

**TITLE 40
REVENUE AND TAXATION**

**DIVISION 1
REVENUE**

**Chapter 1
National Treasury**

- § 101. National Treasury; established.
- § 102. Deposit and disbursement.
- § 103. Administration of National Treasury.
- § 104. Transition.

§ 101. National Treasury; established.

There is hereby established a National Treasury of the Republic of Palau into which all revenues derived from national taxes or other sources due to the national government shall be deposited. No funds shall be withdrawn from the National Treasury except by law.

Source

PL 7-8-13 § 1, modified.

Cross-reference

ROP Const., Art. XII, § 1.

§ 102. Deposit and disbursement.

The Director of the Bureau of National Treasury shall collect and receive national revenues and make such disbursements from the National Treasury as prescribed by law.

Source

PL 7-8-13 § 2, modified.

Cross-reference

ROP Const., Art. XII, § 1.

§ 103. Administration of National Treasury.

(a) The National Treasury shall be administered in accordance with and be subject to the same laws, rules, regulations, orders, and directives that apply to and govern the General Fund of the Palau Legislature.

(b) Until and unless otherwise provided by law, the term Director of the Bureau of National Treasury shall have the same meaning as “District Finance Officer”.

Source

PL 7-8-13 § 3, modified.

§ 104. Transition.

(a) The General Fund of the Palau Legislature shall be closed on January 1, 1981, and all funds in the General Fund shall be transferred to the National Treasury. All rights, interests, obligations, judgments, commitments, and liabilities of the General Fund of the Palau Legislature shall be transferred to the National Treasury.

(b) Nothing in this chapter shall be construed to be inconsistent with or impair the authority of the High Commissioner or United States law or Secretarial Order that make funds available to the Republic.

Source

PL 7-8-13 § 4.

**Chapter 2
Public Auditor**

**Subchapter I
General Provisions**

- § 201. Short title.
- § 202. Purpose.
- § 203. Definitions.

§ 201. Short title.

This chapter may be cited as the “Public Auditing Act of 1985.”

Source

RPPL 2-6 § 100, modified.

§ 202. Purpose.

It is the purpose of this chapter to implement Article XII, Section 2, of the Constitution of the Republic of Palau by creating an Office of the Public Auditor to conduct audits of all agencies and activities of the Republic and to assign such additional duties to the Public Auditor as the Olbiil Era Kelulau deems necessary.

Source

RPPL 2-6 § 101, modified.

§ 203. Definitions.

As used in this chapter:

- (a) “Agency” means any entity established or funded by law of the Republic or a local government. Agency includes, but is not limited to, the following entities and their officers, directors, employees, and independent contractors: any authority, board, branch, bureau, commission, cooperative, council, division, fund, group, institution, political division, office, or public corporation, including any autonomous or semi-autonomous governmental entity.

(b) “Audit” means an independent examination of books, performance, documents, records, and other evidence relating to the receipt, possession, obligation, disbursement, expenditure, or use of public funds by any agency or any activity of any agency; or relating to any contract or grant to which any agency is a party, including any operations relating to the transactions. Audit includes financial audits, performance audits, and program audits or any combination of the audits that the Public Auditor may deem appropriate.

(c) “Constitution” means the Constitution of the Republic of Palau.

(d) “Coordinating Group” means the Interagency Audit Coordinating Advisory Group established by section 230 of this chapter.

(e) “Financial audit” means an audit to determine:

(1) whether financial operations of any agency, or any relevant financial operations of any government contractor or grantee, have been properly conducted;

(2) whether any financial report of any agency, contractor, or grantee has been fairly presented; and

(3) whether any agency, contractor, or grantee has complied with laws and regulations applicable to their operations.

(f) “Performance audit” means an audit to determine whether an agency has managed or used its funds, personnel, property, space, and other resources in an effective and efficient manner, and to identify the cause of any inefficiency or ineffective practice, including any inadequacy in management information systems, administrative procedures, or organizational structure.

(g) “Program audit” means an audit to determine whether the desired results or benefits of agency programs or activities, or of any contract or grant, are being achieved, whether the objectives established by the Olbiil Era Kelulau, or otherwise established pursuant to law or by the Constitution, are being met, and whether the agency, contractor, or grantee has considered alternatives which might yield desired results more effectively or at lower cost.

(h) “Republic” means the Government of the Republic of Palau.

Source

RPPL 2-6 § 102; terms put into alphabetical order and section modified.

**Subchapter II
Establishment of Office**

- § 221. Office of the Public Auditor; establishment.
- § 222. Appointment and removal of the Public Auditor; compensation; vacancy.
- § 223. Duties of the Public Auditor.
- § 224. Special duties to act to prevent fraud, waste and abuse in the collection and expenditure of public funds.
- § 225. Employees of Office.
- § 226. Outside specialists may be hired.
- § 227. Centralization of all auditing services required by an agency of the Republic.
- § 228. Audit standards.
- § 229. Audit procedures and requirements.
- § 230. Establishment of Coordinating Group.
- § 231. Annual report.

§ 221. Office of the Public Auditor; establishment.

An Office of the Public Auditor, to be headed by the Public Auditor, is established as an independent agency of the Republic to audit the receipt, possession, and disbursement of public funds by agencies of the Republic and to perform such other duties as required in this chapter.

Source

RPPL 2-6 § 200, modified.

§ 222. Appointment and removal of the Public Auditor; compensation; vacancy.

- (a) The President shall appoint the Public Auditor subject to confirmation by the Olbiil Era Kelulau. No person shall be appointed Public Auditor unless he or she is a certified public accountant, has received an equivalent, internationally recognized certification, or has served as acting Public Auditor for a period of three (3) years or more, and has a minimum of five (5) years experience in accounting or governmental finance.
- (b) The Public Auditor shall be appointed for a term of six (6) years.

(c) The salary of the Public Auditor shall be within the grades and steps specified in 33 PNCA § 702, payable biweekly. The salary shall be determined by the President based upon the experience and qualifications of the applicant for the position of Public Auditor. The salary limit does not include recruitment, transportation and repatriation costs and benefits, or housing allowances and benefits, as allowed by Executive Branch regulation and stated in the standard employment contract.

(d) The Public Auditor may be removed only for cause and by the affirmative vote of two-thirds of the members of each house of the Olbiil Era Kelulau.

(e) In the event that there is a vacancy in the Office of the Public Auditor, the Chief Justice of the Supreme Court shall appoint a temporary public auditor with the same qualifications as required by law for the Public Auditor who shall serve until the vacancy is filled as provided in the Constitution and subsections (a) and (b) of this section. In no case may the Chief Justice appoint a person who has previously been rejected for such appointment by the Olbiil Era Kelulau.

Source

RPPL 2-6 § 201, modified. Subsection (c) amended by RPPL 3-50 § 1 and RPPL 4-21 § 4, modified. Subsection (a) amended by RPPL 5-7 § 36 as amended by RPPL 5-34 § 31. Subsections (a) and (e) amended by RPPL 7-25 § 25a, modified.

§ 223. Duties of the Public Auditor.

(a) Not later than June 30 of each year, the Public Auditor shall transmit to the President and to the presiding officer of each house of the Olbiil Era Kelulau an annual report for the previous fiscal year required by Article XII, Section 2, of the Constitution. The report shall consist of a financial audit of the National Treasury, each trust fund, each other fund of any agency whether or not appropriated, each contract to which any agency is a party, and each grant made or received by any agency. The audit shall cover the receipt, possession, and disbursement of public funds including all liabilities, receivables, and accruals of any agency, all taxes, fees, receipts, and other revenues of any agency, all other financial transactions involving any agency, and any financial statement issued or prepared by any agency. Personal service contracts and prime contracts with employees of any agency shall be audited as part of the regular operations and activities of the agency.

(b) The Public Auditor shall from time to time make such other audits of the Republic's agencies, activities, contracts, or grants as are possible within the budget provided him and as he deems to be in the public interest and consistent with this chapter.

(c) Upon request of an agency of the Republic the Public Auditor shall provide its opinion as to whether or not certain practices are in accord with generally accepted accounting principles.

(d) The Public Auditor shall undertake as soon as possible, a financial audit of all expenditures and receipts of the Republic since its inception as a constitutional government in 1981. The result of this audit shall be submitted to the Coordinating Group as established by section 230 of this chapter, and in accordance with its rules and procedures.

(e) In accordance with chapter 22 of Title 40 of the Palau National Code, the Public Auditor shall transmit to the President and to the presiding officer of each house of the Olbiil Era Kelulau a state financial audit report annually for each state governor and state legislature. The audit shall cover the receipt, possession, and disbursement of public funds including all liabilities, receivables, and accruals of any agency, all taxes, fees, receipts, and other revenues of any state governor or legislature, all other financial transactions involving any state governor or legislature, and any financial statement issued or prepared by [a] state governor or legislature. Personal service contracts and prime contracts with employees of any state governor or legislature shall be audited as part of the regular operations and activities of the state governor or legislature. Beginning in 2014, each state shall submit prior year audits no later than the end of the third quarter of the next fiscal year.

(f) Within ninety (90) days of the effective date of this Act, the Public Auditor shall promulgate rules of compliance by which all state legislatures and governors shall be held publicly accountable for expenditure of public funds.

Source

RPPL 2-6 § 202, modified. Subsections (e) and (f) are added by RPPL 9-9 § 2, modified.

Notes

Effective Date of RPPL 9-9: August 13, 2013.

§ 224. Special duties to act to prevent fraud, waste and abuse in the collection and expenditure of public funds.

(a) The Office of the Public Auditor shall specially act to prevent and detect fraud, waste and abuse in the collection and expenditure of all public funds. The Public Auditor may audit any transaction involving the procurement of supplies or the procurement of any construction by agencies of the Republic and the procurement of any supplies and

services in connection with such construction.

