



HOUSE OF REPRESENTATIVES

TWENTY-SECOND LEGISLATURE

COMMONWEALTH OF THE NORTHERN MARIANAS COMMONWEALTH

LEGISLATURE

P.O. BOX 500586 SAIPAN, MP 96950

DONALD M. MANGLONA
CHAIRPERSON
WAYS AND MEANS COMMITTEE

Asugted - 12/20/2021

STANDING COMMITTEE REPORT NO. 22-32

DATE: DECEMBER 15, 2021

RE: HOUSE BILL No. 22-81

The Honorable Edmund S. Villagomez
Speaker of the House of Representatives
Twenty-Second Northern Marianas
Commonwealth Legislature
Capitol Hill
Saipan, MP 96950

Dear Mr. Speaker:

Your Committee on Ways and Means to which House Bill No. 22-81 was referred, entitled:

“To amend 4 CMC § 1202, to exclude local stimulus payments from taxation.”

begs leave to report as follows:

I. RECOMMENDATION:

After considerable discussion, your Committee recommends that H. B. NO. 22-81 be passed by the House in the form of House Draft 1.

HOUSE CLERK'S OFC

RECEIVED BY *Jm*

DATE *12/16/2021* TIME *4:30 PM*

II. ANALYSIS:

A. Purpose:

The purpose of this Act is to amend 4 CMC § 1202, to exclude local stimulus payments from taxation.

B. Committee Amendments:

The Committee made the following amendment in consideration of the Attorney General's comments:

1) Page 4, Line 14 & 15:

After the word "section", delete "and do not constitute income for the purpose determining the NMTIT".

The Attorney General stated, "The Legislature cannot redefine what constitutes gross income under the NMTIT or create an exclusion from gross income, because such an act would violate the Covenant and run afoul with binding legal precedent. Therefore, we recommend the following revision to the proposed amendment."

C. Committee Findings:

Your Committee finds that President Joe Biden signed the \$1.9 trillion American Rescue Plan (ARPA) Act, the latest federal stimulus bill to aid public health and economic recovery from the COVID-19 pandemic on March 11. The plan included \$350 billion in emergency funding for state, local and territorial and tribal governments, known as the Coronavirus State and Local Fiscal Recovery Funds.

Your Committee finds that the Governor established the 2021 ARPA Local Stimulus Plan (the "Stimulus Plan"), which provides for payments in the amount of \$500 for each eligible individual and \$500 for each dependent of an eligible individual. The purpose of the Stimulus Plan was to aid households impacted by the negative economic effects of the COVID-19 pandemic. The funds is to be spent within the CNMI for the purpose of helping our local economy and the prepaid card has geo-restrictions in place so it won't be able to be used outside the CNMI.

According to the Department of Finance Website (finance.gov.mp):

- Who is eligible to receive the local stimulus prepaid card?

Anyone with a filing requirement who filed their 2020 or 2019 tax return in the CNMI is eligible provided they are not being claimed as a dependent by another taxpayer. For those with no filing requirement (i.e., no income), you must file a 2020 tax return to receive a payment.

- How much will I receive on the prepaid card?

Each taxpayer will receive \$500 plus an additional \$500 per dependent included on your 2020 tax return.

- Is there an income threshold requirement?

No, there are no income limits to receive a local stimulus payment.

- Is the local stimulus taxable income?

Yes, you must report the stimulus income on your 2021 tax return.

Your Committee further finds that Title 4, Section 1202 of the Commonwealth Code states that there is imposed on every person a yearly tax on such person's total earnings unless it's specifically exempted or excluded. This Act amends the specific section to read that stimulus payments received from the Commonwealth pursuant to the 2021 ARPA Local Stimulus Plan are not subject to the tax imposed under this section.

