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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-200239

DATE: September 8, 1981

MATTER OF: Air Force--Request for Advance Decision

DIGEST:

Guam income tax laws imposed by Guam Organic Act, a Federal statute, are Federal in nature and liens for unpaid Guam income taxes on money due Federal agency contractor are enforceable against that Federal agency. Lien based on purely territorial tax, i.e., one imposed by territorial government, is not so enforceable.

The Air Force requests an advance decision with respect to notices of three tax liens served on the Accounting and Finance Officer at Andersen Air Force Base, Guam, in favor of the Government of Guam upon the property of Alimar Janitorial Services. Alimar has a custodial contract with the base. Two of the liens were imposed by the Guam Department of Taxation and Revenue as a measure to collect the Guam Territorial income tax; they total \$2,347.46. The third was also imposed by the Department to collect the Guam Business Privilege Tax in the amount of \$434.68. We hold that the first two liens should be honored, the third should not.

We held in 35 Comp. Gen. 620 (1956) and B-174326, November 22, 1971, that Federal agencies must honor Guam's liens for income tax liability. It appears, however, that Air Force personnel have questioned the validity of those decisions on the basis of certain court decisions and changes to the statute authorizing the Guam income tax.

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Our 1956 decision upheld Guam's liens for collection of income tax due it from United States employees. We held that while the tax was collected and administered by territorial officials, the income tax laws of Guam were Federal in nature as they were enacted by the United States Congress. Our 1971 decision held that a lien for Guam income taxes has the same force as a Federal tax lien.

The income tax laws for Guam were originally established by section 31 of the Guam Organic Act of August 1, 1950, 64 Stat. 392 which 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."

Guam's income tax authority has since been amended, and codified at 48 U.S.C. §§ 1421i(a)-(h) (1976). The continued validity of both 35 Comp. Gen. 620 and B-174326 is questioned on the basis of Government of Guam v. Kaanehe, 137 F. Supp. 189 (D.C. Guam 1956); Jennings v. United States 168 F. Supp. 781 (Ct. Cl. 1958); Dudley v. Commissioner of Internal Revenue, 258 F.2d 182 (3rd Cir. 1958) and the amended law. According to Air Force personnel, these authorities establish the tax as a territorial rather than a Federal tax thereby making it one which cannot be enforced through liens served on the United States.

The Guam income tax has indeed been categorized as a territorial income tax. The statute, as amended, states that the tax "shall be deemed to impose a separate territorial income tax, payable to the Government of Guam, which tax is designated the 'Guam Territorial income tax'." 48 U.S.C. § 1421i(b). The Kaanehe decision, in holding that the Island

Court of Guam had jurisdiction over prosecution of tax law violators, stated that the Guam tax was a territorial tax to be enforced by Guamanian officials. Similarly, the Court of Claims, in holding that the Government of Guam rather than the United States was the proper defendant in a suit for recovery of income tax allegedly improperly assessed under Section 31 of the Guam Organic Act, stated that the tax was imposed as a territorial tax separate from the "Federal income tax laws of the United States." Dudley involved a similar holding with respect to the Virgin Islands income tax, which is imposed by a nearly identical Federal statute for that territory. See 48 U.S.C. § 1397.

That categorization, however, does not defeat the Federal nature of the law itself. The courts in each of the three cited cases recognized only that the administration, collection, and enforcement of these income taxes was vested in the territorial governments and were concerned with the jurisdiction of particular courts to hear disputed matters concerning the taxes as a result of this territorial authority. The courts, however, did not conclude that the tax itself was not a Federal one. In fact, in a more recent case dealing with this subject, Bank of America, National Trust & Savings Association v. Chaco, 539 F.2d 1226, 1227-8 (9th Cir. 1976) the Federal nature of the Guam income tax was clearly recognized:

"We conclude, therefore, that the enactment of § 31 by the United States Congress of the territorial income tax was done primarily to relieve the United States Treasury of the necessity of making direct appropriations; that although Congress has delegated the collection and enforcement functions to the Government of Guam, the latter is powerless to vary the terms of the federal income tax laws as applied to Guam except as permitted by Congress. We therefore hold that the Guam territorial income tax is not a tax imposed by Guam for the purposes of 12 U.S.C. § 548.¹ * * *"

¹ 12 U.S.C. § 548 allows a local government to tax the net income of a bank only once.

Moreover, although the 1958 amendment to the Organic Act of Guam designates the Guam income tax as the "Guam Territorial Income Tax," this designation was made "for convenient reference" according to the legislative history and not for purposes of diminishing its Federal character. S. Rep. No. 2176, 85th Cong., 2nd Sess., reprinted in (1958) U. S. Code Cong. & Ad. News 3651. Thus, we find that neither the cases cited by the Air Force nor the amendment to the Organic Act of Guam alters the views expressed in our prior decisions that the income tax of Guam is essentially Federal in nature even though it also has some characteristics of a purely territorial tax.

In addition, 48 U.S.C. § 1421i(g) provides:

"The government of Guam shall have a lien with respect to the Guam Territorial income tax in the same manner and with the same effect, and subject to the same conditions, as the United States has a lien with respect to the United States income tax. Such lien in respect of Guam Territorial income tax shall be enforceable in the name of and by the government of Guam. * * *"

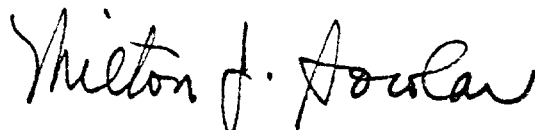
Further, 48 U.S.C. § 1421i(d)(2) provides:

The Governor or his delegate shall have the same administrative and enforcement powers and remedies with regard to the Guam Territorial income tax as the Secretary of the Treasury, and other United States officials of the executive branch, have with respect to the United States income tax. * * *"

See also 48 U.S.C. § 1421(d)(1), making all provisions of Subtitle F (collection) of the Internal Revenue Code applicable to Guam. The Secretary of the Treasury has been delegated authority to levy upon any "agency or instrumentality" of the United States. See 26 U.S.C. § 6331. Consequently, we must conclude that the Governor of Guam, possessing coextensive lien and levy power with the Secretary, also has been delegated this authority.

In light of these provisions and our conclusion that the Guam income tax is a Federally imposed tax, we find that Federal agencies located on Guam are equally subject to liens imposed by the Governor of Guam for the collection of that tax on those doing business with those agencies.

We reach a different result, however, with respect to the lien based on nonpayment of the Guam Business Privilege Tax. That tax is not imposed by 48 U.S.C. §§ 1421i(a)-(h) or by any other Federal statute but by Chapter 6, Title XX of the Government Code of Guam. Thus, this tax is not Federal in nature; it is a purely territorial tax, Bank of America, National Trust, Savings Association v. Chaco, supra, and liens for the enforcement of such taxes are generally not enforceable against Federal agencies. See 35 Comp. Gen. 620, supra.



Acting Comptroller General
of the United States