

THE THIRTY-FIFTH LEGISLATURE OF AMERICAN SAMOA

Second Regular Session

Begun and held at Fagatogo, Tutuila, American Samoa
on Monday, the tenth day of July
two thousand and seventeen

AN ACT AMENDING THE AMERICAN SAMOA ALTERNATIVE MINIMUM BUSINESS TAX; AMENDING SECTION 11.0533 A.S.C.A.; CREATING A SECTION 11.0534 A.S.C.A.; AMENDING AND RENUMBERING SECTION 11.0534; AND RENUMBERING SECTIONS 11.0535, 11.0536, AND 11.0537 A.S.C.A.”

Preamble:

WHEREAS, an alarming number of businesses in the Territory have successfully avoided paying their fair share of corporate taxes despite posting substantial annual gross revenues year after year; and

WHEREAS, this practice robs the people of American Samoa and the American Samoa Government of much needed revenues to provide the services and infrastructure that allow these businesses to operate safely and profitably in the Territory; and

WHEREAS, this practice is also unfair to those businesses that have consistently paid their fair share of corporate taxes to the American Samoa Government; and

WHEREAS, the establishment of an alternative minimum tax on businesses is in the public interest of the people of American Samoa as it will ensure that all corporations pay a fair share of corporate taxes.

BE IT ENACTED BY THE LEGISLATURE OF AMERICAN SAMOA:

Section 1. 11.0533 is amended to read:

“11.0533 ~~Partial recoupment of e~~Corporate taxes.

(a) Section 11(b), relating to the amount of tax imposed on corporations for taxable years beginning on and after July 1, 1987, is amended to read:

11(b) Amount of tax.

The amount of tax imposed by subsection (a) shall be the sum of;

(1) 15 percent of so much of the taxable income as does not exceed \$50,000,

(2) 25 percent of so much of the taxable income as exceeds \$50,000 but does not exceed \$75,000, and

(2) 25 percent of so much of the taxable income as exceeds \$50,000 but does not exceed \$75,000, and

(3) 34 percent of so much of the taxable income as exceeds \$75,000.

In the case of a corporation which has taxable income in excess of \$100,000 for any taxable year, the amount of tax determined under the preceding sentence for such taxable year shall be increased by the lesser of (a) 5 percent of such excess or (b) \$11,750.”

Sec 2. There is created a section 11.0534 which reads:

“11.0534 Alternative minimum business tax.

Section 11(b) is further amended to read:

(4) Alternative Minimum Business Tax. In the case of a corporation or other business entity subject to taxation in American Samoa, there is imposed an alternative minimum business tax equal to 1% of the taxpayer’s gross revenues for the tax year, commencing with tax year 2018 and thereafter. Taxpayer shall pay the alternate minimum business tax if an amount equal to 1% of the gross revenue exceeds the regular tax for the taxable year. For the purpose of this section the term “regular tax” means the tax imposed on the taxpayer by the Samoan Income Tax Act for the taxable year reduced by the credits allowable thereunder. Businesses commenced during a given taxable year will be exempt from the alternative minimum business tax for the initial taxable year and the following taxable year only. Businesses that undergo reorganization as defined in the United States Internal Revenue Code Section 368 will be subject to the alternative minimum business tax regardless of the year of inception. This alternative minimum tax does not apply to a nonprofit corporation. The term “nonprofit corporation” means any group that is organized and operated for charitable, religious, or educational purposes, or hold tax-exempt status as a 501(c)(3) organization under the Federal Internal Revenue Code.

(5) Twenty-five (25) percent of accumulated proceeds from this tax shall be transferred to the LBJ operations, and twenty-five (25) percent of accumulated proceeds shall be transferred to a separate special account of the American Samoa Medical Center to support the Off-island Medical Referral Program.”

Sec 3. 11.0534 is amended and renumbered to read:

“11.05345 Maximum tax imposed upon corporations.

Notwithstanding the provisions of sections 11.0533, and 11.0534 the maximum amount of income tax imposed in a taxable year upon any corporation operating under a certificate of exemption issued pursuant to the tax incentives for businesses act, section 11.1601 et seq., shall not exceed the amount of income tax which would have been imposed upon such corporation in such year under the provisions of this title, as in effect on December 31, 1986 (without regards to the Tax Reform Act of 1986, U.S. Public Law No. 99-514) and as applied in accordance with the terms of the certificate of exemption issued to such corporation.”

Sec 4. 11.0535 is renumbered to read:
11.05356 Section 876 amended.

Section 876 relating to alien residents of Guam, Puerto Rico, the Northern Marianas Islands and the United States is amended to read:

(a) Alien individuals. This subpart shall not apply to any alien individual who is a bona fide resident of Puerto Rico, Guam, the Northern Mariana Islands, or the United States during the entire taxable year and such alien shall be subject to the tax imposed by section 1.

(b) Foreign corporations. Sections 881, 884 and 1442 shall not apply to corporations formed in the United States, any of the 50 states or any territory of the United States.”