Your Committee was also advised by the Attorney General that we should consider whether the proposed change in law is consistent with the prescribed eligible uses of Fiscal Recovery Funds under the American Rescue Plan Act. Section 602(c)(2)(A) of the American Rescue Plan Act provides:

“A State or territory shall not use the funds provided under this section or transferred pursuant to section 603(c)(4) to either directly or indirectly offset a reduction in the net tax revenue of such State or territory resulting from a change in law, regulation, or administrative interpretation during the covered period that reduces any tax (by providing for a reduction in a rate, rebate, a deduction, a credit, or otherwise) or delays the imposition of any tax or tax increase.”

Your Committee requested that the legal counsel examine if the proposed change in law is consistent with prescribed eligible uses under the ARPA plan.

Your Committee legal counsel reviewed the U.S. Department of the Treasury's interim final rule implementing the Coronavirus State Fiscal Recovery Fund and Coronavirus Local Fiscal Recovery Fund under the American Rescue Plan Act ("ARPA"). Coronavirus State and Local Fiscal Recovery Funds Interim Rule, 31 C.F.R. § 35.8 (2021).

The Attorney General's Office had submitted a comment urging the Legislature to consider whether HB 22-81 falls afoul of Section 602(c)(2)(A)'s offset provision, which prohibits using ARPA funds to compensate for a loss of tax revenue. Pub. L. No. 117-2, tit. IX, § 9901(c)(2)(A), 135 Stat. 3, 226 (2021) ("A State or territory shall not use the funds provided under this section or transferred pursuant to section 603(c)(4) to either directly or indirectly offset a reduction in the net tax revenue of such State or territory resulting from a change in law, regulation, or administrative interpretation during the covered period that reduces any tax (by providing for a reduction in a rate, a rebate, a deduction, a credit, or otherwise) or delays the imposition of any tax or tax increase.")

The interim rule in the Department of the Treasury's regulation interpreting ARPA local funds creates a de minimis exception to the offset provision. 86 Fed. Reg. 26809.

The de minimis provision compares lost tax revenue due to changes in law during the covered period to a baseline of Fiscal Year 2019 tax revenue (the last year before the COVID-19 pandemic), adjusted for inflation. If the total of all revenue losses due to changes to law or regulation is less than or equal to 1% of this baseline, the receiving jurisdiction falls within the de minimis exception and does not violate this prohibited use of ARPA funds.

"Tax revenue" for purposes of calculating the baseline follows the definition used in the Census Bureau's definition of taxes for its Annual Survey of State Government Finances. This definition provides as follows: "In this survey, 'taxes' are defined as all compulsory contributions exacted by a government for public purposes, except employer and employee assessments for retirement and social insurance purposes, which are classified as insurance trust revenue. Outside the scope of this collection are data on the unemployment compensation 'taxes' imposed by each of the state governments. However, all receipts from licenses and compulsory fees, including those that are imposed for regulatory purposes, as well as those designated to provide revenue are included."

Adjusted for inflation using the Bureau of Economic Analysis's Implicit Price Deflator, and including license fees considered "taxes" for purposes of the rule, the baseline is estimated at approximately \$200 million. 1% of this figure is \$2 million. House fiscal analyst Thomas Rabago estimates lost tax revenue as a result of HB 22-8, HD1 on the local stimulus payments confirmed so far at about \$680,000, considering the tax brackets into which the covered households would fall¹. The Department of Finance is yet to furnish the Committee with a final total of all local stimulus payments, but fiscal analyst Rabago estimates the final total lost revenue will be no more than \$1.8 million at most.

¹ TY2019-2020 Wage and Salary and Earnings Data

This is still less than the \$2 million baseline for purposes of the de minimis exception to the offset provision. It is therefore the sense of the Committee that HB 22-81 in the form of House Draft 1 does not violate the offset provision of ARPA.

Your Committee agrees with the intent of this Act, therefore, recommends that the House pass House Bill No. 22-81 in the form of House Draft 1.

D. Public Comments/Public Hearing:

Comments were received from the following:

1) David DLG. Atalig, Secretary, Department of Finance

“While the Department of Finance is in favor of the policy goal of this legislation to ensure recipients are not obligated to pay taxes on stimulus payments, there are legal questions involved and, therefore, the Department of Finance defers to the comments provided by the Office of the Attorney General.”

