to exceed Two Thousand Dollars (\$2,000); *provided*, that if the person is a cash-based business, the fine *shall not* exceed Three Thousand Dollars (\$3,000).

§ 71112. Interference with a Tax Official.

It *shall* be unlawful for any person to intentionally interfere with, hinder, obstruct, prevent, or impede any investigator, auditor, collector, or other employee of the Department from obtaining license information, books, records, articles, or items of business transacted, or other information or property rightfully entitled the Department. Any person who violates this Section *shall* be subject to a fine of *not* more than Two Thousand Dollars (\$2,000). It *shall* be an absolute defense to the fine under this Section that the person acted with good cause.

§ 71113. Reporting Requirement for Contractors on Federal Construction Projects.

All persons who do *not* possess a valid Guam business license under Title 11, Guam Code Annotated, at the time of a contract award, and who contract with the federal government for any construction project located in Guam, *shall* report to DRT, on forms prescribed by the Department, its estimated gross receipts from the construction project, or any other information requested by DRT on the prescribed form, within thirty (30) days of the contract being awarded. Failure to report as provided in this Section *shall* result in a penalty of One Thousand Dollars (\$1,000) per month, or fraction thereof, for each month that a failure to report exists; *provided*, that the maximum penalty allowed under this Section in the aggregate *shall not* be more than Six Thousand Dollars (\$6,000).

§ 71114. Withholding Assessment Fee Requirement for Government Contracts; Off-Island Businesses Without Guam Business License.

(a) For the purposes of this Section, the following shall mean:

(1) Non-resident person means a person or body who is not a permanent resident of Guam, or a business that does not possess a valid Guam business license under Title 11, Guam Code Annotated, and does not pay Business Privilege Taxes under Chapter 26 of Title 11, Guam Code Annotated, and includes any individual, firm, co-partnership, joint venture, association, corporation, estate, trust,

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limited liability company, limited partnership, limited liability partnership, or any other group or combination, as a foreign entity outside of Guam, acting as a unit.

(2) Professional services or services means any kind of services rendered by a non-resident person and includes, but is not limited to, legal, promotional, advertising, public awareness, architectural and engineering services, or other services deemed applicable in the opinion of the Director of the Department of Revenue and Taxation.

(b) (1) There is established a withholding assessment fee for a non-resident person without a valid Guam business license, which shall be equal to four percent (4%) of the total dollar value of a contract awarded for all government of Guam contracts for professional services provided by a non-resident person residing outside of Guam, as a cost of doing business with the government of Guam.

(2) This Section shall apply as a mandatory requirement of a government of Guam contract being awarded to provide professional services required by any government of Guam agency, to include all autonomous agencies.

(3) All agencies, to include autonomous agencies, of the government of Guam shall ensure that all Requests for Proposals (RFP), Invitation for Bid (IFB), or any other form of solicitation for professional services, include the notification to potential offerors that the award and issuance of a contract to provide the professional services is subject to the withholding assessment fee for contracts awarded to persons without a valid Guam business license.

(4) The agency awarding the contract or the agency's representative awarding the contract shall, at the time of a contract award, in the instance of a contract for professional services to a person who does not possess a valid Guam business license under Title 11, Guam Code Annotated, and who is not a resident of Guam, deduct from funds allocated for the contract an amount equal to four percent (4%) of the total dollar value of a contract awarded, and shall transmit the funds to the Treasurer of Guam for deposit in the General Fund. The amount of the withholding assessment fee withheld pursuant to this Section shall be duly noted in the payment statements to the contractor. The agency shall report to the Department of Revenue and Taxation (DRT), on forms prescribed

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by the Department, the amount of the withholding assessment fee withheld, or any other information requested by DRT on the prescribed form, from the awarded professional services contract within thirty (30) days of the contract being awarded.

(c) **Prospective Applicability.** The withholding assessment fee pursuant to this Section for a non-resident person without a valid Guam business license shall not be applicable to any contract for professional services entered into with the government of Guam prior to the effective date of this Act; provided, however, that it shall be applicable for the award of a new contract or contract renewal for the contractual provision of the same or similar services.

(d) **Withholding Assessment Fee Collected Declared Government of Guam Funds.** The withholding assessment fee levied, assessed and collected under this Chapter shall become funds of the government of Guam from the moment of collection and shall be subject to all laws, rules and regulations pertaining thereto, and unless specifically provided by law, all such withholding assessment fees collected shall be deposited into the Treasury of Guam as part of the General Fund.

SOURCE: Added by P.L. 33-166:2 (June 30, 2016).

2016 NOTE: Subitem designations were added to Subsection (b) to adhere to the Compiler's general codification and alpha-numeric schemes pursuant to 1 GCA § 1606.