(b) The Public Auditor may conduct audits and inspections, when necessary, relating to programs and operations involving expenditure of public funds. He may review legislation and regulations relating to programs and operations involving expenditure of public funds and may make recommendations concerning the effect of such legislation or regulation on the prevention and detection of fraud, waste and abuse. He may recommend policies which will assist in the prevention or detection of fraud, waste and abuse. The person in charge of, or the governing body of any agency of the Republic, involved in the expenditure of public funds for the purpose of procurement of supplies or construction, and the services and supplies in connection therewith, may request the assistance of the Office of [the] Public Auditor with respect to implementation of any suggested policy.

Source

RPPL 2-6 § 203, modified.

§ 225. Employees of Office.

(a) The Public Auditor may appoint and remove such employees as he deems necessary to perform the duties of his office, which employees shall be exempt from Civil Service laws and regulations. His employees may include assistant public auditors, accountants, auditors, financial management analysts, investigators, attorneys, paralegals, secretaries, and clerks.

(b) The Public Auditor may establish personnel regulations including code of ethics for the employees of his office. No employee of the Office of the Public Auditor shall hold, or be a candidate for, any elective public office while an employee, nor shall he participate in any political campaign of any candidate for public office while an employee. Except as otherwise provided by law, no employee shall engage in any other business or profession, or hold any governmental office, including, but not limited to, membership on any governmental board, commission, authority or committee.

(c) The Public Auditor may, when in his judgment it is necessary, delegate any of his duties and powers to any of the employees employed by him. The employees shall report their findings for review by the Public Auditor.

Source

RPPL 2-6 § 204, as amended by RPPL 4-6 § 1, modified.

§ 226. Outside specialists may be hired.

(a) Independent specialists shall be used for any audit involving the Office of the Public Auditor, or with respect to which the Public Auditor or the Office of the Public Auditor has a conflict of interest, including an audit of any agency, contract, or grant for which the Public Auditor has had management responsibility or in which he was employed

(1) during the two years preceding the time period covered by the audit, or

(2) during the two years preceding or subsequent to the audit time period.

(b) If the Public Auditor fails to schedule an audit so that it can be completed in time to comply with any applicable law or the terms of any loan, grant, financial assistance, or contract, or if the Public Auditor fails to commence, conduct, or complete any audit as required by law, the person or agency concerned may, upon the approval of the President and Public Auditor, and subject to the availability of funds, enter into a contract with any independent certified public accountant for the purpose of conducting the audit. The audit shall be conducted as closely as possible to the standards adopted by the Office of the Public Auditor.

Source

RPPL 2-6 § 205, modified.

§ 227. Centralization of all auditing services required by an agency of the Republic.

The Office of the Public Auditor shall conduct or supervise all audits required for, or sought by an agency of the Republic.

Source

RPPL 2-6 § 206, modified.

§ 228. Audit standards.

(a) The audit standards shall be consistent with the provisions of this chapter and with generally accepted auditing standards. The audit standards shall incorporate the Standards for Audit of Government Operations, Programs, Activities, and Functions published from time to time by the United States General Accounting Office, including those standards issued by the American Institute of Certified Public Accountants referred to therein.

(b) All audits conducted or caused to be conducted by the Public Auditor shall be performed with [the] highest degree of professionalism and with strict avoidance of any degree of partisanship or bias.

Source

RPPL 2-6 § 207, modified.

§ 229. Audit procedures and requirements.

(a) At the conclusion of the audit, the Public Auditor or his designee shall discuss the audit with the officials whose agency, grant, contract, or activity is subject to audit and submit to them a list of his proposed findings which may be included in the audit report. The preliminary audit and proposed findings shall not be made public prior to the receipt of comments from the agencies solicited. If the officials are not available for personal receipt of the list of audit findings, then delivery shall be deemed made when it is delivered to the agency. The agency shall submit to the Public Auditor within 30 days after the receipt of the list of findings, its written statement of explanation or rebuttal concerning any of the adverse or critical audit findings, including any corrective action to be taken to preclude a recurrence of any adverse findings. The Public Auditor shall promptly notify the agency involved as well as the Coordinating Group in the event of an agency's failure to respond or the filing of unresponsive answers to the adverse or critical audit findings. The Public Auditor shall publish the substance of the agency response in the audit report.

(b) An audit report shall make special mention of:

(1) any violation of the laws within the scope of the audit; and

(2) any improper expenditure, any improper accounting procedures, all failures to properly record financial transactions, and all other inaccuracies, irregularities, shortages, and defalcations.

(c) Specific allegations naming the persons involved in improper or illegal acts found in connection with an audit shall be included in a separate confidential special report which shall be transmitted only to the Attorney General, the Interagency Audit Coordinating Advisory Group and Federal agencies when applicable.

Source

RPPL 2-6 § 208, modified.

§ 230. Establishment of a Coordinating Group.

- (a) An Interagency Audit Coordinating Advisory Group is established consisting of the Presiding Officer of each House of the Olbiil Era Kelulau, the Director of the National Treasury, and the Attorney General.
- (b) The Coordinating Group shall not be deemed an agency for purposes of this chapter or any other law, but shall meet or confer as necessary to perform the functions assigned to it by this chapter.
- (c) The Coordinating Group shall review all audit reports of the Public Auditor, and the Public Auditor shall discuss the manner in which his recommendations can be implemented with the assistance of the members of the Coordinating Group. The Coordinating Group shall recommend to the President and to the Olbiil Era Kelulau any changes in law or regulations which it finds necessary or desirable as a result of its work with the Public Auditor.

Source

RPPL 2-6 § 209, modified. Subsection (a) amended by RPPL 5-35 § 1.

§ 231. Annual report.

The Public Auditor shall report on his activities and findings to the Olbiil Era Kelulau and the President at least once every calendar year, and this report shall be made public promptly.

Source

RPPL 2-6 § 210, modified.

**Subchapter III
Budgeting and Funding**

§ 251. Budget.

§ 252. Authorization for Public Auditor to accept funds for audits performed for Federal agencies.

§ 251. Budget.

The Public Auditor shall advise the Coordinating Group of his annual budget at least thirty (30)

days before the date specified by the President for transmittal of the budget to the Olbiil Era Kelulau. The budget shall be in accord with the requirements [of] chapter 3 of Title 40 of this Code. After consideration of any comments made by the Coordinating Group, the Public Auditor shall transmit his proposed budget in the form and manner specified by the President. The President shall include the budget, as transmitted in his annual budget required by this section.

Source

RPPL 2-6 § 300, modified.

Notes

The bracketed “[of]” does not appear in the original legislation.

§ 252. Authorization for Public Auditor to accept funds for audits performed for Federal agencies.

- (a) The Public Auditor may enter into agreements or contracts for the Federal Government, Federal agencies, or agencies of the Republic, acting in behalf thereof, for the purpose of conducting mutual financial audits of programs funded in whole or in part by the Federal Government and carried out by agencies of the Republic.
- (b) Applications for grants, except where prohibited by law or the provisions of the grant, shall include a request for funds adequate to accomplish the objectives of the grant proposal, including monies to pay for the audit or audits of the financial transactions as required by law or the provisions of the grant. Monies budgeted for auditing a grant shall not be used for any other purpose.
- (c) The term of employment of any individual or firm hired by the Public Auditor under the provisions of this section shall be expressly limited in duration by the availability of Federal funds and shall expire on the date of expiration of the Federal funds.

Source

RPPL 2-6 § 301, modified.

**Subchapter IV
Authority to Gather Information; Criminal Penalties**

- § 271. Protection of whistleblowers.
- § 272. Access to agency information.
- § 273. Access to confidential information and proprietary records.
- § 274. Access to tax data.
- § 275. Access to contracts and grants information.
- § 276. Power to summon persons to testify.
- § 277. Referrals; criminal action.
- § 278. Referrals; civil action.
- § 279. Secrecy of records; penalty for violation.
- § 280. Penalties; failure to make proper audit; making false audit; failure to produce documents or information.

§ 271. Protection of whistleblowers.

(a) The Public Auditor may receive and investigate complaints or information from any person concerning the possible existence of any activity constituting fraud, waste and abuse in the collection and expenditure of public funds.

(b) The Public Auditor shall not, after receipt of a complaint or information from a person, disclose the identity of the person without the written consent of the person, unless the Public Auditor determines the disclosure is necessary and unavoidable during the course of the investigation. In that event, the person shall be notified in writing prior to the disclosure.

(c) Any person who has authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to such authority, take or threaten to take any action against any person as reprisal for making any complaint or disclosing any information to the Public Auditor, unless the complaint made, or the information disclosed was with actual knowledge that it was false or with willful disregard for its truth or falsity.

Source
RPPL 2-6 § 400, modified.

§ 272. Access to agency information.

(a) The Public Auditor in carrying out the provisions of this chapter shall have access to all records, reports, audits, reviews, papers, books, documents, recommendations, correspondence, and any other data and material that is maintained by, or available, to any agency which in any way relates to the activities to which the Public Auditor has duties and responsibilities. The Public Auditor shall request such information, cooperation, and assistance from any agency as may be necessary for carrying out his duties and responsibilities. Upon receipt of a request, each person in charge shall furnish to the Public Auditor or his designee the information, cooperation, and assistance requested. The Public Auditor may make such investigations, audits, and reports relating to the activities of the agencies audited as is necessary and may conduct any examination of any public documents. The Public Auditor shall have direct and prompt access to the head of any agency when necessary for any purpose pertaining to the performance of his duties.

(b) The Public Auditor may request the production, on a voluntary basis, of testimony or documents from any individual, firm, or nongovernmental entity which relate to his duties.