2) Edward Manibusan, CNMI Attorney General

“The language stating that stimulus payments “ do not constitute income for the purposes of determining the NMTIT” is problematic, because the Legislature does not have the authority to modify the NMTIT.”

“Finally, the Legislature should consider whether the proposed change in law is consistent with the prescribed eligible uses of Fiscal Recovery Funds under the American Rescue Plan Act.”

Comments received have been attached as part of this committee report.

D. Legislative History:

House Bill No. 22-81 was introduced by Representative Angel A. Demapan on October 1, 2021 and was subsequently referred to the House Standing Committee on Ways and Means for disposition.

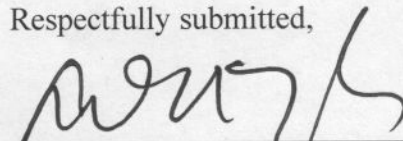
E. Cost Benefit:

The enactment of House Bill No. 22-81, HD1 will result in a potential loss of revenue for the CNMI Government. The 2021 ARPA Stimulus Plan will not be subject to the tax imposed therefore taxpayers will not be required to pay additional taxes when filing their 2021 return in 2022. However, the proposed legislation aims to assist the public during these tough economic times brought on by the COVID19 Pandemic therefore the loss will be in the best interest of the CNMI people. More importantly, House fiscal analyst Thomas Rabago estimates lost tax revenue as a result of HB 22-81, HD1 on the local stimulus payments confirmed so far at about \$680,000, considering the tax brackets into which the covered households would fall. The Department of Finance is yet to furnish the Committee with a final total of all local stimulus payments, but fiscal analyst Rabago estimates the final total lost revenue will be no more than \$1.8 million at most. This is still less than the \$2 million baseline for purposes of the de minimis exception to the offset provision. It is therefore the sense of the Committee that HB 22-81 in the form of House Draft 1 does not violate the offset provision of ARPA.

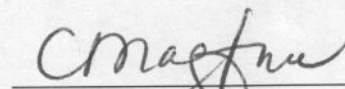
III. CONCLUSION:

The Committee is in accord with the intent and purpose of H. B. NO. 22-81, and recommends its passage in the form of House Draft 1.

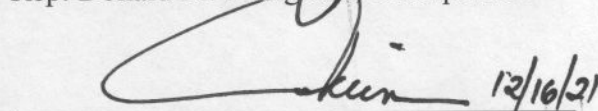
Respectfully submitted,



Rep. Donald M. Manglona, Chairperson

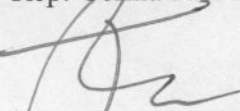


Rep. Corina L. Magofna, Vice Chairperson



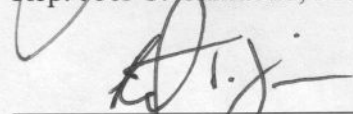
Rep. Celina R. Babauta, Member

Rep. Sheila J. Babauta, Member




Rep. Joel C. Camacho, Member

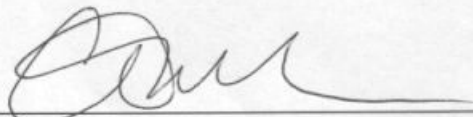
Rep. Vicente C. Camacho, Member



Rep. Richard T. Lizama, Member

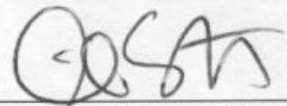


Rep. Edwin K. Propst, Member

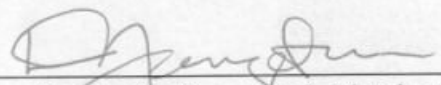


Rep. Christina M.E. Sablan, Member

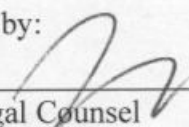
Rep. Patrick H. San Nicolas, Member



Rep. Leila H.F.C. Staffler, Member



Rep. Denita K. Yangetmai, Member

Reviewed by:


House Legal Counsel

Attachment: TY2019-2020 Wage and Salary and Earning Data spreadsheet
Comments dated Dec. 13, 2021: David DLG. Atalig, Secretary, Dept. of Finance
Comments dated Dec. 13, 2021: Edward Manibusan, CNMI Attorney General

2019 and 2020 Wages and Salary Data

				<u>2019</u>	<u>2020</u>
<u>Wage and Salary Tax Bracket</u>				<u>No. of Taxpayers</u>	<u>No. of Taxpayers</u>
A	\$1	\$1,000	0%	552	582
B	\$1,001	\$5,000	2%	2,191	2,934
C	\$5,001	\$7,000	3%	1,154	1,333
D	\$7,001	\$15,000	4%	6,032	5,709
E	\$15,001	\$22,000	5%	6,012	3,650
F	\$22,001	\$30,000	6%	3,146	2,360
G	\$30,001	\$40,000	7%	2,180	1,825
H	\$40,001	\$50,000	8%	1,399	1,001
I	\$50,001		9%	1,970	1,522
Total:				24,636	20,916

Taxable Amount of CNMI \$500 Stimulus Payments

		<u>2019</u>	<u>2020</u>
		<u>Taxable amount</u>	<u>Taxable amount</u>
A	\$0	\$0	\$0
B	\$21,910	\$21,910	\$29,340
C	\$17,310	\$17,310	\$19,995
D	\$120,640	\$120,640	\$114,180
E	\$150,300	\$150,300	\$91,250
F	\$94,380	\$94,380	\$70,800
G	\$76,300	\$76,300	\$63,875
H	\$55,960	\$55,960	\$40,040
I	\$88,650	\$88,650	\$68,490
Total:		\$625,450	\$497,970

2019 and 2020 Earnings Data

				<u>2019</u>	<u>2020</u>
<u>Earnings Income Tax Bracket</u>				<u>No. of Taxpayers</u>	<u>No. of Taxpayers</u>
A	\$1	\$1,000	0%	1,760	1,289
B	\$1,001	\$5,000	2%	950	699
C	\$5,001	\$7,000	3%	140	145
D	\$7,001	\$15,000	4%	212	520
E	\$15,001	\$22,000	5%	63	86
F	\$22,001	\$30,000	6%	52	39
G	\$30,001	\$40,000	7%	30	15
H	\$40,001	\$50,000	8%	24	14
I	\$50,001		9%	81	38
Total:				3,312	2,845

Taxable Amount of CNMI \$500 Stimulus Payments

		<u>2019</u>	<u>2020</u>
		<u>Taxable amount</u>	<u>Taxable amount</u>
A	\$0	\$0	\$0
B	\$9,500	\$9,500	\$6,990
C	\$2,100	\$2,100	\$2,175
D	\$4,240	\$4,240	\$10,400
E	\$1,575	\$1,575	\$2,150
F	\$1,560	\$1,560	\$1,170
G	\$1,050	\$1,050	\$525
H	\$960	\$960	\$560
I	\$3,645	\$3,645	\$1,710
Total:		\$24,630	\$25,680

Total No. of Taxpayers:

27,948 23,761

Total Taxable Amount of Wages and Salaries and Earnings Income:

\$650,080 \$523,650

Amount in Stimulus Payments made to Taxpayers (\$500/tax payer):

\$13,974,000 \$11,880,500

Detailed above on the left-hand side of the document are listings of the number of tax payers in the CNMI as well as their prespective tax brackets that they fall under dependent upon their salary and wages or earnings income that they earned in 2019 and 2020. The right-hand side of the document details a listing of supposed taxable amounts derived from the \$500 stimulus payments that were issued out to CNMI tax payers from the CNMI Government. These supposed taxable amounts were calculated by having the \$500 stimulus payment subjected to the corresponding percentage within a certian tax bracket and then multiplying that number by the amount of tax payers listed within each tax bracket. Below these listings are the figures for the total number of CNMI tax payers in 2019 and 2020, the supposed total taxable amount of wages and salaries as well as earned income from all CNMI tax payers that were issued a \$500 stimulus payment for 2019 and 2020, and the total amount in \$500 stimulus payments issued to all CNMI tax payers corresponding the total number of tax payers for both 2019 and 2020.



