

I Mina'Trentai Kuáttro Na Liheslaturan
BILL STATUS

BILL NO.	SPONSOR	TITLE	DATE INTRODUCED	DATE REFERRED	CMTE REFERRED	PUBLIC HEARING DATE	DATE COMMITTEE REPORT FILED	FISCAL NOTES	NOTES
179-34 (COR)	Joe S. San Agustin Dennis G. Rodriguez, Jr.	AN ACT TO ADD A NEW CHAPTER 53 TO DIVISION 2, TITLE 11 OF THE GUAM CODE ANNOTATED, RELATIVE TO THE CREATION OF THE "GUAM QUALIFIED DOMESTIC PLAN TRUST ACT" TO REGULATE THE ESTABLISHMENT OF QUALIFIED PENSION, PROFIT SHARING, AND STOCK BONUS PLANS BY DOMESTIC CORPORATIONS.	9/18/17 2:29 p.m.						

I MINA'TRENTAI KUÁTTRO NA LIHESLATURAN GUÅHAN
2017 (FIRST) Regular Session

Bill No. 179-34 (COR)

Introduced by:

Joe S. San Agustin 
Dennis G. Rodriguez, Jr. 

**AN ACT TO ADD A NEW CHAPTER 53 TO DIVISION 2,
TITLE 11 OF THE GUAM CODE ANNOTATED, RELATIVE
TO THE CREATION OF THE “GUAM QUALIFIED
DOMESTIC PLAN TRUST ACT” TO REGULATE THE
ESTABLISHMENT OF QUALIFIED PENSION, PROFIT
SHARING, AND STOCK BONUS PLANS BY DOMESTIC
CORPORATIONS.**

1 **BE IT ENACTED BY THE PEOPLE OF GUAM:**

2 **Section 1. Legislative Intent.** *I Liheslaturan Guåhan* finds that an
3 increasing number of Guam domestic corporations are offering qualified pension,
4 profit sharing, and stock bonus plans as a benefit of employment. The employees in
5 these plans are Guam taxpayers under the Guam Territorial Income Tax (“GTIT”)
6 as established by section 31 of the Organic Act of Guam.

7 *I Liheslaturan Guåhan* additionally finds that most contributions to these
8 plans are made on a pre GTIT basis, which results in less taxes coming into the
9 island’s treasury at time of deduction. While the reduced tax collection at the time
10 of contributions is modeled in the Internal Revenue Code to be made up when the
11 tax payer receives a distribution from the plan in the form of 1099R income, many
12 plan sponsors maintain a trust with a U.S. situs, resulting in tax withholdings being
13 paid to the IRS instead of to the Guam Department of Revenue and Taxation. This
14 practice is costing the Government of Guam millions of dollars in lost tax revenue.

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1 *I Liheslaturan Guåhan* further finds that the IRS defines a qualifying trust
2 under the 26 U.S. Code § 401 (a) as: “A trust created or organized in the United
3 States and forming part of a stock bonus, pension, or profit-sharing plan of an
4 employer for the exclusive benefit of their employees or their beneficiaries shall
5 constitute a qualified trust under this section.”

6 The Guam Territorial Income Tax (“GTIT”) is established by Section 31 of
7 the Organic Act of Guam, as amended, 48 U.S.C. § 1421i. The GTIT is a “mirror”
8 to the Internal Revenue of 1986 (“IRC”) and incorporates the income tax provisions
9 of the IRC, except where those provisions are manifestly inapplicable or
10 incompatible with the intent of Section 31; in effect, Section 1 of the IRC applies to
11 Guam taxpayers as section 1 of the GTIT, and so on. Thus, the applicable provisions
12 of the IRC *shall* be read so as to substitute “Guam” for “United States”. For this
13 purpose, a qualifying trust for a plan sponsored by a Guam Domestic Corporation is
14 a trust created or organized on “Guam”.

15 Further in applying the GTIT, a corporation organized in Guam is “Domestic”
16 while a corporation organized elsewhere is “Foreign”. For this purpose, trusts
17 organized outside of Guam are recognized as “Foreign” and trusts organized on
18 Guam are recognized as “Domestic”.

19 Therefore, it is the intent of the *I Liheslaturan Guåhan* to require domestic
20 corporations to establish a domestic trust for their retirement plans. Further, it is the
21 intent that all plan sponsors register their Plan Trusts with the Department of
22 Revenue and Taxation (DRT) by completing the registration process described in
23 this legislation.

24 **Section 2. Guam Qualified Domestic Plan Trust.** A new Chapter 53
25 is added to Division 2 of Title 11, Guam Code Annotated, to read:

26 **“CHAPTER 53**

27 **GUAM QUALIFIED DOMESTIC PLAN TRUST**

1 § 53101. Title. This Chapter may be cited as the ‘Guam Qualified Domestic
2 Plan Trust Act of 2017’.

3 § 53102. Application. This Chapter *shall* only apply to retirement plan trusts
4 that qualify under 26 U.S.C. § 401 – Qualified pension, profit-sharing, and stock
5 bonus plans sponsored by a Guam domestic employer.

6 § 53103. Definitions.

7 (a) ‘Certificate’ *shall* mean and include a written recognition of a Plan Trust
8 that qualifies under the 26 U.S.C. § 401 - Qualified pension profit-sharing, and
9 stock bonus plan trusts sponsored by a Guam domestic employer.

10 (b) ‘Commissioner’ *shall* mean the Tax Commissioner pursuant to 11 GCA
11 § 26102.

12 (c) ‘Domestic Employer’ *shall* mean and include any individual, firm, co-
13 partnership, joint venture, association, corporation, or other group or combination
14 acting as a unit organization in Guam.