(c) The Public Auditor may require by summons, the production of all records, reports, audits, review, papers, books, documents, recommendations, correspondence, and any other data and material relevant to any matter under audit or investigation. The summons shall be served by the police in the same manner as the summons for the production of documents in civil cases issued on behalf of the Republic, and all provisions of law relative to the summons shall apply to summons issued under this chapter. Any justice of the Supreme Court of Palau may, upon application by the Public Auditor, issue an order to compel the production of records, audits, reviews, papers, books, documents, recommendations, correspondence, and any other data and material relevant to any matter under audit or investigation. Any failure to obey a court order is punishable by the court as contempt.

(d) Any summons issued under this section shall not be made public by the Public Auditor or any employee of his agency, or the police who serve the summons, nor shall any documents provided under this section be made public until such time as it is necessary for the Public Auditor to do so in the performance of his duties.

(e) The provisions of paragraphs (c) and (d) of this section shall apply to sections 273, 274, and 275.

Source

RPPL 2-6 § 401, modified.

§ 273. Access to confidential information and proprietary records.

(a) Confidential or proprietary records or information disclosed to the Public Auditor shall be subject to the same legal confidentiality and protective restrictions in the Office of the Public Auditor as those records and information have in the hands of the official authorized custodian. Any penalties applicable to the officially authorized custodian or his employees for the violation of any confidentiality or protective restrictions applicable to those records or information shall also apply to the employees and agents of the Office of the Public Auditor.

(b) The Office of the Public Auditor may not publish any confidential or proprietary information or records in any report, including data and statistics, if that information as published is directly matchable to any individual.

(c) Inside the Office of the Public Auditor, confidential or proprietary records or information may be used only for official purposes.

Source

RPPL 2-6 § 402, modified.

§ 274. Access to tax data.

(a) The Public Auditor or any members of his staff designated by him shall have authority to examine and audit the books and accounts of the Bureau of National Treasury including the Division of Revenue and Taxation, and shall have access to all papers, books, documents (including tax returns and tax return information), films, tapes, and any other forms of recordation, including computers and recording devices, which the Public Auditor, at his discretion, deems necessary for the purpose of making the audit, if the disclosure of information is not in contravention of any provision of law prohibiting the dissemination thereof.

(b) The Public Auditor and his designee may audit a taxpayer's or debtor's compliance with the law of the Republic in the same manner and with the same authority as the Chief and employees of the Division of Revenue and Taxation have to audit taxpayer's or debtor's compliance with the Republic's laws. The Public Auditor shall conduct his audit

activities in accordance with an administrative plan agreed upon by the Director of the Bureau of National Treasury and Public Auditor.

(c) The scope of the examination may include certification of financial accountability, legal compliance, or evaluations of the economy, efficiency, and effectiveness of the Bureau of National Treasury, or any combination of the foregoing.

(d) In the performance of the audit and examination of the Bureau of National Treasury, the Public Auditor or any members of his staff designated by him may inspect and make copies of any papers, books, records, instruments, documents (including tax returns and tax return information), films, tapes, and any other form of recordation, including computers and recording devices of the Bureau. He may call upon the Bureau for assistance and advice, and the assistance and advice shall be given through the assignment of personnel or in any other manner as requested.

Source

RPPL 2-6 § 403, modified.

§ 275. Access to contracts and grants information.

Any contract to which an agency is a party, except a personal service or prime contract with an employee of the agency, and any grant awarded by any agency, with or without formal advertising, shall include a clause to the effect that the Public Auditor shall, until the expiration of three years after final payment, have access to and the right to examine and copy any records, data, or papers of any subcontractor or subgrantee, relevant to the contract or grant.

Source

RPPL 2-6 § 404, modified.

§ 276. Power to summon persons to testify.

(a) Whenever the Public Auditor has a reasonable basis for believing that a person has information with respect to any matter which is within the Public Auditor's jurisdiction to investigate, he may require by summons the attendance and testimony under oath of the person.

(b) If necessary to secure enforcement, the Public Auditor shall provide to the judge or justice information concerning the matter under investigation which shall include: the

name and address of the prospective witness; the subject of the investigation; a summary of the status of the investigation; a summary of the reasons for requesting a summons for testimony; and a summary of the general scope of the inquiry to be made of a prospective witness.

(c) The summons shall be served in the same manner as a summons for a witness in a civil case issued on behalf of the Republic and all provisions of law relative to a summons issued in such a case shall apply to a summons issued under this section. A witness required by summons to attend and testify under oath and produce books and records shall be given not less than forty-eight (48) hours notice of the time and place of the taking of testimony, unless the notice shall unduly interfere with the conduct of the investigation and prior approval for a shorter period of time for the summons and notice has been obtained from the judge or justice. The witness, at the time of service of the summons, shall be notified of the matter under investigation concerning which the witness will be required to testify and shall be given a copy of the rules and procedures adopted by the Public Auditor and shall be notified that his testimony will be taken at a private session and that the issuance of the summons was approved by the judge or justice and whether the witness is a subject of an investigation. A subject of an investigation is a person whose conduct is within the scope of the investigation. The failure to furnish the witness with any notice or information required to be given by this section shall cause the summons to be invalid. In addition, the witness shall be notified that he has a right to consult with and to have an attorney present at the time the testimony is taken and that he has a constitutional right not to furnish or produce evidence which may tend to incriminate him.

(d) A person summoned to attend and testify shall appear and testify under oath before the Public Auditor or his designee.

(e) The information sought from the summoned witness must be reasonably related to the subject matter under investigation. No summons may be issued for the purpose of harassment or for any illegitimate or improper purpose. All constitutional and statutory rights and privileges which exist with respect to any summons issued by a court, including the privilege against self-incrimination, shall have the same force and effect with respect to any summons issued by the Public Auditor.

(f) Any justice of the Supreme Court may, upon application by the Public Auditor, issue an order to compel the attendance of witnesses summoned and the giving of testimony under oath in furtherance of any audit or investigations under this chapter in the same manner and to the same extent as before the Supreme Court of the Republic. Failure to

obey the order of the court with respect to the summons may be punished by the court as contempt.

Source

RPPL 2-6 § 405, modified.

§ 277. Referrals; criminal action.

(a) In carrying out his duties, the Public Auditor shall report to the Attorney General whenever the Public Auditor has reasonable grounds to believe there has been violations of Federal or the Republic's criminal law. The Attorney General may institute further proceedings.

(b) If the Public Auditor has reasonable grounds to believe the President or Attorney General has violated Federal or the Republic's criminal law, the Public Auditor may use his legal counsel or retain special counsel who shall serve as an Assistant Attorney General for purposes of investigating and prosecuting, if necessary, the criminal law violations.

Source

RPPL 2-6 § 406, modified.

§ 278. Referrals; civil action.

The Public Auditor shall have the authority to institute the civil recovery action in any case where the Public Auditor has discovered fraudulent acts and believe[s] that civil recovery proceedings may be appropriate.

Source

RPPL 2-6 § 407, modified.

§ 279. Secrecy of records; penalty for violation.

All records of the Public Auditor shall be confidential unless it is deemed necessary for the Public Auditor to make the records public in the performance of his duties. Violations relative to the secrecy of proceedings by the Public Auditor or any member of his staff shall be punished by imprisonment for not more than six (6) months or by a fine for not more than one thousand

dollars (\$1,000).

Source

RPPL 2-6 § 408, modified.

§ 280. Penalties; failure to make proper audit; making false audit; failure to produce documents or information.

(a) All agencies shall enter into their public record sufficient information for a proper audit, and shall make the same available to the Public Auditor at his request.

(b) Any person who wilfully fails or refuses to furnish or produce any book, record, paper, document, data, or sufficient information necessary to a proper audit which the Public Auditor is authorized by law to perform shall be guilty of an offense, punishable by not more than three (3) months imprisonment or a fine of one thousand dollars (\$1,000), or both.

(c) A willful failure or refusal by any person to furnish or provide upon request any book, record, paper, document, data, or sufficient information necessary to a proper audit which the Public Auditor is authorized by law to perform shall be cause for removal of the official or employee from their office as provided by law.

Source

RPPL 2-6 § 409, modified.

40 PNCA

REVENUE AND TAXATION

Chapter 3
Annual National Budget

Subchapter I
General Provisions

- § 301. Short title.
- § 302. Purpose.
- § 303. Definitions.

§ 301. Short title.

This chapter may be cited as the “Budget Reform Act of 2001.”

Source

RPPL 6-11 § 2[301], modified.

Notes

The former Unified National Budget Act codified as Chapter 3 of Title 40 of the Palau National Code was repealed by the first clause of the first sentence of RPPL 6-11 § 2. The legislation directed the reuse of Chapter 3 section numbers to codify the Budget Reform Act of 2001.

RPPL 6-11 § 1 reads: Section 1. Legislative findings.

- (a) The Olbiil Era Kelulau finds that it is appropriate to enact new budgetary policies and procedures based on performance, so as to improve economy and efficiency in government operations, programs, and services.
- (b) The Olbiil Era Kelulau further finds that, especially regarding appropriation bills, heretofore existing laws governing repassage of bills referred back to the Olbiil Era Kelulau by the President pursuant to the Constitution, Article IX, section 15, are incomplete or unclear as to what changes may be made before resubmission to the President. A new section 407 of 3 PNC provides clear guidelines, in conformity with established legislative practice of both the Olbiil Era Kelulau and the President, regarding repassage of bills referred back to the Olbiil Era Kelulau.
- (c) The Olbiil Era Kelulau finds that there has been confusion in the past between the definitions of budget deficit and revenue deficit, and seeks to clarify these terms in this bill. Legislation prohibits spending over an amount appropriated, and these new definitions intend to eliminate misunderstanding and provide meaningful definitions.

§ 302. Purposes.