Office of the Secretary
Department of Finance



P.O. Box 5234 CHRFB, Saipan MP 96950

TEL: (670) 664-1100 FAX: (670) 664-1115

December 13, 2021

SFL 2022-038

Hon. Donald Manglona
Chairman
Committee on Ways & Means
22nd Commonwealth Legislature
P.O. Box 500586, Saipan, MP 96950
Tel: 1-(670) 664-8950

Subject: Department of Finance Comments and Recommendations on House Bill 22-81,
To Amend 4 CMC § 1202, to Exclude Local Stimulus Payments from Taxation.

Dear Chairman Manglona:

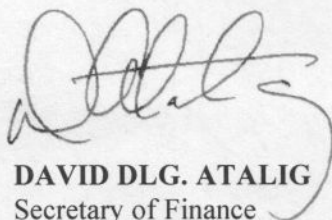
The Commonwealth of the Northern Mariana Islands (CNMI) Department of Finance, is pleased to submit comments and recommendations on House Bill 22-81, to amend 4 CMC § 1202 to exclude local stimulus payments from taxation. In an effort to provide our response, the Department of Finance sought to assess the impact of this legislation on the CNMI Government's compliance with the requirements of our unique relationship between the CNMI and Federal Tax Codes.

House Bill 22-81 would amend 4 CMC § 1202 to include a provision exempting stimulus payments received pursuant to the 2021 American Rescue Plan Act (ARPA) Local Stimulus Plan from both the earnings tax and Northern Marianas Territorial Income Tax ("NMTIT"). It is our understanding that you have also solicited comments from the Office of Attorney General, which it will provide concerning the legality of the NMTIT exclusion.

While the Department of Finance is in favor of the policy goal of this legislation to ensure recipients are not obligated to pay taxes on stimulus payments, there are legal questions involved and, therefore, the Department of Finance defers to the comments provided by the Office of the Attorney General.

On behalf of the CNMI Department of Finance, I thank you for the opportunity to provide this letter. If you have any questions or need additional information, please do not hesitate to contact us at 664-1100 or via email at david.atalig@dof.gov.mp.

Best Regards,



DAVID DLG. ATALIG
Secretary of Finance



Commonwealth of the Northern Mariana Islands
Office of the Attorney General

2nd Floor Hon. Juan A. Sablan Memorial Bldg.
Caller Box 10007, Capitol Hill
Saipan, MP 96950

EDWARD MANIBUSAN
Attorney General

LILLIAN A. TENORIO
Deputy Attorney General

December 13, 2021

OAGHOR 2021-507

Donald M. Manglona
Chairman, Committee on Ways and Means
Hon. Jesus P. Mafnas Memorial Building
P.O. Box 500586
Saipan, MP 96950

RE: H.B. 22-81 – To amend 4 CMC § 1202, to exclude local stimulus payments from taxation

Dear Chairman Manglona:

Thank you for the opportunity to review and comment on House Bill 22-81, to amend 4 CMC § 1202, to exclude local stimulus payments from taxation (the “Bill”). I have read and reviewed the above-stated legislation and advise as follows:

HB 22-81 – Comments/Recommendations:

The Bill would amend 4 CMC § 1202 to include a provision exempting stimulus payments received pursuant to the 2021 ARPA Local Stimulus Plan from both the earnings tax and Northern Marianas Territorial Income Tax (“NMTIT”). Specifically, the Bill incorporates a new subsection (e), which states:

“Stimulus payments received from the Commonwealth pursuant to the 2021 ARPA Local Stimulus Plan are not subject to the tax imposed under this section and do not constitute income for the purposes of determining the NMTIT.”

The language stating that stimulus payments “do not constitute income for the purposes of determining the NMTIT” is problematic, because the Legislature does not have the authority to modify the NMTIT.