15 (d) ‘Plan’ *shall* mean a retirement plan offered by a Guam Domestic
16 Employer for the exclusive benefit of their employees who are classified as Guam
17 Taxpayers or their employees’ beneficiaries.

18 (e) ‘Qualifying Trust’ *shall* mean a trust created or organized on Guam and
19 forming part of a retirement plan of a Guam domestic employer for the exclusive
20 benefit of their employees who are classified as Guam Taxpayers or their employees’
21 beneficiaries.

22 § 53104. Administration. The Commissioner of the Department of Revenue
23 and Taxation (DRT) *shall* have responsibility for the administration and enforcement
24 of this Chapter.

25 § 53105. Qualifications for a Certificate of Qualified Retirement Plan
26 Trust.

1 (a) Domestic Employers that offer a Plan to their employees shall be required
2 to obtain a certificate from the Commissioner in recognition that their Plan's Trust
3 is a qualified trust. Such certificate shall be granted by the commissioner to
4 employers that meet the following criteria:

5 (1) Submit a copy of the Qualifying Trust Document to the DRT; and

6 (2) Pay a one-time filing fee of Five Hundred Dollars (\$ 500.00) for
7 individually designed plan documents or One Hundred Dollar (\$ 100.00) for plans
8 using master prototype plans documents that have previously been pre-approved by
9 the Commissioner. Pre-approved plans must pay a one-time Seven Hundred and
10 Fifty Dollars (\$ 750.00) fee. Proceeds to be deposited into the Better Public Service
11 Fund; and

12 (3) Agree to file applicable Tax forms under the GTIT and pay
13 withholdings tax and other appropriate taxes to DRT that are required to maintain a
14 tax qualified retirement plan.

15 (b) Domestic Employers sponsoring a Plan prior to the enactment of this
16 Chapter need to confirm the tax status of their plan with the Commissioner.

17 (1) If said Plan Trust has been filing Guam Territorial Income Tax
18 withholding taxes with the DRT, the trust representative shall provide copies of tax
19 filings for the previous three (3) years with the initial plan filing.

20 (2) If said Plan Trust has not been paying Guam Territorial Income Tax
21 withholding taxes to DRT, but has previously notified DRT of such payments to
22 another jurisdiction, the trust representative shall provide copies of the notifications
23 for the previous three (3) years with the initial plan filing.

24 (3) If said Plan Trust has not been properly paying Guam Territorial
25 Income Tax withholding taxes to the DRT and has not notified the DRT of
26 such payment to another tax jurisdiction, then the trust representative shall file
27 amended tax returns for the previous three (3) tax years and pay DRT any past due

1 taxes, penalties and interests as a result of filing and paying withholding taxes to the
2 improper tax jurisdiction.

3 § 53106. Examinations. Examination of the qualifications of any Plan Trust
4 shall be the duty and responsibility of the Commissioner.

5 § 53107. Inspections. It *shall* be the duty and responsibility of the
6 Commissioner to make periodic inspections or examinations of Plan Trusts to see
7 that they conform at all times to the required qualifications.

8 § 53108. Certificates not Transferable. Every certificate of Plan Trusts
9 issued under this Chapter shall be deemed to be Trust specific and may not in any
10 circumstance be transferred to any other Trust except upon written application to and
11 written approval by the Commissioner.

12 § 53109. Suspension and Revocation of Certificate. Any trust holding a
13 certificate under the provisions of this Chapter who refuses or fails to comply with
14 any provision of applicable regulatory statutes, rules or regulations shall be subject
15 to the penalty of having the certificate either suspended for a period of time or
16 revoked by the Commissioner. The suspension or revocation of any certificate of a
17 Domestic Employer Plan sponsor making application for any new certificate shall
18 be taken into consideration by the Commissioner for the granting of the new
19 certificate and may, in the Commissioner's discretion, be grounds for refusal to grant
20 a new certificate.

21 § 53110. Rules. The Commissioner *may* adopt rules to implement and
22 administer this Chapter pursuant to the Administration Adjudication Act."

23 **Section 3. Halt on accepting employee retirement contribution**
24 **deductions or employer contributions, and disallowing deductions until Plan**
25 **Trust receives a certificate.** The Guam Department of Revenue and Taxation
26 (DRT) *shall* cease accepting individual Guam W2 retirement contribution
27 deductions, and corporate retirement plan employer contributions issued by

1 domestic employers until such time that DRT issues a certificate for their individual
2 Plan Trust pursuant to Section 2 of this Act.

3 Effective immediately, if DRT receives a W2 from an individual Guam tax
4 payer issued by an employer whose Plan Trust does not have a certificate, the DRT
5 *shall* issue a letter to the tax payer disallowing the deduction until such time that
6 their Plan Trust receives the certificate. Once the Plan Trust receives the certificate,
7 the deduction will be valid.

8 Likewise, DRT will *not* accept deductions for retirement contributions by a
9 domestic corporation *unless* the contribution is made to a Plan Trust that maintains
10 a certificate from DRT. DRT *shall* issue a letter to the tax payer disallowing the
11 deduction until such time their Plan Trust receives a certificate. Once a Plan Trust
12 receives the certificate, the deduction will become valid.

13 **Section 4. Severability.** If any provision of this Act or its application to any
14 person or circumstance is held invalid, the invalidity *shall not* affect other provisions
15 or applications of this Act which can be given effect without the invalid provision
16 or application and to this end the provisions of this Act are severable.

17 **Section 5. Effective Date.** This Act *shall* take effect upon its enactment and
18 apply prospectively.