

FIFTEENTH NORTHERN MARIANAS COMMONWEALTH LEGISLATURE

1<sup>ST</sup> DAY, ELEVENTH SPECIAL 2007

H. B. NO. 15-327

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**A BILL FOR AN ACT**

TO AMEND SECTION 1201 OF TITLE 4 OF THE COMMONWEALTH CODE TO INCLUDE WITHIN THE DEFINITION OF “WAGES AND SALARIES” ANY COST-OF-LIVING ALLOWANCE PAID BY THE EMPLOYER OF A WORKER WITHIN THE COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS, IN ORDER TO PROVIDE FOR EQUALITY, PARITY AND FAIRNESS IN THE TREATMENT OF COMPENSATION PAID TO SIMILARLY SITUATED INDIVIDUALS; AND FOR OTHER PURPOSES

**BE IT ENACTED BY THE FIFTEENTH NORTHERN MARIANAS  
COMMONWEALTH LEGISLATURE:**

1           **Section 1. Short Title.** This Act may be referred to as the “Fair Taxation Act of  
2 2007.”

3           **Section 2. Findings and Purpose.** The Legislature finds that certain employers,  
4 including agencies of the federal government, are providing their employees a “cost of  
5 living allowance” (COLA) to supplement their wages and salaries in light of the high cost  
6 of living within the Commonwealth of the Northern Mariana Islands as compared to  
7 some other parts of the United States. Under the United States Internal Revenue Code  
8 (IRC), adopted within the Commonwealth as the Northern Marianas Territorial Income  
9 Tax (NMTIT), Title 4 of the Commonwealth Code, Division 1, Chapter 7, such COLA  
10 payments to current federal employees are excludable from income under the NMTIT.  
11 See 4 CMC § 1701; NMTIT § 912(2).

12           While the NMTIT is currently a “mirror image” of the IRC as applied nation-  
13 wide, the Wage and Salary and Earnings Taxes, Title 4 of the Commonwealth Code,  
14 Division 1, Chapter 2, operate as “local” taxes wholly outside the constraints of the IRC,  
15 although some provisions of the NMTIT are referred to or incorporated by reference.  
16 See, e.g., 4 CMC §§ 1202-03. Accordingly, the Commonwealth has greater flexibility in  
17 amending the Chapter 2 tax, without implicating the myriad considerations involved with  
18 changing the NMTIT Chapter 7 tax.

1           The Legislature finds that many or most employees receiving a COLA from their  
2 employer are not including that payment within the employee’s total wages and salaries  
3 as reported on their Chapter 2 tax return. The express exclusion of federal COLA  
4 payments from the Chapter 7 NMTIT introduces ambiguity as to whether some or all  
5 COLA payments received by employees are taxable under the Chapter 2 Wage and  
6 Salary Tax.

7           The exclusion from wage and salary taxation of COLA payments to those  
8 employees fortunate enough to receive such extra compensation unfairly shifts a greater  
9 proportion of the wage and salary tax burden to those employees who do not obtain such  
10 largesse from their employers, and also reduces government revenues. In essence,  
11 because of the way in which their compensation is categorized, some employees are able  
12 to receive a significant portion of their pay (20% in the case of federal employees  
13 receiving a 25% COLA) free of the Chapter 2 Wage and Salary Tax.

14           It is the policy of the Legislature — to ensure equality, parity and fairness in the  
15 taxation of compensation provided to workers in the Commonwealth — that all COLA  
16 payments by any employer to a current employee shall be subject to the Chapter 2 Wage  
17 and Salary Tax on a non-discriminatory basis.

18           Accordingly, the purpose of this bill is to clarify and ensure that all cost of living  
19 allowance payments by any employer to a current employee are included within the  
20 definition of “wages and salaries,” and withheld and taxed accordingly.

21           **Section 3. Amendment.** Section 1201 of Title 4 of the Commonwealth Code is  
22 amended as follows:

23           **“§ 1201. Wage and Salary Tax.**

24           (a) There is imposed on every employee a yearly tax on the employee’s total  
25 wages and salaries.

26           (b) For purposes of this chapter, “wages and salaries” shall include any cost-of-  
27 living allowance received by an employee, whether or not excludable from income  
28 under NMTIT Section 912(2).”

29

1           **Section 4. Severability.** If any provision of this Act or the application of any  
2 such provision to any person or circumstance should be held invalid by a court of  
3 competent jurisdiction, the remainder of this Act or the application of its provisions to  
4 persons or circumstances other than those to which it is held invalid shall not be affected  
5 thereby.

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

13           **Section 6. Effective Date.** This Act shall take effect on January 1, 2008.

Date: December 28, 2007

Introduced By: /s/ Rep. Oscar M. Babauta

Reviewed for legal sufficiency for introduction by:

/s/ Antonio Cabrera  
House Legal Counsel