Section 601 of the Covenant provides: “The income tax laws in force in the United States will come into force in the Northern Mariana Islands as a local territorial income tax ... in the same manner as those laws are in force in Guam.” A provision requiring that the CNMI adopt the United States tax laws as a local territorial income tax establishes what is commonly referred to as a “mirror code” system. *Armstrong v. N. Mariana Islands*, 576 F.3d 950, 953 (9th Cir. 2009). U.S. Congress has described such systems, which are implemented in several insular areas, including Guam, the Virgin Islands, and Puerto Rico, as “the provisions of law ... which make

Civil Division
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Attorney General’s Investigative
Telephone: (670) 237-7625
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Victim Witness Advocacy Unit
Telephone: (670) 237-7602
Facsimile: (670) 237-2349

the provisions of the income tax laws of the United States ... in effect in a possession of the United States.” *Id.* (citations omitted). To implement Section 601 of the Covenant, the CNMI Legislature adopted the United States Internal Revenue Service Code by enacting law consistent with the Guam Organic Act. *See* 4 CMC § 1701 (Application of the Internal Revenue Code, In General); 4 CMC § 1702 (Internal Revenue Code Adopted); 48 U.S.C. § 1421(i) (Guam Organic Act).

The 9th Circuit has held that substantive changes in the Guam local territorial income tax must be left to Congress. *Ramsey v. Chaco*, 549 F.2d 1335, 1338 (9th Cir. 1977); *Gov't of Guam v. Koster*, 362 F.2d 248, 252 (9th Cir. 1966) (holding redefinition of “gross income” was an impermissible substantive modification to the territorial income tax code); *Bank of Am., Nat. Tr. & Sav. Ass'n v. Chaco*, 539 F.2d 1226, 1227–28 (9th Cir. 1976) (noting Government of Guam is powerless to vary the terms of the federal income tax laws as applied to Guam except as permitted by Congress); *Sayre & Co. v. Riddell*, 395 F.2d 407, 413 (9th Cir. 1968) (holding deviations by substantive revision of the basic scheme of the mirror code system as applied to Guam must be left to Congress). The legal precedent governing Guam also applies to the CNMI because, in accordance with Section 601 of the Covenant, the NMTIT comes into force in the same manner as those laws are in force in Guam. Therefore, H.B. 22-81, as currently constituted, would impermissibly modify the NMTIT definition of gross income.

The laws in force in the United States must be enforced by the CNMI in the same manner as those laws are in force in Guam. *Armstrong*, 576 F.3d at 956. Accordingly, the Secretary of Finance, as the Governor’s delegate, has the same administrative and enforcement powers with regard to the NMTIT as the Secretary of the Treasury and other United States officials of the executive branch have with respect to the United States income tax. *Koster*, 362 F.2d at 252; 4 CMC § 1701. Therefore, like the United States Commissioner of Internal Revenue, the Secretary of Finance may interpret the NMTIT and prescribe rules and regulations as long as such interpretations, rules, and regulations are not inconsistent with federal tax statutes or authoritative interpretations of the Internal Revenue Code.¹ *Id.*

Under the NMTIT, taxpayers are taxed on their gross income, which is defined as “all income from whatever source derived.” NMTIT § 61. However, there are several exclusions from that statutory rule, and the Internal Revenue Service has long recognized the general welfare exclusion as a non-statutory exclusion to that rule. The general welfare exclusion exempts from the recipient’s taxable income payments by governmental units under legislatively provided social programs that promote general welfare. *See generally* General welfare exclusion, 1 Mertens Law of Fed. Income Tax’n § 7:192. To qualify under the exclusion, the payments must:

¹ Except where manifestly incompatible with the Covenant or NMTIT, authoritative interpretations of the Internal Revenue Code include: (1) All present and future United States federal court cases, including Tax Court cases; (2) All present and future revenue rulings, revenue procedures, and Treasury decisions of the United States Treasury Department, promulgated under United States income tax laws; (3) All present and future regulations under the Internal Revenue Code, promulgated under United States income tax laws. 4 CMC § 1702(d).

