

CHUUK STATE LEGISLATURE  
House of Representatives

P.O. Box 27  
Weno, Chuuk State FM96942

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Florence P. Stanley, Chief Clerk

Email: [florencestanley@ymail.com](mailto:florencestanley@ymail.com)  
Tel # (691)330-2673

August 22, 2012

The Honorable Johnson S. Elimo  
Governor  
State of Chuuk  
Federated States of Micronesia 96942

Re: Overridden of Act 11-23

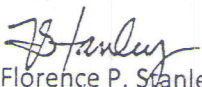
Dear Governor Elimo:

Pursuant to Rule 9, Section 14 of the Rules of Procedure of the House of Representatives, I am transmitting the subject Act evidencing the repassage by the House of Representatives on the 8<sup>th</sup> of August at 11:45 a.m, by 17 yes and 0 nay, and the Senate overridden on the 21<sup>st</sup> of August at 11:40 a.m., by 7 yes, 0 nays as proof of enactment.

I am enclosing copy of Act 11-23 with Chuuk State Law No. 11-12-14 as assigned.

Thank you.

Respectfully,

  
Florence P. Stanley  
Chief Clerk, House of Representatives

cc: President Mark Mailo, Senate  
Speaker Innocente I. Oneisom  
Legal Office, CSL

BAKER'S OFC. Rec'd  
6/26/12  
10:20 a.m.



OFFICE OF THE GOVERNOR  
STATE OF CHUUK

Post Office BOX 189, STATE OF CHUUK, F.S.M. 96942  
TEL. (691) 330-2230/4239 FAX: (691) 330-2233

JOHNSON ELIMO  
GOVERNOR  
RITIS HELDART  
LIEUTENANT GOVERNOR

June 5, 2012

**THE HONORABLE MARK MAILO**  
President  
Senate  
11<sup>th</sup> Chuuk State Legislature  
Weno, Chuuk, FM 96942

**THE HONORABLE INNOCENTI ONEISOM**  
Speaker  
House of Representatives  
11<sup>th</sup> Chuuk State Legislature  
Weno, Chuuk, FM 96942

**RE: VETO OF ACT 11-23**

Dear President Mailo and Speaker Oneisom:

I am respectfully transmitting my veto on Act 11-23 pursuant to section 14 (a), Article V of the Chuuk State Constitution. Act 11-23 amended sections 4 [(4) iii], 7,8(1) and adding a new paragraph 8 in Section 8 of CSL 11-12-07. This veto is based on constitutional vagueness of the amendment. The difference between CSL 11-12-07 and Act 11-23 is in section 4 [(4) iii] as follows:

"iii. Gasoline at the rate of five cents (\$.05) per gallon, increasing by 1 cent per gallon from the 1<sup>st</sup> of each month after ~~XXX~~ thereafter, to a ~~maximum~~ minimum of 10 cents (\$.10) per gallon."

As shown above, the stricken through portions are the original provision of CSL 11-12-07 and the underlined portions are the amended portion as shown in Act 11-23.

The phrase "thereafter, to a minimum of 10 cents (\$.10) per gallon" can be construed in various interpretations. It can be construed as \$.11 cents, \$.12 or even \$100 per month. Tax statutes are construed strictly against the taxing authority.

In tax statutes, the rule is strict construction against taxing authority.

This rule of strict construction against the taxing authority was reiterated in Tandy Leather Company v. United States, 347 F.2d 693 (5th Cir. 1965),

". . . In ruling as he did, that the taxpayer had the obligation to show that sales of the articles in suit were not subject to the excise taxes collected, the district judge was misled by the erroneous contention of the tax collector into misstating the rule of proof in a tax case. This is: that the burden in such a case is always on the collector to show, in justification of his levy and collection of an excise tax, that the statute plainly and clearly lays the tax; that, in short, the fundamental rule is that taxes to be collectible must be clearly laid.

**"A cardinal rule of statutory construction is that a statute be construed from its four corners and not by singling out a particular word or phrase."**

The Hornbook Rule reminds us that tax laws are strictly construed, and that when the letter of the law is subject to more than one interpretation, it must be construed against the imposition of the tax, the rule of interpretation of taxes being:

**"that the burden in such a case is always on the collector to show, in justification of his levy and collection of an excise tax, that the statute plainly and clearly lays the tax; that, in short, the fundamental rule is that taxes to be collectible must be clearly laid."** *Tandy Leather Company*, supra, at 694.

(emphasis added)

In the case at bar, applying rule of strict construction against the taxing authority on the following,

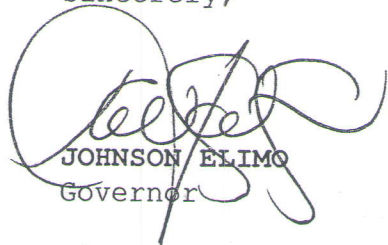
"Gasoline at the rate of five cents (\$.05) per gallon, increasing by 1 cent per gallon from the 1<sup>st</sup> of each month thereafter, to a minimum of 10 cents (\$.10) per gallon."

This could mean that the tax rate for gasoline will start from five (\$.05) cents per gallon which will be increase by 1 cent per gallon after the first month without limit after reaching 10 cents per gallon. This mean that the tax rate after one month could reach at an amount which may be left to the determination or discretion of the taxing authority, since there is no maximum rate imposed by law. The tax may be more than the value of the gasoline per gallon. That is just unacceptable in any society.

In view of this, I have no other choice but to exercise my veto power on Act 11-23.

Thank you and I remain.

Sincerely,



JOHNSON ELIMO  
Governor

File

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AN ACT

Amending sections 4, ((4), iii), 7,8(1) and adding a new paragraph 8 in Section 8, of CSL 11-12-07, and for other purposes.