The purposes of this chapter are:

- (a) to repeal the Unified National Budget Procedure Act of 1981 and enact national government budget and finance policies and procedures that are appropriate to the Republic’s political status and contemporary budget practices;
- (b) to establish performance reporting requirements to:
 - (1) generate information that allows the determination of the extent to which national government programs and services are economical and successful;
 - (2) develop well-defined goals and priorities for national government agencies and programs;
 - (3) strengthen the accountability of the national government to citizens and taxpayers by providing a record of the national government’s performance in providing effective and efficient services; and
 - (4) create appropriate incentives to encourage national government employees to perform efficiently and to the best of their ability; and
- (c) to establish guidelines for the expenditure and monitoring of capital improvement project funding by national and state governments.

Source

RPPL 6-11 § 2[302], modified.

Notes

Mesubed v. ROP, 10 ROP 62, 64, 66 (2003).

§ 303. Definitions.

In this chapter:

- (a) “Agency” means any entity established or funded by law of the Republic or a local government. Agency includes, but is not limited to, the following entities and their officers, directors, employees, and independent contractors: any authority, board, branch,

bureau, commission, cooperative, council, division, fund, group, institution, political division, office, public corporation, or state government, including any autonomous or semi-autonomous governmental entity.

(b) “Annual national budget” means a consolidated budget reflecting the total estimated revenues anticipated and their proposed uses for general operations, debt service, capital improvement projects, and other lawful purposes.

(c) “Appropriation item” means a sum allocated to an identified budget activity.

(d) “Appropriation bill” means a bill that proposes the appropriation of funds from the National Treasury for specified purposes.

(e) “Authorization” means a provision establishing authority to appropriate funds for a budget activity.

(f) “Balanced budget” means all or part of an annual national budget in which estimated revenues and other available resources equal authorized expenditures for all or the corresponding part of the budget during a fiscal year.

(g) “Budget activity” means a purpose proposed for funding.

(h) “Budget call” means written instructions of the President of the Republic to any budget activity regarding preparation of an annual budget, including without limitation format, order, arrangement, contents, narrative justification, and due date.

(i) “Budget deficit” means the amount by which the authorized budget spending level exceeds the actual revenues collected.

(j) “Budget surplus” means the amount by which sums appropriated exceed actual expenditures and obligations for a fiscal year; obligations and expenditures are held below the level of actual receipts creating savings within the authorized budget.

(k) “Budget year” is the fiscal year.

(l) “Capital improvement project” (“CIP”) means any of the following undertakings of the national government or a state government:

- (1) any construction or renovation on the real property of the Republic or of a state, for any permanent physical facility, including architecture and engineering and other construction and planning studies;

(2) any physical improvement which has an estimated useful life longer than one year and is made to a leased property or to an occupied property owned by a government entity;

(3) any acquisition of an interest in land or permanent fixtures on land, or any matching funds for any United States or foreign grants within the meaning of subsections(1) or (2) required because of the activities described in subsections (1) or (2).

(m) “Compact” means the Compact of Free Association between the Republic of Palau and the United States Government and any subsequent laws and subsidiary agreements pertaining thereto.

(n) “Fiscal year” means the 12-month period from October 1 of one calendar year through September 30 of the next calendar year.

(o) “General fund” is the fund into which national government revenue collections are credited for discretionary appropriations.

(p) “General operations” means annual budgetary operations of the executive, legislative, and judicial branches of the national government, operating grants and subsidies to state governments, non-governmental organizations, and other programs and activities of the national government.

(q) “Item” means a positive sum, a single amount appropriated for a specified purpose.

(r) “Item reduction” or “line item reduction” is the presidential power of an item provided in Article IX, Section 15 of the Constitution, which allows the President to reduce specific sums in an appropriation bill passed by the Olbiil Era Kelulau.

(s) “Item veto” or “line item veto” is the presidential veto power of an item provided in Article IX, Section 15 of the Constitution.

(t) “Performance measure” means a quantifiable standard of government accomplishments, results, efficiency, or cost-effectiveness.

(u) “Program” means a group of related services or activities provided or administered by an agency and accounted for in its budget.

(v) “Recurring budget activities” means regular and on-going activities of the national government requiring annual appropriations and excludes one-time-only appropriation

items or completed programs or activities.

(w) “Reprogramming” means the reallocation of appropriated funds from one appropriation item to any other appropriation item.

(x) “Restricted local revenues” means revenues collected from all domestic sources and designated for specific purposes or programs.

(y) “Revenue deficit” means revenue shortfall; the amount by which actual revenues fall short of anticipated receipts.

(z) “Revenue surplus” means the amount by which actual receipts exceed the amount of receipts anticipated.

(aa) “Service population” means the recipients, users, and beneficiaries of an agency’s activities or the subject of an agency’s regulation.

(bb) “Unrestricted local revenues” means revenues collected from all domestic sources not designated for specific purposes or programs.

Source

RPPL 6-11 § 2, modified.

Subchapter II
Annual National Budget Procedures

- § 321. Annual budget preparation.
- § 322. Budget call.
- § 323. Annual budget requirements.
- § 324. Preparation and introduction of annual national budget.
- § 325. Item veto or reduction.
- § 326. Balanced annual national budget.
- § 327. Continuing budget authority.
- § 328. Lapsing of appropriated funds.
- § 329. Funds availability analysis.
- § 330. General fund reserve.
- § 331. Foreign grants.

§ 321. Annual budget preparation.

The President shall prepare and introduce an annual budget bill in the Olbiil Era Kelulau. Funding for general operations, debt service, and capital improvement projects may be proposed in separate bills or in a unified budget. A consolidated bill or the sum of separate bills, with supporting documentation, shall constitute the annual national budget.

Source
RPPL 6-11 § 2.

§ 322. Budget call.

The President shall issue a budget call and prescribe the format, order, arrangement, and contents of the annual budget for all budget activities. The annual budget amounts of any budget activity that fails to respond to the budget call on or before the second Tuesday of February; said annual budget activity shall be established by the President.

Source
RPPL 6-11 § 2. Amended by RPPL 7-7 § 20, modified. Amended by RPPL 7-51 § 4.

§ 323. Annual budget requirements.

The annual budget shall contain:

- (a) a funds availability analysis;
- (b) schedules detailing actual expenditures and obligations for the past fiscal year and providing estimated expenditures and obligations for the current and next fiscal years;
- (c) a list of personnel and salaries for each budget activity listed in the national budget at the end of the last fiscal year, the current fiscal year, and projected for the next fiscal year;
- (d) operation and maintenance impact statements for capital improvement projects;
- (e) details of current or proposed investments and all outstanding or proposed loans to the national government;
- (f) a statement of the balance of the general fund and any other funds of the National Treasury for the last fiscal year and the projected year-end balance for the current fiscal year;
- (g) a budget report by the President summarizing the last fiscal year and a statement of objectives and strategies explained with reference to the Palau National Master Development Plan (PNMDP) and the Economic Development Plan. The budget report shall summarize all anticipated revenues and relate them to proposed expenditures and obligations. The budget report shall also summarize the financial condition of the Republic; and
- (h) such other data that the President includes to explain and justify the proposed annual national budget.

Source

RPPL 6-11 § 2, modified.

§ 324. Preparation and introduction of annual national budget.

The annual national budget shall be prepared and introduced as follows:

- (a) The head of each budget activity shall submit a proposed operating budget for the next fiscal year, in accordance with budget call instructions, not later than the second Tuesday of June of each year. Heads of budget activities may also submit requests for funding for capital improvement projects; such requests shall be transmitted and justified separately from operating budget funding requests. For budget planning and balancing purposes, the Olbiil Era Kelulau and Judiciary shall submit to the President summary

amounts for their respective proposed operational budget activities.

(b) The President shall introduce an authorization and appropriation bill and submit annual budget documentation to the Olbiil Era Kelulau by [the] first day of the July Regular Session of each year except that, for the fiscal year 2011 only, the President may submit annual budget documentation to the Olbiil Era Kelulau on or before May 31st. Sums proposed to be authorized need not be proposed for appropriation in the same bill.

Source

RPPL 6-11 § 2, modified. Subsections (a) and (b) amended by RPPL 6-12 § 21. Subsections (a) and (b) amended by RPPL 7-7 § 21. Subsection (b) amended by RPPL 8-15 § 10. Amended by RPPL 9-5 § 25.

Notes

The bracketed [the] in subsection (b) does not appear in the original legislation.

§ 325. Item veto or reduction.

The President may reduce or veto an item in an appropriation bill and sign the remainder of the bill, returning the item reduced or vetoed to each house within fifteen (15) calendar days together with the reason for his action.

Source

RPPL 6-11 § 2, modified.

§ 326. Balanced annual national budget.

The annual national budget shall be a balanced or surplus budget in which the total of all estimated receipts is equal to or greater than the proposed total appropriations.

Source

RPPL 6-11 § 2.

§ 327. Continuing budget authority.

If an annual budget is not enacted by the beginning of a fiscal year, continuing budget authority may be enacted for all regular budget activities of the national government. Continuing budget authority shall provide funding at the level of appropriations of the previous budget year until an annual budget for the fiscal year is enacted. Authorizations and appropriations of United States grant funds under these circumstances are conditional on such funds being made available to the Republic.

Source
RPPL 6-11 § 2.

§ 328. Lapsing of appropriated funds.

Unless otherwise provided by law, all appropriations shall lapse at the end of the fiscal year.

Source
RPPL 6-11 § 2.

§ 329. Funds availability analysis.

(a) The President shall submit a funds availability analysis with each authorization or appropriation bill. The funds availability analysis must be approved by the President and the Olbiil Era Kelulau, and the itemized summary provided in subsection (b)(1) shall become part of the appropriation bill in support of which it is submitted. For the annual national budget, the President shall submit a funds availability analysis for the preceding fiscal year, the current fiscal year, and the next two fiscal years.

(b) A funds availability analysis for a fiscal year shall contain, but need not be limited to:

- (1) an itemized summary of revenue projections, by source, and appropriations or proposed appropriations. Revenue projections shall include all grants, from all sources, anticipated to be available for obligation during the budget year; and
- (2) a detailed schedule of actual revenues for the preceding fiscal year, original revenue projections for the current national budget, and revenue projections for the two fiscal years immediately following the current fiscal year. The detailed schedule shall include an explanation of the basis for all revenue projections, including revenues from grants, providing sufficient detail to show that the projections are reasonable.