(1) be made to an individual under a governmental program; (2) be for the promotion of the general welfare (that is, based on need); and (3) not represent compensation for services. *See, e.g.,* Rev. Rul. 75-246; Rev. Rul. 82-106; Rev. Rul. 2003-12. Another possible exclusion applicable to the stimulus payments could be under NMTIT Section 213, which excludes certain disaster relief payments from gross income.

The Legislature cannot redefine what constitutes gross income under the NMTIT or create an exclusion from gross income, because such an act would violate the Covenant and run afoul with binding legal precedent. Therefore, we recommend the following revision to the proposed amendment:

“Stimulus payments received from the Commonwealth pursuant to the 2021 ARPA Local Stimulus Plan are not subject to the tax imposed under this section ~~and do not constitute income for the purposes of determining the NMTIT.~~”

The Secretary of Finance, as the Governor’s delegate, is charged with administering and enforcing the NMTIT, which includes determining whether the stimulus payments are subject to an exclusion under the NMTIT. These comments shall not be construed to provide an opinion as to whether such an exclusion applies.

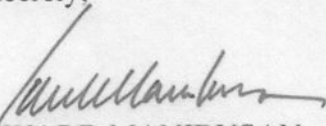
Finally, the Legislature should consider whether the proposed change in law is consistent with the prescribed eligible uses of Fiscal Recovery Funds under the American Rescue Plan Act. Section 602(c)(2)(A) of the American Rescue Plan Act provides:

“A State or territory shall not use the funds provided under this section or transferred pursuant to section 603(c)(4) to either directly or indirectly offset a reduction in the net tax revenue of such State or territory resulting from a change in law, regulation, or administrative interpretation during the covered period that reduces any tax (by providing for a reduction in a rate, a rebate, a deduction, a credit, or otherwise) or delays the imposition of any tax or tax increase.”

On May 17, 2021, the United States Secretary of the Treasury issued an interim final rule to implement the Coronavirus State Fiscal Recovery Fund and the Coronavirus Local Fiscal Recovery Fund established under the American Rescue Plan Act. *See* 31 C.F.R. Part 35. The interim final rule provides a step-by-step framework for calculating whether an offset provision applies to a State’s or territory’s use of Fiscal Recovery Funds to offset a reduction of net tax revenues resulting from a change in law.

Please feel free to contact me should you require any further assistance in this regard.

Sincerely,



EDWARD MANIBUSAN
Attorney General

cc: Deputy Attorney General

TWENTY-SECOND NORTHERN MARIANAS COMMONWEALTH

LEGISLATURE

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 1, 2021

Second Regular Session, 2021

H. B. 22-81, HD1

A BILL FOR AN ACT

To amend 4 CMC § 1202, to exclude local stimulus payments from taxation.

**BE IT ENACTED BY THE 22ND NORTHERN MARIANAS
COMMONWEALTH LEGISLATURE:**

1 **Section 1. Findings and Purpose.** The Legislature finds that the Governor
2 established the 2021 ARPA Local Stimulus Plan (the “Stimulus Plan”), which
3 provides for payments in the amount of \$500 for each eligible individual and \$500
4 for each dependent of an eligible individual. The purpose of the Stimulus Plan was
5 to provide assistance to households impacted by the negative economic effects of
6 the COVID-19 pandemic.

7 The Legislature finds that payments under the Stimulus Plan would be
8 subject to the earnings tax unless applicable law is amended to specifically exclude
9 these payments. The Legislature finds that taxing these payments is inconsistent
10 with the underlying purpose of the Stimulus Plan and would only create yet another
11 burden on recipients. Therefore, it is the intent of the Legislature to exclude from

1 earnings tax, the stimulus payments received from the Commonwealth pursuant to
2 the 2021 ARPA Local Stimulus Plan.

3 **Section 2. Amendment.** 4 CMC § 1202 is hereby amended to read as
4 follows:

5 “(a) There is imposed on every person a yearly tax on such person’s
6 total earnings.

