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Office of the Legislative Secretary  
Senator Tina Rose Mufia Barnes

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**OPINION**

**TO:** Director, Department Revenue and Taxation  
**FROM:** Attorney General *ASX*  
**SUBJECT:** P.L. 28-20 Educator Appreciation Act of 2005 –Tax Rebates



**Question Presented**

Whether income tax rebates for educator expenses enacted as part of P.L. 28-20, by the Legislature and administered outside the realm of the Guam Economic Development and Commerce Authority is authorized under the Organic Act and the Guam Territorial Income Tax Code.

**Answer**

No. P.L. 28-20, which authorizes tax rebates on personal income tax for educator expenses is not permitted under the Guam Territorial Income Tax Code as implemented by the Organic Act.

**Discussion**

P.L. 28-20 amends Title 11 of the Guam Code Annotated, and establishes the "Educator's Qualifying Certificate" ("EQC") program. This law permits a rebate in an amount equal to the qualified expenses incurred, but not to exceed Five Hundred Dollars (\$500.00) of personal income tax paid by resident individual taxpayers, who are eligible educators. P.L. 28-20, §4303.

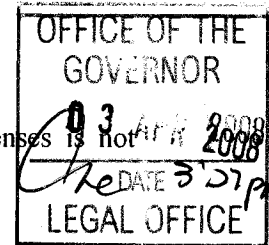
The term "qualified expenses" means unreimbursed expenses exceeding Two Hundred-Fifty Dollars which is incurred for books, supplies, computer equipment, other equipment and supplementary materials that an educator used in his or her classroom. PL 28-20, §4302(b). When a tax return is accompanied by an EQC, the amount of tax due prior to the rebate shall be deposited with the government of Guam at the time of the filing of the income tax return. If no payment is due at the time the tax return is filed, the Tax Commissioner shall credit the amount of the EQC to the Rebate Fund from taxes paid by the taxpayer. The rebate shall then be withdrawn from the deposit and returned to the taxpayer within 180 days. P.L. 28-20, §4304.

In passing this Bill, the Guam Legislature noted that the United States Congress currently allows a deduction of Two Hundred-Fifty Dollars from a taxpayer's adjusted income. PL 28-20, §4301. The Legislature further stated:

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Subsections 4302(a) and (b) of this Chapter are substantially similar to §62(a)(2)(D) of the Internal Revenue Code [26 USC §62(a)(2)(D)] and should be construed consistently therewith *except* where manifestly inapplicable.

PL 28-20, §4308 (emphasis in original).

In essence, the Guam Legislature is authorizing income tax rebates to certain taxpayers.

#### A. Guam Territorial Income Tax ("GTIT")

The U.S. income tax laws in force in the United States are applicable to Guam pursuant to 48 USCA §1421i. 48 USCA §1421i(a) provides:

The income-tax laws in force in the United States of America and those which may hereafter be enacted *shall* be held to be likewise in force in Guam: *Provided*, That notwithstanding any other provision of law, the Legislature of Guam may levy a separate tax on all taxpayers in an amount not to exceed 10 per centum of their annual income tax obligation to the Government of Guam.

(emphasis added).

This income tax, payable to the government of Guam, is referred to as the "Guam Territorial Income Tax" ("GTIT"). 48 USCA §1421i(b). In applying the GTIT, except as manifestly otherwise required, the applicable provisions of the Internal Revenue Codes of 1986 and 1939, shall be read to substitute "Guam" for the "United States", "Governor or his delegate" for "Secretary or his delegate", as well other applicable substitutions as specified in the Organic Act. 48 USCA §1421i(e). This substitution process is commonly referred to as "mirroring". *Sayre & Co. v. Riddell*, 395 F.2d 407 (9<sup>th</sup> Cir. 1968).

As further noted in *Sayre*:

The general conclusion that we draw from the available evidence, then, is that Congress intended that Guam should apply the Internal Revenue Code (with those deletions prescribed by section 1421i(d)(1)) to persons and income within its territory just as the United States applies the Code to persons and income within its territory.