Source
RPPL 6-11 § 2.

§ 330. General Fund Reserve.

(a) A permanent “General Fund Reserve” is hereby established, into which all unspent appropriated funds shall be deposited. The following revenues shall be managed and invested by the COFA Board of Trustees:

- (1) The general fund cumulative surplus balance;
- (2) beginning in Fiscal Year 2015, and every Fiscal Year thereafter, an amount not less than two (2%) percent of actual unrestricted local revenue collections from the preceding fiscal year; and
- (3) any additional funding sources identified annually and specified in the annual budget.

(b) The General Fund Reserve may be used only for the following purposes:

- (1) Prior to the expiration of the Compact funding period, the General Fund Reserve may be utilized for emergency expenditures under a declared state of national emergency, in accordance with Article VIII, Section 14 of the Constitution, so long as no other funds are available.
- (2) Subject to subsection [(a)(2)], if at the end of the third quarter of a fiscal year, the collected local revenue is at least five (5%) percent less than the originally projected local revenue, then the General Fund Reserve may be utilized to offset the shortfall in local revenue in that Fiscal Year, subject to authorization and appropriation.
- (3) After expiration of the Compact funding period, the General Fund Reserve may be utilized to fund any lawful purpose.

Source

RPPL 6-11 § 2, modified. RPPL 6-26 § 22 repeals subsection (a)(2) and subsection are renumbered accordingly. Amended in its entirety by RPPL 9-15 § 21, modified.

Notes

In subsection (2) above, the bracketed “[(a)(2)]” replaced the numbering “(2)(A)” in the original legislation per consultation with Senate Legal Counsel.

§ 331. Foreign grants.

A copy of any request or application for a grant to fund a project in the Republic requested from any foreign source, including United States federal grants, shall be forwarded to the presiding officers of the Olbiil Era Kelulau along with an operations and maintenance impact statement as described in section 381 of this chapter. All outside grants and development assistance, with the exception of US Federal Program Grants and Japan Grant Aid, are subject to authorization and appropriation by the Olbiil Era Kelulau.

Source

RPPL 6-11 § 2. Amended by the second to the last sentence of RPPL 7-13 § 28, modified.

Notes

The last sentence of RPPL 7-7 § 16 read: "Henceforth, all subsequent outside grants and development assistance, for the next fiscal year and thereafter, shall be subject to authorization and appropriation by the Olbiil Era Kelulau."

**Subchapter III
Budget Authority of the President**

§ 351. Reprogramming authority.

§ 352. Impounding funds.

§ 351. Reprogramming authority.

(a) The President may reprogram appropriated funds, having due regard for the effective reprogramming on the performance of affected budget activities, as follows:

(1) Up to ten percent (10%) of appropriated funds from any general operations appropriation item in a fiscal year may be reprogrammed out to any other budget activity, except as otherwise provided by law. No budget activity appropriations may be increased by reprogramming by more than fifteen percent (15%) of its original appropriations except as otherwise provided by law.

(2) Up to ten percent (10%) of appropriated funds from any CIP appropriation item in a fiscal year may be reprogrammed to any other CIP appropriation item, except as otherwise provided by law.

(3) Capital improvement project funds may be reprogrammed only to other capital improvement projects.

(4) General fund appropriations may be reprogrammed to capital improvement projects or Compact-funded appropriation items.

(5) At least ten (10) days prior to any reprogramming, the President shall inform the Committee on Ways and Means of each house of the Olbiil Era Kelulau of the actual and percentage amounts to be reprogrammed, the reasons for reprogramming, and the purpose for the reprogramming.

(b) The President of the Senate and the Speaker of the House of Delegates may reprogram up to ten percent (10%) of funds, cumulatively in a fiscal year, appropriated to the Senate and House, respectively, and to any office of the Senate and House, respectively, except as otherwise provided by law. The Senate President and House Speaker may jointly reprogram up to ten percent (10%) of the funds, cumulatively in a fiscal year, appropriated to any joint office of the Olbiil Era Kelulau, except as otherwise provided by law.

(c) The Chief Justice of the Supreme Court may reprogram up to ten percent (10%) of funds, cumulatively in a fiscal year, appropriated to the Judicial Branch, except as otherwise provided by law.

(d) No new budget activity may be created as a result of reprogramming.

Source

RPPL 1-16 § 10, modified. Subsection (a) amended by RPPL 4-36 § 7. Subsection (c) added by RPPL 5-7 § 45. RPPL 6-11 § 2 repeals Subchapter III of Title 40 in its entirety and replaced with new §§ 351 & 352. Subsections (a)(1) and (a)(2) amended by RPPL 7-7 § 23. Subsection (a)(1) amended by RPPL 7-13 § 16(b).

Notes

Mesubed v. ROP, 10 ROP 62, 64 (2003).

§ 352. Impounding funds.

The President may, from time to time, take action to impound or otherwise prevent the obligation or expenditure of budget authority for the balance of the budget year, or the period of the appropriation authority, in order to prevent a budget deficit or revenue deficit or create government savings, budget surplus, or revenue surplus; provided that the President shall immediately notify the Olbiil Era Kelulau of any such action and the reasons thereof.

Source

RPPL 1-16 § 12, modified. Amended in its entirety by RPPL 6-11 § 2.

Notes

The title of this section reads “Recissions and deferrals” in RPPL 6-11 § 2.

Gibbons v. Seventh Koror State Legislature, 11 ROP 97, 108, 109 (2004).

**Subchapter IV
Performance Reporting**

- § 371. Performance reports.
- § 372. Attestation.
- § 373. Performance review.
- § 374. Office of the Attorney General.

§ 371. Performance reports.

(a) Every agency shall prepare a performance report for the programs and services it administers or provides. The report shall include each of the following items or an explanation of why an item does not apply to a program or service:

- (1) a statement of the agency’s functions, responsibilities, and objectives as set forth by Executive Order or statute;
- (2) performance measures, including measures of results of continuing activities, results of completed activities, economy, and efficiency of each service and program;
- (3) identification of service populations served by each service or program and explanations of how those populations are expected to change within the period of the report;
- (4) proposals for collecting new performance information;
- (5) a list of all personnel positions including a job description and the salary for each position;
- (6) documentation and analysis of past and projected performance of programs and services; and

(7) performance objectives as an incentive for improving programs and services.

(b) Every agency shall issue a first report in fiscal year 2002 and annually thereafter. A report shall cover the last, current, and next fiscal year from the date it is required to be issued, including previous forecasts and actual performance. Copies of each report shall be made available for public inspection.

(c) Each agency shall submit its report to the President, the Olbiil Era Kelulau, and the Public Auditor by not later than April 15th of each year.

(d) The President shall:

(1) develop format, forms, and instructions and coordinate training to assist agencies in the preparation of their reports;

(2) assist agencies in determining acceptable measures of staff workload, unit costs, and productivity; and

(3) request any needed additional information concerning any agency performance report submitted.

(e) The President shall ensure that performance reports are complete, accurate, and reasonably self-explanatory. The President shall maintain an automated performance data records system for performance reports and may require additional information from the agencies necessary to meet the requirements of this subsection.

Source

RPPL 6-11 § 2[371]. Subsection (c) amended by RPPL 7-7 § 22, modified.

Notes

Section 22 of RPPL 7-7 § 22 reads as follows:

“§ 371. Performance reports.

(a) Every agency shall prepare a report

....

(c) agency shall submit its report to the President, the Olbiil Era Kelulau, and the Public Auditor by not later than April 15th of each year.

....”

§ 372. Attestation.

Beginning in fiscal year 2002 and at least once every two years thereafter, the Public Auditor shall review each agency’s performance report and comment on the reasonableness, appropriateness, validity, and reliability of the performance measures and data collection efforts. The Public Auditor shall report his or her findings to the agencies reviewed, the President, and

the presiding officer of each house of the Olbiil Era Kelulau.

Source
RPPL 6-11 § 2[372].

§ 373. Performance review.

The Olbiil Era Kelulau shall conduct performance reviews during the second regular session of each calendar year to determine the success of agencies in carrying out their mandates and the outcomes desired and to develop consensus on agency missions and goals. Performance reports shall be utilized in the budget appropriation process to provide the basis for agency funding and to facilitate the allocation and distribution of funds available for appropriation.

Source
RPPL 6-11 § 2[373].

§ 374. Office of the Attorney General.

All funds authorized for appropriation, and appropriated pursuant to this section used to pay for the employment or salary of attorneys or other personnel not solely employed by the Office of the Attorney General shall be accounted for and listed in a report prepared by this Office at the beginning of each fiscal year but no later than October 30th of each year. Any changes in the payment of attorneys or other personnel not solely employed by the Office of the Attorney General throughout the year shall be submitted, in writing, to the Olbiil Era Kelulau within fifteen (15) days of the change. The list shall include the name of the employees, their primary employer, and all payments made from the Office of the Attorney General's allocated budget.

Source
RPPL 7-25 § 2(a)(8), modified.

**Subchapter V
Capital Improvement Projects (“CIP”)**

- § 381. Operations and maintenance impact statement.
- § 382. Administrative costs and project budget.
- § 383. Change orders.
- § 384. Inspection.
- § 385. Contractor/company disqualification.
- § 386. Quarterly project report.
- § 387. Project completion report.
- § 388. Update of economic development plan.

§ 381. Operations and maintenance impact statement.