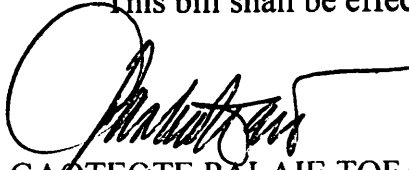
Sec 5. 11.0536 is renumbered to read:
“11.05367 Section 1442(c) deleted.

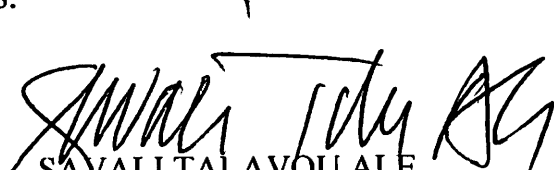
Section 1442(c) relating to corporations formed in Guam and other territories is deleted.”

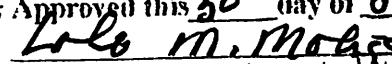
Sec 6. 11.0537 is renumbered to read:
“11.05378 Section 881(b) deleted.

Section 881(b) relating to corporations formed in Guam and other territories is deleted.”

Sec7. Effective date.
This bill shall be effective January 1, 2018.


GAOTEOTE PALAIE TOFAU
President of the Senate


SAYALI TALAVOU ALE
Speaker, House of Representatives

Hereby Approved this 30th day of OCTOBER 2017

Governor Of American Samoa

NOFOAIGA TOLUSEFULU-LIMA FONOFAITULAFONO AMERIKA SAMOA

Fono Tele Lona Lua

Nofoia ma usuia i Fagatogo, Tutuila, Amerika Samoa
Aso Gafua, aso sefulu o Iulai
Lua afe sefulufitu

O SE TULAFONO E SUIA AI LAFOGA MAUALALO MO PISINISI I AMERIKA SAMOA I SE ISI ALA LELEI; SUIA AI LE MAGA 11.0533 T.T.A.S.; FAAVAEINA AI SE MAGA 11.0534 T.T.A.S.; SUIA MA TOE FAANUMERAINA AI LE MAGA 11.0534; MA TOE FAANUMERAINA AI MAGA 11.0535, 11.0536, MA LE 11.0537 T.T.A.S.”

Faatomuaga:

TALUAI, ua matua toatele na’ua le aofa’i o Pisinisi i Amerika Samoa ua ‘alo mai le totogiina o a latou lafoga faatulaga e tusa ma tatau ai o Pisinisi e ui ina o loo faailoaina le tele o le latou tupe maua i lea tausaga ma lea tausaga; ma

TALUAI, o leni faiga le talafeagai ua faagaoi ai le tamaoaiga o tagata o Amerika Samoa ma lana Faigamalo i se aofa’i sa tatau ona maua mai, e fesoasoani ma auauna ai i le faavaeina lelei o Pisinisi ma lona galueaina, ina ia saogalemu ma ola manuia ai le Teritori; ma

TALUAI, o leni faiga ua le taitai ona fetau i nisi pisinisi o loo latou tausisia pea ma le faamaoni le totogiina o a latou lafoga, e tusa o latou sao i le faigamalo a Amerika Samoa; ma

TALUAI, o le faavaeina o le lafoga maualalo, mo pisinisi o loo iai faatasi ma le manao o tagata lautele o Amerika Samoa, ina ia mautinoa lava, soo se faalapopotoga tau pisinisi e ao ona totogi a latou lafoga e fai ma sao tutusa mo lafoga faatulagaina

IA FAATULAFONOINA E LE FONOFAITULAFONO A AMERIKA SAMOA:

Maga 1. 11.0533 ua suia e faitauina faapea:

“11.0533 ~~Vaega ua ave’ese mai o lafoga o pPisinisi~~

(a) Maga 11(e), faatatau i le aofai o lafoga ua faaee atu i pisinisi i tausaga faalafoga, e amata ia Iulai 01, 1987 ma faasolo mai ai, ua suia ma faitauina:

11(e) Aofai o lafoga.

O le aofai o lafoga na faaee i le soamaga (a) o le aofai o le:

O le aofai o lafoga na faaee i le soamaga (a) o le aofai o le:

(1) 15 pasene o se aofai na maua mai lafoga e le sili atu ma le \$50,000,

(2) 25 pasene o se aofai na maua mai lafoga e sili atu i le \$50,000 ae le sili atu ma le \$75,000, ma

(3) 34 pasene o se aofai na maua mai lafoga e sili atu i le \$75,000.

I tulaga o se pisinisi na te maua le \$100,000.00 e mafai ona faalafogaina i soo se tausaga, o le aofai o le lafoga ua fuafuaina i lalo o le uluai fuaitau e tataua ona tele atu pe itiiti ifo mai le (a) 5 pasene o se faaopoopoga poo le (e) \$11,750.”

Maga 2. Ua faavae nei se maga 11.0534 e faitauina faapea:

“11.0534 Le isi Lafoga pito maualalo mo pisinisi.

