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Attorney General



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## Office of the Attorney General

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July 16, 2008

### LEGAL MEMORANDUM

Ref: GEDCA 08-0583

TO: Administrator, Guam Economic Development and Commerce Authority

FROM: Attorney General *ALL*

**SUBJECT: \$13,800,000.00 Term Loan from the Bank of Guam**

This memorandum addresses whether the Bank of Guam ("Bank") must pay an income tax on the interest the Bank will earn on the loan referenced above.

We have issued an opinion stating that the Guam Legislature has no authority to exempt anyone or anything from the Guam Territorial Income Tax which is imposed by federal law. However, there are exclusions in the Internal Revenue Service Code ("IRS Code") regarding interest earned on certain government obligations.

Based on the IRS Code, the interest to be received by the Bank on the loan made to the Government to fund the payment of the delinquent streetlight arrearage will be excluded from taxation under 26 U.S.C.A. §103 as implemented in Guam. Section 103 excludes interest on any State or local bond. As defined in §103(c)(1), the term "State or local bond" means an obligation of a State or political subdivision. The term "State" includes any possession of the United States.

The purpose of §103 is to aid the borrowing power of the government by making its interest-bearing bonds more attractive to investors. *Drew v. U.S.*, 551 F.2d 85 (5<sup>th</sup> Cir. 1977). As noted in *Drew*, the scope of the word "obligations" is narrow and not extended to include interest upon indebtedness not incurred under the borrowing power. *Id.* at 87. In recognition of the statutory purpose, the *Drew* court limited the §103 exclusion to interest paid by governmental entities on obligations issued under their borrowing power. In light of the purpose of §103, this Office finds that the interest paid on the Bank loan is excluded from tax under that section.

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This memorandum should not be construed as condoning the extension of the §103 income tax exclusion to all loans that the Government might take out.

Based upon the foregoing, we have approved the Bank of Guam loan for \$13,800,000.00 to pay the Government's delinquent streetlight arrearage.

  
**DEBORAH RIVERA**  
**Assistant Attorney General**

cc: Director, Department of Revenue and Taxation  
Tax Commissioner