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<td>199-35 (COR)</td>
<td>James C. Moylan</td>
<td>AN ACT TO PROVIDE FOR A BINDING REFERENDUM DURING THE 2020 GENERAL ELECTION TO DETERMINE WHETHER THE BUSINESS PRIVILEGE TAX, PURSUANT TO CHAPTER 26 OF TITLE 11, GUAM CODE ANNOTATED, SHALL BE REDUCED FROM FIVE PERCENT (5%) TO FOUR PERCENT (4%)</td>
<td>9/3/19 9:31 a.m.</td>
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AN ACT TO PROVIDE FOR A BINDING REFERENDUM DURING THE 2020 GENERAL ELECTION TO DETERMINE WHETHER THE BUSINESS PRIVILEGE TAX, PURSUANT TO CHAPTER 26 OF TITLE 11, GUAM CODE ANNOTATED, SHALL BE REDUCED FROM FIVE PERCENT (5%) TO FOUR PERCENT (4%).

BE IT ENACTED BY THE PEOPLE OF GUAM:

Section 1. Legislative Findings and Intent. *I Liheslaturan Guåhan* finds that it is the right of the people to determine matters of policy, particularly as it relates to taxpayer dollars, the cost of living, and equally as important, the government’s failure to abide by language in Guam law relative to tax increases. § 16311 of Chapter 16, Title 3, Guam Code Annotated stipulates that any proposal to increase the business privilege (BPT) tax shall be placed in front of voters in the form of a Referendum. Unfortunately in 2018, *I Liheslaturan Guåhan* passed a measure that increased the BPT initially for a six month period, and later to allow the increase to remain indefinitely.

Given the financial constraints placed on the Guam Election Commission and the many challenges that would arise from calling a special election, *I Liheslaturan Guåhan* finds that this matter is most appropriate for placement on
the 2020 ballot, as allowed pursuant to Article 4 of Chapter 16, Title 3, Guam Code Annotated.

Section 2. The Guam Election Commission, subject to the provisions hereinafter set forth, shall put to the voters the question described in Section 4 of this Act. The question shall be submitted during the 2020 General Election.

Section 3. The question shall determine whether or not the business privilege tax, pursuant to Chapter 26, Title 11, Guam Code Annotated, shall be reduced from five percent (5%) to four percent (4%) via a referendum certified by the Guam Election Commission as eligible for a binding referendum vote.

Section 4. The question put to voters shall be:

"Shall the Business Privilege Tax (BPT) be reduced from five percent (5%) to four percent (4%)?"

( ) Yes

( ) No

Vote for only ‘Yes’ or ‘No’.”

Section 5. Notwithstanding any other provisions of the law, rule, or regulation, this referendum shall be approved if the total number of “Yes” votes garnered at least a minimum of fifty percent (50%) plus one (1) of the total votes casted by those voters who voted on the specific question pursuant to Section 4 of this Act. Any ballot in which no vote was cast for this question shall not be added to the total tabulation in determining the approval of this Act.

Section 6. If the referendum is approved, Section 2 of Public Law 34-116 shall hereby be repealed in its entirety as follows:

Section 2—Business Privilege Tax Increase. Notwithstanding any other provision of law, rule or regulation, beginning on October 1, 2018, the business privilege tax rate shall be five percent (5%).
Section 7. If the referendum is approved, §§ 26202 (a), (c), (d), (e), (f), (g), (h), (i), (j)(1), and (j)(2) of Chapter 26, Title 11, Guam Code Annotated shall hereby be amended to read as follows:

§ 26202. Rates.

The following rates shall apply in computing, assessing and collecting the business privilege tax:

(a) Tax on the Business of Selling Tangible Personal Property. Upon every person engaging or continuing within Guam in the business of selling any tangible property whatsoever (not including however, bonds or other evidence of indebtedness or stocks), there shall be a tax equivalent to four percent (4%) five percent (5%) of gross proceeds of sales; except that on the gross proceeds of the operation of poker machines, there shall be a tax equivalent to eight percent (8%) on the gross proceeds of each machine, as determined by subtracting the winnings, pay-outs and malfunction refunds from total receipts of each machine.