7 (b) For purposes of this chapter, “earnings” shall mean:

8 (1) A gain as determined under NMTIT Section 1001
9 received from the sale of personal property, tangible or intangible,
10 by a resident that was not in the course of carrying on a business.

11 (2) One half of the gain as determined under NMTIT section
12 1001 received from the sale of real property located in the
13 Commonwealth that was not in the course of carrying on a business.
14 Provided, however, that the sale of private real property to the
15 Commonwealth government for a public purpose shall not be
16 deemed a sale of real property for the purposes of this subsection.

17 (3) One half of the net income received from leasing of real
18 property located in the Commonwealth, including the assignment of
19 any lease that was not in the course of carrying on a business. For
20 purposes of this subsection, “net income from leasing real property
21 including the assignment of any lease,” means the income less

1 expenses from the rental of real property as determined under the
2 NMTIT.

3 (4) [Repealed.]

4 (5) Gross winnings received from any gaming, lottery, raffle
5 or other gambling activity in the Commonwealth.

6 (6) All other types of income that a resident individual must
7 report in determining his NMTIT, except:

8 (i) Payments received by an employee or his
9 beneficiary from a retirement plan, including the
10 Commonwealth retirement plan, or as unemployment
11 compensation. For purposes of this subsection, the term
12 "retirement plan," other than the Commonwealth retirement
13 plan means a plan that qualifies under Subchapter D, Subtitle
14 A of the NMTIT.

15 (ii) Amounts received as alimony or separate
16 maintenance payments as defined under Section 71 of
17 NMTIT.

18 (iii) Unemployment compensation as defined under
19 Section 85 of NMTIT.

20 (iv) Social security benefits as defined under Section
21 86 of NMTIT.

1 (v) Distributive shares of partnerships and S
2 corporations to respective partners and shareholders.

3 In addition to the items included within subsections (i)-(v)
4 of this subsection, the secretary by ruling or regulation may exempt
5 other income when the secretary determines that imposing the
6 earnings tax would result in excessive taxation.

7 (c) The tax imposed under this section shall not apply to earnings
8 from a de minimis transaction. The secretary shall prescribe regulations to
9 determine whether a transaction is de minimis.

10 (d) In determining the total earnings, a person shall not reduce any
11 earnings by any loss.

12 (e) Stimulus payments received from the Commonwealth pursuant
13 to the 2021 ARPA Local Stimulus Plan are not subject to the tax imposed
14 under this section and do not constitute income for the purpose of
15 determining the NMTIF.”

16 **Section 3. Severability.** If any provision of this Act or the application of
17 any such provision to any person or circumstance should be held invalid by a court
18 of competent jurisdiction, the remainder of this Act or the application of its
19 provisions to persons or circumstances other than those to which it is held invalid
20 shall not be affected thereby.

1 **Section 4. Savings Clause.** This Act and any repealer contained herein shall
2 not be construed as affecting any existing right acquired under contract or acquired
3 under statutes repealed or under any rule, regulation or order adopted under the
4 statutes. Repealers contained in this Act shall not affect any proceeding instituted
5 under or pursuant to prior law. The enactment of this Act shall not have the effect
6 of terminating, or in any way modifying, any liability civil or criminal, which shall
7 already be in existence at the date this Act becomes effective.

8 **Section 5. Effective Date.** This Act shall take effect upon its approval by
9 the Governor or upon its becoming law without such approval.

Prefiled: 10/1/2021

Date: 9/30/2021

Introduced by: /s/ Rep. Angel A. Demapan
/s/ Rep. Roy C.A. Ada
/s/ Rep. Blas Jonathan "BJ" T. Attao
/s/ Rep. Joel C. Camacho
/s/ Rep. Joseph A. Flores
/s/ Rep. Joseph Leepan T. Guerrero
/s/ Rep. John Paul P. Sablan
/s/ Rep. Patrick H. San Nicolas
/s/ Rep. Ralph N. Yumul

Reviewed for Legal Sufficiency by:

/s/ John B. Layde
House Legal Counsel