All requests for funding for capital improvement projects shall be accompanied by an operations and maintenance impact statement. Such statement shall include, but shall not be limited to, the following:

- (a) a description of the project, including a summary of its costs and benefits, including:
 - (1) a justification of the project; and
 - (2) a statement confirming its consistency with the Palau National Development Plan or Economic Development Plan;
- (b) a project schedule, including the anticipated time requirements for planning, design, procurement, and construction;
- (c) the estimated capital costs of the project, including costs for administration, design, construction, inspection, and contingencies;
- (d) the status of land ownership, rights of way, and easements;
- (e) the estimated useful life of the project;
- (f) the project management agency and eventual project user or project owner; and
- (g) the estimated total annual operation and maintenance costs of the project, including

utilities, operations, parts, maintenance, landscaping or grounds keeping, custodial services, security services, and other specialized services.

Source
RPPL 6-11 § 2.

§ 382. Administrative costs and project budget.

Where appropriate CIP projects funded in whole or in part by the national government shall be charged administrative costs. The means of determining administrative costs shall be set forth in rules and regulations established by the Minister of Public Infrastructure, Industries and Commerce and shall be directly related to each project.

Source
RPPL 6-11 § 2.

Notes
“Minister of Public Infrastructure, Industries and Commerce” read “Minister of Resources and Development” which has been amended by RPPL 7-43 § 2.

§ 383. Change orders.

The CIP Office must transmit a copy of each change order to the Olbiil Era Kelulau for approval or disapproval where the cumulative amount of change orders for a CIP project equals ten percent (10%) or greater of the estimated capital costs of the project as contained in the “Operations and Maintenance Impact Statement” required in section 381. The Senate President and the Speaker of the House, or in either’s absence, a Presiding Officer, shall approve or disapprove the change order within fifteen (15) working days of receipt of the change order. If the Senate President and the Speaker of the House do not act within fifteen (15) working days of receipt of the change order, the change order is presumed to be approved.

Source
RPPL 6-26 § 26. The RPPL 6-11 § 2 version of section 383 was effectively re-codified as section 384 by RPPL 6-26 § 26.

§ 384. Inspection.

(a) All capital improvement projects financed in whole or in part by the national government shall be inspected during construction by personnel from the Ministry of

Public Infrastructure, Industries and Commerce's CIP Office, or by a qualified, licensed engineer appointed by the CIP Office, to ensure that construction conforms to architectural and engineering plans and specifications. By January 1, 2003, all inspections shall be conducted and certified by an engineer who has received an advanced degree in engineering from an accredited institution of higher learning.

(b) CIP project managers and engineers shall review daily, weekly, and monthly inspection reports and shall approve or disapprove the same. If a project manager determines that a project is not proceeding satisfactorily, the project manager shall take immediate action to ensure proper construction and compliance with the architectural and engineering plans and specifications for the project.

(c) Until a comprehensive national building code is enacted, the Minister of Public Infrastructure, Industries and Commerce shall establish rules and regulations to ensure that each project is designed, engineered, and constructed in accordance with acceptable standard architectural, engineering, and construction procedures and methods, having due regard also for energy efficiency. Any capital improvement project that falls below acceptable standards shall be subject to immediate action by the CIP Office to ensure that the project is brought into compliance within a reasonable time with appropriate architectural, engineering, and construction standards.

Source

RPPL 6-26 § 26. The RPPL 6-11 § 2 version of section 384 was effectively re-codified as section 386 by RPPL 6-26 § 26.

Notes

"Minister of Public Infrastructure, Industries and Commerce" read "Minister of Resources and Development" which has been amended by RPPL 7-43 § 2, *see* 2 PNCA § 102.

§ 385. Contractor/company disqualification.

(a) Should a capital improvement project fall below acceptable architectural, engineering and construction standards the CIP Office may bring an administrative action to bar the offending company, contractor(s) or subcontractor(s), from bidding on or participating in the completion of a CIP project for up to five (5) years;

(b) Within thirty (30) days of the effective date of this chapter, the Ministry of Public Infrastructure, Industries and Commerce shall promulgate rules and regulations governing the administrative disqualification procedures. The administrative procedures shall comply with all requirements of due process, including, but not limited to:

- (1) notice to the party of the specific allegations, the penalty sought by the Ministry of Public Infrastructure, Industries and Commerce, and a description of the disqualification process;
- (2) a right to be heard and present evidence to the presider of the administrative hearing; and
- (3) an opportunity to appeal the administrative decision to the Supreme Court of Palau within thirty (30) days.

Source

RPPL 6-26 § 26.

Notes

“Minister of Public Infrastructure, Industries and Commerce” read “Minister of Resources and Development” which has been amended by RPPL 7-43 § 2, *see* 2 PNCA § 102.

§ 386. Quarterly project report.

The Minister of Public Infrastructure, Industries and Commerce shall within thirty (30) days after the end of each quarter submit to the President and the presiding officers of the Olbiil Era Kelulau a status report describing each CIP project administered or supervised by the Ministry. The report shall include for each project:

- (a) commencement and completion dates, and the budget for major components of the project, such as land excavation, design, and construction and a description of each;
- (b) the project title;
- (c) a brief description of the project;
- (d) the total project funding and a budget breakdown of project components;
- (e) the name of consultants and contractors responsible for the project’s design and construction;
- (f) the approximate percentage of completion of each major project component, such as land project design, preparation, and construction;
- (g) approximate expenditures to date for each project category;

(h) a brief description of progress since the last reporting period; and

(I) a brief description of any problems, major issues, or change orders encountered on the project.

Source

RPPL 6-26 § 26. The RPPL 6-11 § 2 version of section 386 was effectively re-codified as section 388 by RPPL 6-26 § 26.

Notes

“Minister of Public Infrastructure, Industries and Commerce” read “Minister of Resources and Development” which has been amended by RPPL 7-43 § 2, *see* 2 PNCA § 102.

§ 387. Project completion report.

When the Minister of Public Infrastructure, Industries and Commerce has determined that a project has been completed and it is appropriate that the project be administratively closed, within thirty (30) days of such determination, he or she shall prepare a written project completion report to the Minister of Finance and the presiding officers of the Olbil Era Kelulau. The project completion report shall include the same information that appears in the quarterly project report; provided, that the project completion report shall also include a final funding status of the project. A copy of the project’s operations and maintenance impact statement shall be attached to the project completion report. The project is officially completed and closed upon the liquidation of all financial obligations by the Minister of Finance.

Source

RPPL 6-26 § 26, modified. The RPPL 6-11 § 2 version of section 385 was effectively re-codified as section 387 by RPPL 6-26 § 26.

Notes

“Minister of Public Infrastructure, Industries and Commerce” read “Minister of Resources and Development” which has been amended by RPPL 7-43 § 2, *see* 2 PNCA § 102.

§ 388. Update of economic development plan.

The National Economic Development Plan (EDP) shall be updated whenever an appropriation is made for a CIP project that is not included in the EDP.

Source

RPPL 6-26 § 26. The RPPL 6-11 § 2 version of section 386 was effectively re-codified as section 388 by RPPL 6-26 § 26.

Chapter 4
Government Funding

- § 401. Projects, programs, and operations financed by the Olbiil Era Kelulau.
- § 402. [Repealed]
- § 403. [Repealed]
- § 404. Avoidance of future prior year debts.
- § 405. Investment of unobligated balances.
- § 406. Responsible administration of funds; Civil and criminal penalties for expenditures in excess of appropriation; Taxpayer standing; Attorneys fees.
- § 407. [Repealed]
- § 408. Trust Fund Administration.
- § 409. Procedures for withdrawal of invested public funds; liability for improper withdrawal; taxpayer standing and attorney fees.
- § 410. Appropriations for the Legislature.
- § 411. Earmarking of funds.
- § 412. Water and wastewater charges.

§ 401. Projects, programs, and operations financed by the Olbiil Era Kelulau.

(a) Unless otherwise specified by law, all projects and operations financed by means of appropriation laws of the Olbiil Era Kelulau shall be contingent upon the availability of funds. No person shall obligate or expend any funds made available or appropriated by the Olbiil Era Kelulau until he receives written certification from the National Director of Program, Budget and Management for expenditures and obligations of the executive branch, from the budget officer for expenditures and obligations of the Olbiil Era Kelulau, or from the Chief Justice for expenditures and obligations of the judicial branch, that funds are available and that obligations may be incurred.

(b) No person shall enter into any contract which purports to obligate public funds or which purports to obligate funds from any appropriation, apportionment, reapportionment, or allotment of funds made available or appropriated by the Olbiil Era Kelulau or of public funds from any other source whatsoever, unless the National Director of Program, Budget and Management, the budget officer or the Chief Justice first certifies in writing on the document to be used as a contract that funds are available to complete the contract. Any contract entered into in violation of this subsection shall be void. The National Director of Program, Budget and Management is authorized to allot funds to the various projects of the executive branch financed by an Act of the Olbiil Era

Kelulau either monthly or quarterly or as needed to pay specific obligations which have previously been authorized by the National Director of Program, Budget and Management, as the necessary revenues are deposited in the National Treasury.

(c) Any person obligating or expending funds of the National Treasury without written authorization as specified in this section, shall be personally liable for the payment of such obligations or expenditures unless the Olbiil Era Kelulau by joint resolution subsequently approves or ratifies said obligation, and provides for the satisfaction thereof.

Source

PDC § 107, as amended by PL 7-5-4 § 2, as amended by RPPL 1-51 § 11, modified.

Notes

The Senate v. Nakamura, 8 ROP Intrm. 190, 191 (2000).

The Senate v. Nakamura, 7 ROP Intrm. 212, 216, 218, 219, 220 (1999).

Sixth Kelulul a Kiuluul v. Ngiramekatii, 5 ROP Intrm. 321, 324 (Tr. Div. 1995).

ROP v. Etpison, 5 ROP Intrm. 313, 318 (Tr. Div. 1995).

Kingon v. ROP, 2 ROP Intrm. 72, 74, 75 (1990).

Orion Telecommunications, Ltd. v. PNCC, 1 ROP Intrm. 633A, B, 642 (1989).