(c) Tax on service business. Upon every person engaging or continuing within Guam, in any service business or calling not otherwise specifically taxed under this Section, [there shall be] a tax equivalent to four percent (4%) five percent (5%) of the gross income of such business.

(d) Professions. Upon every person engaging or continuing within Guam in the practice of a profession, excluding those expounding the religious doctrines of any church, [there shall be] a tax equivalent to four percent (4%) five percent (5%) of the gross income of such practice.

(e) Tax on Contractors. There shall be levied, assessed and collected a tax rate of four percent (4%) five percent (5%) measured against the gross income of any contractor; provided, that there shall be deducted from the gross income of the taxpayer so much thereof as has been included in the
gross income earned from another taxpayer who is a contractor as defined in § 26101(b) and who has already paid the tax levied under this Subsection for goods and services that include the deductible gross income of the taxpayer who is a contractor; provided, that any person claiming a deduction under this Subsection shall be required to show in the person’s return either the name and the contractor’s license number issued by the Guam Contractors License Board, or the Guam business license number, or the registration number for a professional engineer, architect or land surveyor, or the Certificate of Authorization (COA) number for a business authorized to provide engineering, architecture or land surveying services by the Guam Board of Registration for Professional Engineers, Architects, and Land Surveyors of the person paying the tax on the amount deducted by the person.

(f) Tax on banks, banking institutions, small lenders and building and loan associations. Upon every person engaging or continuing within Guam in the business of operating any bank, banking institutions, building and loan association, small lending business, or lending institutions, there shall be a tax equivalent to four percent (4%) five percent (5%) of the net income received from business.

(g) Dealing in foreign currency. Upon every person engaging or continuing within Guam in the business of purchasing and selling foreign money, there shall be a tax equivalent to four percent (4%) five percent (5%) of the gross profit of such business represented by the difference between the cost and selling price of the foreign currency measured in United States dollars.

(h) Tax on other business. Upon every person engaging or continuing within Guam in any business, trade, activity, occupation or calling not
specifically included in any other provision of this Article, there shall likewise be a tax equivalent to four percent (4%) five percent (5%) of the gross income of such business. This Section shall apply to the gross income of persons taxable under other provisions of this Chapter but which gross income is not derived from the exercise or privilege taxable there under.

(i) Insurers. Upon every person engaged or continuing within Guam in the business of an insurer, there shall be a tax at the rate of four percent (4%) five percent (5%) of gross income received as premium for the writing of insurance, less returned premiums and less all commissions attributable to the sale and purchase of an insurance policy or policies of the insurer paid by said insurer to agents of the same, and five percent (5%) of any other gross income earned or derived on Guam.

(j) Tour Agencies.

(1) Upon every person engaging or continuing within Guam in the business of a tour agency or travel agency, where tourism-related services are furnished to consumers by independent vendors through arrangements made by a travel agency, or tour packager, and the gross income is divided between the provider of the services on the one hand and the travel agency or tour packager on the other hand, a tax equivalent to four percent (4%) five percent (5%) shall be imposed on each person with respect to such person’s respective portion of the proceeds, and no more.

(2) Where transient accommodations are furnished through arrangements made by a travel agency or tour packager, the gross income is divided between the provider of the transient accommodations on the one hand and the travel agency, or tour packager, on the other hand, a tax equivalent to four percent (4%) five
percent (5%) shall be imposed on each person with respect to such person’s respective portion of the proceeds, and no more.

Section 8. Notwithstanding any other provisions of the law, rule, or regulation, if the referendum is approved, and after its approval certified by the Guam Election Commission, the Act shall take effect on January 1, 2021. The Commission shall transmit the results of the referendum to I Maga’hagan Guåhan, the Speaker of I Liheslaturan Guåhan, and the Compiler of Laws. If the referendum is approved, I Maga’hagan Guåhan shall assign a public law number to it after its receipt.

Section 9. Severability. If any provision of this Act or its application to any person or circumstance is found to be invalid or contrary to law, such invalidity shall not affect other provisions or applications of this Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.