

Alicia G. Limtiaco
Attorney General



J. Patrick Mason
Deputy Attorney General

OFFICE OF THE ATTORNEY GENERAL

September 24, 2007

Rec'd of Mason

RECEIVED

OPINION

To: Hon. David L.G. Shimizu
Senator, 29th Guam Legislature

From: Attorney General *AGP*

Re: Section 11 of Organic Act

REC'D. SEP 24 2007
BY: <i>Arval</i>
SENATOR <i>R. Tenorio</i>
ACTION
FILE

Ref: LEG 07-0818 SEP 2 2007

GUAM LAW LIBRARY

OFFICE OF THE GOVERNOR

SEP 2007

Chc

OFFICE

This is in response to your letter asking whether the debt ceiling provisions of Bill 168¹ comply with the United States Supreme Court decision in *Limtiaco v. Camacho*, 127 S.Ct. 1413 (2007). Bill 168 would double the appraised value of Guam property from 35% to 70% of fair market value and then reduce the tax levied on property by one-half. The effect would be to double the government's debt ceiling while keeping property taxes at the same level.

Your letter requests an opinion regarding the meaning of "aggregate tax valuation" in Section 11 of the Organic Act. Section 11 of the Organic Act of Guam (codified at 48 U.S.C. § 1423a) provides: "That no public indebtedness of Guam shall be authorized or allowed in excess of 10 per centum of the aggregate tax valuation of the property in Guam." The meaning of the phrase "aggregate tax valuation" was first considered by the Guam Supreme Court and then on appeal by the United States Supreme Court. The issue before the respective courts was whether "aggregate tax valuation" means the appraised value of the property as reflected by the certified tax roll or the "assessed value" of the property which is set by law as a percent of the appraised value.

In *Request of Governor Felix P. Camacho*, 2003 Guam 16, the Guam Supreme Court held that the allowable public indebtedness under Section 11 is ascertained with reference to the appraised value of Guam property. Under this interpretation, government borrowing would be limited to 10% of the appraised value (or market value) of Guam property. However, the decision was reversed by the United States Supreme Court.

On the issue of the meaning of "aggregate tax valuation" in Section 11 of the Organic Act, the U.S. Supreme Court issued a majority opinion and a dissenting opinion. In its opinion, the majority pointed out that an appraised valuation is the market value of property. *Limtiaco v. Camacho*, 127 S.Ct. at 1419. And, by contrast, an "assessed valuation" is the value on each unit of which a prescribed amount must be paid as property taxes. *Id.* In other words, appraised value is set by the market and assessed value is set by law. The majority held that the term "aggregate tax valuation" in Section 11 of the Organic Act meant

¹ We are aware that Bill 174 was passed by the Legislature on Sunday, September 23, 2007, and that it contained the relevant provisions of Bill 168 discussed herein.

Office of the Compiler of Laws

By: *L. Robert*

Date: *24 Sep 07* 287 West O'Brien Drive • Hagåtña, Guam 96910 • USA

Time: _____ (671) 475-3324 • (671) 472-2493(Fax)

FILE COPY

2:45 PM

9/24/07

opinion binder

assessed value. As a result, government borrowing is limited to 10% of the assessed value of Guam property, with the assessed value being a percentage of market value as proscribed by law. The majority acknowledged that the assessed value of Guam property could be raised above 100% of its market value; however, the U. S. Supreme Court, addressing this concern, stated that should an attempt be made to raise the assessed value of property above 100% of its market value "a strong political check exists" as "property-owning voters will not fail to notice if the government sets the assessment rate above market value." *Id.* at 1420.

Four U.S. Supreme Court justices joined in a dissenting opinion on the issue of the meaning of Section 11. The dissent opined that since the actual market value of property is the only economic index of Guam's ability to collect property taxes to pay its bills, Congress intended to base Guam's debt ceiling at 10% of the appraised value of property. In a footnote, the dissenting opinion reiterated what the majority opinion had recognized, namely, that the assessed value of property could be increased above 100% of its actual market value. *Id.* at 1422, fn. 5. Hence, the dissenters expressed concern because under the majority opinion, there is no actual debt limit since the assessed value of Guam property could exceed 100% of the actual market value of the property. Hence, it is conceivable that the debt limit in the Organic Act could exceed 10% of the actual market value of Guam property. The dissenting opinion referred to the setting of assessment rates above 100% of the actual market value of property as the "specter of mischief." *Id.*

To conclude, under the U.S. Supreme Court decision, the majority held that the Guam Legislature has the authority to raise the current debt ceiling by raising the assessed value of property. The concern of the dissenting opinion was that the assessed value of property could exceed 100% of the appraised value (or market value) of the property. The majority of the U. S. Supreme Court addressed this concern by pointing out that voters will not fail to notice an increase of the assessed value above 100% of the market value of property, thus, a "strong political check exists." *Id.* at 1420. Here, Bill 168 would raise the assessed value of property to 70% of its appraised value and pursuant to the U. S. Supreme Court's decision, this would not violate Section 11 of the Organic Act.



J. PATRICK MASON