Cross-reference

For reporting of Ministry of Public Infrastructure, Industries and Commerce projects, see 2 PNCA § 120.

§ 402. [Repealed]

Source

PDC § 105(a), as amended by PL 7-5-4 § 3 and RPPL 3-11 § 1, modified. Repealed by RPPL 3-54 § 64.

Notes

Gibbons v. ROP, 1 ROP Intrm. 634, 641-46 (1989).

§ 403. [Repealed]

Source

PDC § 105(b), as amended by PL 7-5-4 § 3, PL 7-6-1 § 1 and RPPL 3-11 § 1, modified. Repealed by RPPL 3-54 § 64.

Notes

Gibbons v. ROP, 1 ROP Intrm. 634, 641 (1989).

§ 404. Avoidance of future prior year debts.

Should the President, by the beginning of any quarter of a fiscal year, project expenditures to

exceed appropriations for that year, he shall immediately take one or more of the following actions and notify the Olbiil Era Kelulau:

- (a) reprogram within discretionary presidential authority,
- (b) submit legislation to reprogram amounts in excess of presidential discretionary authority,
- (c) submit supplemental appropriations legislation, and
- (d) institute a reduction-in-force under Part 8, Section 8.4 of the Rules and Regulations of the Public Service System.

Should the above actions fail to prevent the accrual of year-end debts, the President shall, within thirty (30) days after the end of such fiscal year, reduce all current year allocations for that budget activity by amounts equal to the unpaid debts from the prior year, and so notify the Olbiil Era Kelulau.

Source

RPPL 3-70 § 6, modified.

§ 405. Investment of unobligated balances.

Cash in excess of immediate needs shall at all times remain invested in accordance with the National Government Investment Plan, at the direction of the President; excess cash includes, but is not limited to, unobligated balances of appropriations and revenues collected in excess of appropriations.

Source

RPPL 4-40 § 22, modified and RPPL 4-55 § 23. Identical language previously enacted in RPPL 4-32 § 38.

§ 406. Responsible administration of funds; civil and criminal penalties for expenditures in excess of appropriations; taxpayer standing; attorneys fees.

- (a) No person may expend, obligate, or certify the expenditure or obligation of any public funds for any purpose in excess of the amount appropriated by law for that purpose. No person may direct or authorize anyone, over whom that person has any supervisory authority, to expend, obligate, or certify the expenditure or obligation of any public funds for any purpose in excess of the amount appropriated by law for that purpose.

(b) No person may discipline or otherwise alter the employment status of a public employee based on the employee's refusal to violate subsection (a) of this section.

(c) Any person who violates subsection (a) or (b) of this section shall be:

(1) jointly and severally liable to pay to the National Treasury civil damages equal to the greater of two thousand five hundred dollars (\$2,500) or the amount of any expenditure or obligation in excess of that appropriated by law, plus interest at the maximum rate allowable by law; and

(2) subject to a criminal fine not to exceed five hundred thousand dollars (\$500,000), imprisonment for not more than two (2) years, or both.

(d) In addition to any other person or entity entitled to bring an action to enforce the provisions of this section, any person who pays taxes in the Republic of Palau may bring a civil action in the Trial Division of the Supreme Court to enforce subsection (c)(1) of this section, and to recover for deposit into the National Treasury public funds expended in excess of appropriations, and to obtain equitable relief to ensure compliance with this section. A taxpayer prevailing in an action brought under this section may be awarded reasonable costs and attorneys' fees actually incurred in the prosecution or defense of such an action, at the discretion of the court.

Source

RPPL 4-40 § 37, modified. Amended by RPPL 4-48 § 2(37).

Notes

Mesubed v. ROP, 10 ROP 62, 63, 64, 65, 66, 67 (2003).

Shmull v. Rosenthal, 8 ROP Intrm. 261 (2001).

The Senate v. Nakamura, 8 ROP Intrm. 190, 191, 193, 194 (2000).

In re Perrin, 8 ROP Intrm. 165, 167 (2000).

§ 407. Compact of Free Association Board of Trustees.

(a) There shall be a five (5) member Board of Trustees to administer the Trust Fund created in section 211(f) of the January 10, 1986 Improved Compact of Free Association.

(b) The President of the Republic shall appoint five (5) members to the Board of Trustees subject to the advice and consent of the Senate. Members of the Board shall serve terms of four (4) years. The President may terminate a member of the Board of Trustees for cause only.

(c) To be appointed to the Board of Trustees, candidates must either:

(1) have demonstrated five years of direct work experience in financial matters;
or

(2) have received a recognized four-year degree from an accredited institution of post-secondary education, preferably in such relevant fields as investments, law, business administration or management, accounting, public finance, or corporate finance, prior to their appointment; or,

(3) successfully complete, within three months of appointment to the Board, a recognized training program that directly addresses the prudent process of administering and managing such trust funds, such as through the Chartered Institute of Management Accountants, the Asian Institute of Finance, or others.

(d) Board terms will be staggered to ensure continuity of the Board of Trustees. Therefore, upon re-establishment of the Board of Trustees, two members shall be appointed to an initial two (2) year term, and three (3) members shall be appointed to a four (4) year term. All subsequent appointments shall be for a four (4) year term except as provided in paragraph (e).

(e) In the event a Board member is terminated for cause, resigns, or is otherwise unable to complete the remainder of a four (4) year term appointment, a replacement will be promptly made, with the advice and consent of the Senate of the Olbiil Era Kelulau, to serve for the remainder of the four (4) year term. At all times, a full complement of the five (5) members of the Board of Trustees will be maintained. If the President fails to nominate a qualified individual to a vacant seat within fifteen (15) days of the seat being vacated or the Senate fails to confirm the President's appointment, then the remaining members of the Board shall appoint an interim member to serve until such time as a permanent member is appointed by the President and confirmed by the Senate. In the event of a tie vote between the remaining Board members with regard to the appointment of an interim member, then the Minister of Finance shall temporarily break his ex officio role on the Board to cast the tie breaking vote.

(f) The Board shall provide recommendations for action to the President of the Republic, with respect to investment of the funds in the 211(f) Trust Fund. To discharge these duties, the Board may employ financial consultants as needed. A formal investment policy statement shall be adopted by the Board in which the specific qualifications for all service providers will be stated.

(g) The Minister of Finance, and the Chairmen of the Committee on Ways and Means in the Senate and the House of Delegates, shall serve as ex-officio members of the Board. The ex-officio members may attend any meetings or hearings of the Board. No action or recommendation of the Board will require the approval of the ex-officio members, except that the Minister of Finance may break his ex officio role to cast the tie breaking vote, if necessary, to appoint an interim member to the Board in accordance with subsection (e).

Source

RPPL 2-22 § 5(1), 5(3), and 5(4), modified. Repealed by RPPL 7-29 § 5(a). Reinstated by RPPL 9-20 § 2, modified.

§ 408. Trust Fund Administration.

(a) The Compact of Free Association Board of Trustees shall be responsible for the administration of the Trust Fund created by section 211(f) of the Compact of Free Association. Prior to taking any action with regard to the Trust Fund, the Board shall provide fifteen (15) days of written notice to the President of the Republic with respect to any changes related to the prudent investment of the funds in the Trust Fund. Such written notice shall include a detailed description of the changes proposed, which may include changes to matters such as investment policy statement change, selection and replacement of investment service providers including custodians, investment consultants, investment managers, and other investment related matters.

(b) To ensure the timely and prudent management of the Trust Fund, the President shall have fifteen (15) days in which to respond in writing to the written notice provided by the Board pursuant to subsection (a) and either concur with the recommendations of the Board, or to provide cause to not adopt any particular recommended change proposed in the written notice submitted by the Board of Trustees. If the President provides written cause to not adopt a particular proposed action by the Board, then the Board shall not implement the proposed action. If no such written communication from the President is received by the Board of Trustees within the fifteen (15) day period, then the Board of Trustees may proceed with implementation of its proposed action.

(c) It is hereby authorized that all funds received by the Republic of Palau pursuant to sections 211(b), 211(c), 211(d), 211(e), 211(f), 212(b), 213, 215, and 221(b) of the January 10, 1986 Compact of Free Association, and any additional funds received pursuant to any subsequent extension of, or amendment to the Compact of Free Association, may be commingled into the 211(f) Trust Fund for investment purposes; however, those funds and the income derived there-from shall remain segregated for

appropriation and accounting purposes. No funds shall be withdrawn from the 211(f) Trust Fund, any investment account containing funds received pursuant to any Compact section, or any investment account containing funds from the General Fund Reserve, except through the constitutional appropriation process.

(d) No later than the fifteenth day after the end of each fiscal quarter, the Compact of Free Association Board of Trustees shall submit to the President of the Republic of Palau, and to the Olbiil Era Kelulau a written summary report of the current value of all invested compact funds that includes any contributions or withdrawals that occurred, excluding investment related fees.

(e) The Board of Trustees is empowered to enter into any and all agreements needed pertaining to the investment management of the compact funds, including the hiring and firing of service providers such as custodians, investment consultants, investment managers, and others. The Board of Trustees shall adopt an investment policy to set procedures for the management of the compact funds and to properly designate persons authorized to transact business on behalf of the Board.

(f) Of the funds received by the Republic under Compact section 211(b), twenty-five percent (25%) shall be devoted to the energy needs of those parts of Palau not served by the central power-generating facility in Aimeliik.

(g) The sum of sixty-six million dollars (\$66,000,000) is hereby authorized to be appropriated for the purposes set forth in Compact section 211(f). The amount authorized to be appropriated shall, upon receipt from the United States Government, be invested in a Trust Fund under the terms and conditions of the Compact, including that distributions (withdrawals) of Trust Fund interest or principal shall not begin earlier than the fifth anniversary after the effective date of the Compact; distributions (withdrawals) of principal and interest from the Trust Fund may only be done upon subsequent authorization and appropriation by law. The Trust Fund Management shall be under the Compact of Free Association Board of Trustees.

