



Office of the Attorney General of Guam



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OPINION MEMORANDUM

Ref. DRT 18-0545

TO: Director, Department of Revenue and Taxation

FROM: Attorney General

**SUBJECT: Effective Date of Real Property Tax Levy in Public Law 34-116,
the General Appropriations Act of 2019**

This is in response to your request for an opinion on the following matter:

QUESTION/ANSWER

Whether the additional real property tax levy on improvements valued over \$1 Million mandated by Public Law 34-116, the General Appropriations Act of 2019, must be applied in the present tax year? The answer is YES.

DISCUSSION

The General Appropriations Act of 2019 (the "Act"), which lapsed into law on August 24, 2018 without the Governor's signature, appropriates funding for the government for Fiscal Year 2019 and mandates increases to the Business Privilege Tax, Tobacco Tax and Real Property Tax. While the Legislature provided an effective date for the Business Privilege Tax increase, it did not do so for the Tobacco and Real Property Tax increases.

This Office recently addressed a recent request for guidance on the effective date of the Tobacco Tax increase from the Department of Revenue and Taxation (the "Department"). We opined that because the Legislature did not specify an effective date for the Tobacco Tax increase and because the bill lapsed into law without the Governor's signature, it went into effect on the effective date of the Act as required by 1 GCA § 102(c), which states:

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§ 102. Effective Date of Statutes.

. . . .

(c) If a bill passed by the Legislature becomes a law without the signature of the Governor by lying before him for ten (10) days (Sundays excepted) while the Legislature is in session, such a law *shall* go into effect at midnight on the last of such ten (10) days, unless otherwise provided therein.

Similarly, because the Real Property Tax increase did not come with an effective date, we must find that it too went into effect when the Act went into effect on August 24, 2018.

However, the Department is uncertain if this effective date is in conflict with existing Guam laws governing real property tax collections. Specifically, the Department seeks clarification on whether 11 GCA § 24102, regarding Lien Date, and 11 GCA § 24305, regarding Assessment Date, affect the effective date of the tax increase.

We therefore examine Sections 24102 and 24305 to determine whether an irreconcilable conflict exists or whether such laws can be reconciled with the statutory mandated effective date of the Additional Levy. *See e.g. Sumitomo Const. Co., Ltd. V. Government of Guam, 2001 Guam 23, ¶ 16* (stating “Repeals by implication are disfavored. Implied repeals can be found in two instances: (1) where provisions in the two acts are in irreconcilable conflict, or (2) if the later act covers the whole subject of the earlier one and is clearly intended as a substitute. Courts can avoid a finding of implied repeal if the two statutes can be reconciled.” (citations and internal quotation marks omitted)).

Section 24102 defines Lien Date as “the time when taxes for any year become a lien on the property; this is noon on the first Monday in March in the year of assessment.” 11 GCA § 24102. Regarding Assessment Date, Section 24305 provides “on or before the first day of September, the assessor shall ascertain all the taxable property in Guam and shall assess it to the persons owning or claiming it on the first Monday in March of that year at the value as determined in accordance with § 24306.” 22 GCA § 24305. These laws require the Department, on or before September 1, to ascertain taxable property and assess it against the persons who owned it on the first Monday in March, which is when the tax becomes a lien.

We read these laws to fix the person who owned the property as of the first Monday in March as the responsible tax payer, regardless of whether the property was conveyed after that first Monday in March, and to fix the date by which the assessment must occur. We do not read these laws to expressly or impliedly fix the *tax rate* as of the Lien Date. Moreover, the tax laws contain adequate protections and remedies to resolve potential enforcement issues and tax payer disputes on the Additional Levy. While the Department may face additional burdens caused by the new levy, we do

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not find an irreconcilable conflict between the effective date and either Section 24102 or Section 24305.

CONCLUSION

The law on the effective date and the mandate of the Legislature is clear and unavoidable. As the Act and the Additional Levy became effective on August 24, 2018 and no other statute prohibits implementation of the Additional Levy in the present year, it must be imposed immediately.



ELIZABETH BARRETT-ANDERSON
Attorney General of Guam

cc: Governor of Guam
Honorable Thomas Ada, 34th Guam Legislature
Public Auditor, Office of Public Accountability