Be it enacted by the Chuuk State Legislature:

1           Section 1. Amendment. Section 4 of CSL,11-12-07 is hereby amended to read as  
2 follows:

3                   “Section 4. Sales Tax Imposition. There is hereby levied a tax on first sale in the  
4 State of Chuuk of all tangible items, except unprocessed and unpackaged items, as  
5 follows:

- 6           1. Tobacco at the rate of one hundred percent (100%) of the sales price.
- 7           2. Cigarettes and cigars:
  - 8           i.       at a rate of two dollar per pack of 20 cigarettes;
  - 9           ii.       at a rate of 10 cents per on cigarette;
  - 10          iii.       at a rate of 10 cents per cigar.
- 11          3. Alcoholic beverages at the rate of 50%
- 12          4. Fuel Taxes
  - 13          i.       Diesel, kerosene at the rate of ten cents (\$.10) per gallon.
  - 14          ii.       Jet A One at the rate of ten cents (\$.10) per gallon.
  - 15          iii.       Gasoline at the rate of five cents (\$.05) per gallon, increasing by 1 cent  
16               per gallon from the 1<sup>st</sup> of each month thereafter, to a minimum of 10  
17               cents (\$.10) per gallon.
- 18          5. Luxury items at the rate of twenty percent (20%) of the sales price.
- 19          6. All other items at a rate of six percent of the sales price.”

20           Section 2. Amendment. Section 7 of CSL 11-12-07 is hereby amended to read as  
21 follows:

22                   “Section 7. Sales Tax Agreement: Prepayment. The first seller of the items  
23 listed in Section 4, (other than items in paragraphs 4(i) and (ii) of this Act shall have the

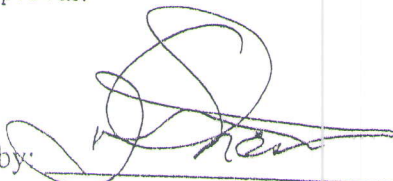
1 option of prepaying all the sales taxes due under that Section in accordance with  
2 regulations to be issued by the Director of the Department of Administrative Services.”

3 Section 3. Amendment. Section 8 of CSL 11-12-07 is hereby amended to read as  
4 follows:

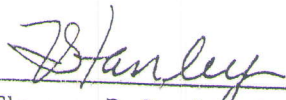
5 “Section 8. Cigarette tax stamps, prepayment of tax.

- 6 1. The tax levied by Section 4(2)(i) and (ii) must be prepaid at the time and in  
7 the manner required by this section.
- 8 2. The prepayment of tax required by this section is due no later than the time of  
9 first possession of the cigarettes by a person in Chuuk, when those cigarettes  
10 are intended to be or have been sold in Chuuk.
- 11 3. There shall be a rebuttable presumption that any person in possession of more  
12 than 200 cigarettes holds those cigarettes with the intention to sell.
- 13 4. On prepayment of tax required by this section, the Director of the Department  
14 of Administrative Services shall issue one tax stamp for each \$2 of tax  
15 prepaid.
- 16 5. Prepayment of the tax required by this section is evidenced by affixing one tax  
17 stamp to each pack of 20 cigarettes.
- 18 6. The Director of the Department of Administrative Services may refund or  
19 issue new tax stamps in relation to cigarettes with tax stamps affixed if he is  
20 satisfied that those cigarettes will not be sold in Chuuk.
- 21 7. Any person who sells cigarettes in Chuuk knowing that those cigarettes are  
22 without a current tax stamp as provided by this section shall be guilty of a  
23 felony and shall, upon conviction, be imprisoned for a period not less than  
24 three (3) months and not more than one (1) year or fined not less than \$1000,  
25 or both.
- 26 8. This section becomes operative from the date that the Director of the  
27 Department of Administrative Services first makes the declaration referred to  
28 in Section 3 (8).”

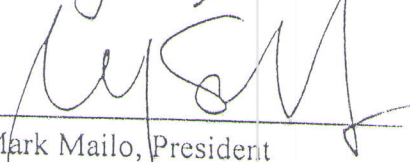
1 Section 4. Effective Date. This Act shall become effective upon approval of the  
2 Governor, or upon its becoming law without such approval.

Signed by:   
Innocente I. Oneisom, Speaker  
House of Representatives  
Chuuk State Legislature

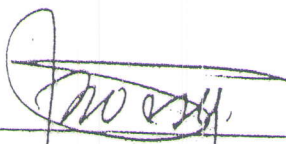
Attested:

  
Florence P, Stanley, Chief Clerk  
House of Representatives  
Chuuk State Legislature

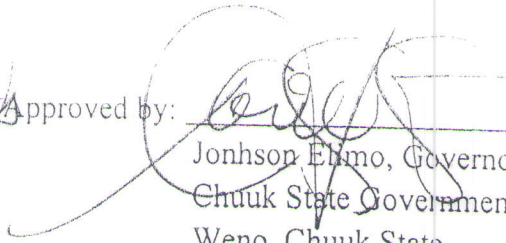
Date: May 24, 2012

Signed by:   
Mark Mailo, President  
House of Senate  
Chuuk State Legislature

Attested:

  
Songkinita Bossy, Chief Clerk  
House of Senate  
Chuuk State Legislature

Date: May 25, 2012

Approved by:   
Jonhson Elmo, Governor  
Chuuk State Government  
Weno, Chuuk State

Date: June 12, 2012

History:

H.B. NO. : 11-52

H.S.C.R.: None

**Overridden:** House of Representatives on 8/08/12 @ 11:45 a.m.  
Yes = 17  
Nay = 0  
House of Senate on 8/21/12 @ 11:40 a.m.  
Yes = 7  
Nay = 0