The interpretative omissions and substitutions of language authorized by section 1421i(d)(1) and (e) are those which are necessary to effectuate this intention. We may not adopt a construction inconsistent with it, as we did in *Atkins-Kroll*, simply because we consider the result more equitable. *Deviations from the intended dual structure by substantive revision of the basic scheme of the Code as applied to Guam must be left to Congress.*

*Sayre & Co. v. Riddell*, 395 F.2d 407, 412 -413 (9<sup>th</sup> Cir. 1968) (fn omitted; emphasis added). *See also, Bank of America v. Chaco*, 539 F.2d 1229 (C.A. Guam 1976) ("the Government of Guam is powerless to vary the terms of the Internal Revenue Code as applied to Guam, except as permitted by Congress.").

As such, the Guam Legislature does not have authority to amend, or deviate from the GTIT. Only the U.S. Congress may amend provisions of the income tax code.

#### B. P.L. 28-20

P.L. 28-20 is an attempt to amend the GTIT by allowing a rebate of income tax paid by eligible educators. As discussed above, only the U.S. Congress can amend the income tax code that is mirrored by Guam notwithstanding §4308 of the Public Law.

Although it is true that Guam is permitted to rebate certain income taxes pursuant to the Qualifying Certificate Program administered by the Guam Economic Development and Commerce Authority (GEDCA), the GEDCA rebate does not extend to individuals outside of the Qualifying Certificate Program. The Qualifying Certificate statute, which authorized for tax rebates, was enacted into law prior to 1968 at a time when the Organic Act permitted implied congressional approval of Guam laws under certain circumstances. As explained in *Ramsey v. Chaco*, 549 F.2d 1335 (9<sup>th</sup> Cir. 1977), a case which addressed the Qualifying Certificate Program:

Prior to amendment in 1968, however, the Organic Act also provided that all laws enacted by the Guam legislature ultimately would be reported to Congress, and unless Congress acted to annul the law within one year, it was deemed to have congressional approval. Guam Organic Act s 19, ch. 512, s 19, 64 Stat. 389 (1950), as amended 48 U.S.C. s 1423i. The original law granting tax rebates was passed by the Guam legislature and submitted to Congress while this pre-1968 version was still in effect, and Congress failed to annul the law within the one-year period. In 1968, Section 19 of the Organic Act was amended to eliminate the provision of implied congressional approval in the absence of annulment by it within one year. Thereafter, in 1969, the present rebate act was passed, changing only the percentage of taxes rebated.

*Ramsey v. Chaco*, 549 F.2d 1335, 1338 (C.A.Guam 1977).

The Court concluded:

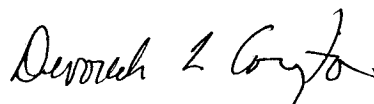
We agree with the defendants that Congress' failure to annul the original rebate bill within one year constituted an implied approval under former Section 19 of the Organic Act. Despite its possible conflict with the Organic Act, the original rebate law was implicitly ratified by Congress' inaction, and the Guam legislature's later alteration of the specific rebate percentages did not give rise to a possible independent violation of the Organic Act and therefore did not require congressional approval.

*Id.*

In the instant case, the former Section 19 of the Organic Act, which provided for implied congressional approval of amendments of laws by the Guam Legislature was amended to eliminate that provision. Guam no longer has authority to pass laws that could alter the mirror tax code. Therefore, any tax rebate provided by the Guam Legislature in P.L. 28-20 with respect to *income* tax is not permitted unless the U.S. Congress amends the income tax code to provide for the tax rebates. As such P.L. 28-20 is contrary to the GTIT and the Organic Act.

#### Conclusion

The Guam Legislature is without authority to amend the provisions of the Guam Territorial Income Tax Code. P.L. 28-20, which authorizes an income tax rebate for qualified expenses made by an eligible educator, is contrary to the GTIT and the Organic Act.



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