Maga 11(e) ua toe suia atili ma faitauina faapea:

(4) Le isi lafoga maualalo mo pisinisi. I tulaga o se pisinisi e totogi lafoga i Amerika Samoa, ua iai le isi lafoga maualalo mo pisinisi, e faatutusa lelei ma le 1 pasene o tupe maua a le togilafoga i le tausaga e amata i le tausaga lafoga 2018, ma faasolo ai. E totogi e le togilafoga le isi lafoga aupito maualalo o pisinisi pe afai e sili atu le lafoga masani o le tausaga faalafoga nai lo le aofai e tutusa ma le 1% o le tupemaua. O le faamoemoe la o lenei maga, o le upu “lafoga masani” o lona uiga o le lafoga ua faaee atu i le togilafoga e le tulafono ua ta’ua, o le tulafono o lafoga maua mai i Samoa mo le tausaga faalafoga ua faaitiitia ai mai aitalafu ua faatagaina ai. O pisinisi uma ua amata tonu i le taimi o lafoga faaletausaga, o le a faagafua mai lenei lafoga maualalo mo pisinisi i le uluai tausaga faalafoga, atoa ma le tausaga e sosoo ane ai. O pisinisi uma foi o loo iai tau faamaopoopoina pea pei ona faamatala faaletulafono e le Tulafono o Lafoga a le Iunaita Setete i le Maga 368 e ao ina aafia ai i le isi lafoga aupito maualalo tusa lava poo le a le tausaga na fofoa ai. O lenei lafoga maualalo mo pisinisi ua le aafia ai faalapotopotoga e le o galulue mo se tupe faasili (nonprofit). O le upu “faalapotopotoga e le o galulue mo se tupe faasili” o lona uiga o faalapotopotoga ua faamaopoopo ma atiae e fesoasoani atu i isi e aunoa ma le manatu i se tupe faasili e maua, o Ekalesia, o faalapotopotoga fesoasoani atu, i a’oga poo e ua faagafua le totogiina atu o lafoga i lalo o le 501(i)(3) i lalo o le tulafono o lafoga a le Feterale.

(5) 25 pasene o le aofaiga o le tupe maua mai lenei lafoga o le a tu’uina atu mo galuega fa’alaua’itele a le LBJ, ma e 25 pasene o le tupe maua mai lenei lafoga o le a tuuina i se teugatupe fa’apitoa a le Matagaluega a le Falema’i mo le Porokalama e auina ai Gasegase i Fafu.”

Maga 3. 11.0534 ua suia ma toe faanumeraina e faitauina faapea:

“11.0534 Lafoga aupito maualuga ua faaee atu i pisinisi.

E ui lava i aiaiga o Maga 11.0533, ma le 11.0534 o le aofai aupito maualuga o le lafoga ua faaee atu i le tausaga faalafoga i pisinisi o loo galue i lalo o le tusi faamaonia, ua tuuina atu ai le avanoa e faagafua ai e tusa o aiaiga ina ia talafeagai lafoga ma tulafono faapisinisi, maga 11.1601 ma isi e mulimuli mai ai, e le tataua ona sili atu le aofai o le lafoga maua mai, pei ona faaee atu i se pisinisi i se tausaga e pei o

aiaiga o lenei mataupu, sa amataina ia Tesema 31, 1986. (e aunoa ma le manatu fua i le Tulafono o le Lafoga Toe Faafou o le 1986, Tulafono Lautele a le Iunaitē Setete Nu.99-514) ma e tusa ona fa'azoga ai i tuutunga o le tusi faamau o le tuusaunoaga na tuuina atu i lea pisinisi."

Maga 4. 11.0535 ua to faanumeraina e faitauina faapea:

"11.05356 Maga 876 ua suia.

Maga 876 e faatatau i tagata ese o loo nonofo ma aumau i Guam, Puerto Rico, le Atū Mariana i Matu ma le Iunaitē Setete ua suia e faitauina faapea:

(a) Tagata mai fafo. O lenei soavaega e le o aafia ai tagata ese o loo nonofo i Puerto Rico, Guam, le Atū Mariana i Matu poo le Iunaitē Setete i tausaga uma e feagai ai ma lafoga, o i latou uma ia e ao ina faaee atu iai le lafoga pei o le Maga 1.

(e) O pisinisi mai fafo. Maga 881, 884 ma le 1442 e le aafia ai pisinisi ua faavaeina i totonu o le Iunaitē Setete, i Setete uma e 50 poo soo se Teritori o le Iunaitē Setete."

Maga 5. 11.0536 ua toe faanumeraina e faitauina faapea:

"11.05367 Maga 1442(i) ua soloiesea.

Maga 1442(i) e faatatau i faalapotopotoga ua faavaeina i Guam ma isi Teritori ua soloiesea."

Maga 6 11.0537 ua toe faanumeraina e faitauina faapea:

"11.05378 Maga 881(e) ua soloiesea.

Maga 881(e) e faatatau i pisinisi ua faavaeina i Guam ma isi Teritori ua soloiesea."

Maga 7. Aso e taualoa ai.

O lenei pili e ao ina faatauina ia Ianuari 1, 2018.


GAOTEOTE PALAI TOFAU
Presetene, Maota Maualuga


SAVALI TALAVOU ALE
Fofoga Fetalai, Maota o Sui

Hereby Approved this 30th day of OCTOBER 2017
W. M. Mole
Governor Of American Samoa