(h) All funds derived from the Compact Section 213 Investment Account Pursuant to the Fiscal Year 2007 Supplemental Budget Authorization and Appropriation Act shall be reimbursed in the future so that the purpose of the Compact 213 Investment Account funds shall be maintained.

Source

Subsection (a) added by RPPL 2-22 §§ 5(5) & 7. Subsection (b) added by RPPL 2-22 § 6. RPPL 4-26 § 40 amended subsection (b) with identical language. Amended by RPPL 4-32 §§ 36, 48, 50 & 52. Subsection (d) added

by the last sentence of RPPL 4-40 § 36(c). Subsection (h) added by RPPL 4-40 § 36(b). Subsection (h) amended by RPPL 5-6 § 3(b). Subsection (h) was repealed by RPPL 5-15 § 22(a) and a new subsection (I) was added by § 22(b). Subsection (i)(2) was amended by RPPL 5-34 § 42. Subsection (b) was amended by RPPL 6-11 § 4. Amended in its entirety by RPPL 7-29 § 5(b). Amended in its entirety by RPPL 9-20 § 3, modified.

Notes

RPPL 2-22 § 6 was amended by RPPL 4-26 § 40. RPPL 4-26 was repealed in its entirety by RPPL 4-32 § 49. In Subsection (c), the bracketed “[on]” replaced RPPL 4-43 § 50 wording “. . . , the . . .” per Code Commission. In Subsection (f), “. . . with the provisions of 40 PNCA § 407 and § 408” reads “. . . with the provisions of RPPL No. 2-22” in the original statute, RPPL 4-32 § 36.

ROP v. Sakuma, 10 ROP 221, 223 (Tr. Div. 2003).

§ 409. Procedures for withdrawal of invested public funds; liability for improper withdrawal; taxpayer standing and attorney fees.

(a) No funds received from the United States of America pursuant to the Compact of Free Association, or monies earned therefrom (collectively “Compact Funds”), or any other funds held in the name of or on behalf of the Republic of Palau or monies earned therefrom, which are invested outside of the National Treasury may be transferred to the National Treasury without first doing the following:

(1) All requests for transfers of such funds shall be made in writing and shall be accompanied by the written certifications required, *infra*. Each request shall have a separate certification which shall be serialized. All such requests shall be a matter of public record and shall be available for inspection at the Bureau of National Treasury by any person during reasonable business hours regardless of the purpose of the inquiry.

(2) Prior written certification shall be obtained from the Director of the Bureau of the National Treasury and the Director of the Program, Budget, and Management Office, signed under penalty of perjury, that they: have received the request for the transfer; have reviewed the relevant Unified National Budget law, any

amendments thereto, and any other applicable authorization and appropriations law; have knowledge of all previous transfers to the National Treasury made pursuant to such laws; and that the transfer is in accordance with law.

(3) Written notice of the proposed transfer shall be provided to the Presiding Officers of the Olbiil Era Kelulau, together with copies of the aforementioned written certifications from the Director of the Bureau of National Treasury and the

Director of the Program, Budget, and Management Office, not less than two (2) business days before the written request for transfer.

(b) Any person who causes Compact Funds to be transferred in violation of this section shall be personally liable for the amount of said transfer.

(c) In addition to any other person or entity entitled to bring an action to enforce the provisions of this section, any person who pays taxes in the Republic of Palau may bring a civil suit in the Trial Division of the Supreme Court to enforce the provisions of this section. The court is authorized to make any order necessary to ensure prospective compliance with this section. The prevailing party in an action to enforce compliance with this section may be awarded reasonable attorneys' fees and costs actually incurred in the prosecution or defense of such an action, at the discretion of the court.

Source

RPPL 4-40 § 32(B), (C) and (D), modified. Previously enacted with similar language in RPPL 4-38 § 34(B), (C) and (D). Amended by RPPL 4-48 § 2(32).

Notes

RPPL 4-36 § 9 preceded RPPL 4-38 § 34(b) and RPPL 4-40 § 32(b) covering the same subject matter with different language. RPPL 4-36 § 9 was repealed by RPPL 4-38 § 34A. RPPL 4-40 § 32A also repealed § 9 of RPPL 4-36. RPPL 4-38 was repealed in its entirety by RPPL 4-40 § 46.

§ 410. Appropriations for the Legislature.

All appropriations for the legislature shall be apportioned and allotted at the direction of the President of the Senate and the Speaker of the House of Delegates or their designees.

Source

RPPL 4-36 § 2(5), modified. Amended by RPPL 5-15 § 24.

§ 411. Earmarking of funds.

Of the funds generated by the concession fee of four percent (4%) of the gross receipts annually derived from the Virtual Pachinko Business or Internet Digits Lottery Game Business, established in accordance with 11 PNC § 1402(c), fifty percent (50%) shall be deposited in the general fund of the National Treasury for future appropriation, twenty five percent (25%) shall be earmarked and appropriated for school books, supplies and instructional equipment within the Ministry of Education, and twenty five percent (25%) shall be earmarked and appropriated to supplement the Hospital Trust Fund.

Source

RPPL 5-45 § 2. Amended by RPPL 6-26 § 15(f) and RPPL 6-35 § 2, modified. Amended in its entirety by RPPL 8-21 § 4, modified.

Notes

The first two sentences of RPPL 6-12 § 11 read: “Pursuant to RPPL No. 5-45, \$1,000,000 has been earmarked to the Civil Service Pension Plan. Of that sum, \$500,000 is allocated for the employer contribution of the Palau Community College (PCC) to the Civil Service Pension Plan; any portion of the \$500,000 not used toward PCC employees shall be used for the general contribution.”

§ 412. Water and wastewater charges.

The Minister of Finance, in cooperation with the relevant Ministry, shall promulgate rules and regulations pursuant to the Administrative Procedures Act, 6 PNC Chapter 1, to establish fees and charges, with subsidy options for fixed and low income groups, that at minimum recover the actual costs of the provision of water and wastewater services. Such fees and charges, pursuant to rules and regulations, shall take effect not later than April 1, 2009.

Source

RPPL 7-53 § 8.

Chapter 5
National Government Private Borrowing

- § 501. Short title.
- § 502. Legislative findings and purposes.
- § 503. Definitions.
- § 504. Authority to borrow from private persons; conditions, procedures and guidelines.
- § 505. Inapplicability of chapter 4, Title 33 of the Trust Territory Code, interest and terms of borrowing permissible.
- § 506. Conflict of laws.

§ 501. Short title.

This chapter may be cited as the “National Government Private Borrowing Authority Act.”

Source
RPPL 1-20 § 1(a), modified.

§ 502. Legislative findings and purposes.

The Olbiil Era Kelulau hereby finds and declares the public policy of the nation to be as follows:

- (a) The national government is constitutionally responsible for taking positive action to promote the national economy and the health, safety, welfare and prosperity of the citizens of the Republic.
- (b) The national economy and the health, safety, welfare and prosperity of the citizens of the Republic will be greatly enhanced by the expeditious and reasonable development of national programs, public projects, governmental services, and capital improvements within Palau.
- (c) The need to develop necessary government services and programs requires immediate outlays of funds not currently available to the national government.
- (d) Public debt financing, properly controlled and regulated, is a useful and efficient tool for the development of needed services and programs, and is a necessary and proper exercise of governmental powers.

- (e) The current international political status of the Republic makes borrowing from other sovereign nations and international financial organizations an uncertainty.
- (f) There currently exists the possibility of the national government borrowing funds from private financial institutions and persons at reasonable rates and under reasonable terms, provided that sufficient enabling legislation is enacted to enable the Republic to meet those conditions normal to such private borrowings.
- (g) The Olbiil Era Kelulau may properly delegate to the President a portion of its powers and duties with regard to borrowing funds, and Olbiil Era Kelulau may set the guidelines under which such delegation of power is executed.

Source

RPPL 1-20 § 1(b), modified.

Cross-reference

ROP Const., Art. IX, § 5(2).

§ 503. Definitions.

In this chapter:

- (a) “Borrow” means to solicit and receive from another any article or property or thing of value with the intention and promise to repay or return it or its equivalent. Money may be borrowed on an agreement to pay interest for its use.
- (b) “Finder’s Fee” means a sum of money paid by a lender or borrower of money to one who brings him a transaction out of which he may make or receive money.
- (c) “Interest” means the amount of money paid for the use of the principal or sum loaned at a certain rate or allowance.
- (d) “Lender” means the person from whom a thing or money is borrowed.
- (e) “Loaning money” means a transaction creating the customary relation of borrower and lender, in which money is borrowed for a fixed time on the borrower’s promise to repay the amount borrowed at a stated time in the future with interest at a fixed rate.
- (f) “Person” means any natural individual, partnership, association, clan, corporation, institution, business and all entities cognizable as legal personalities.

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(g) "Private person" means affecting or belonging to persons distinct from the public generally or from a governmental body or subdivision thereof.

(h) "Public debt" means that which is due or owing by the Republic and is backed by the full faith and credit of the nation.

(i) "Public purpose" means a classification of objects which, according to settled usage, the national government is to provide, as opposed to those objects which by the like usage, are left to private interests. A public purpose has for its objective the promotion of the public health, safety, morals, welfare, security or prosperity of the citizens of the Republic. It includes, but need not be limited to, public programs and works and capital improvements such as roads, power development, transportation modes, housing, health services and the like.

Source

RPPL 1-20 § 2. Subsections (2), (8), and (12) omitted as unnecessary and section modified.

§ 504. Authority to borrow from private persons; conditions, procedures and guidelines.

(a) The Republic, by and through the President, shall have the authority to borrow money or goods and incur long term obligations and repay the same with interest, from any private person; backed by the full faith and credit of the Republic consistent with the provisions of this chapter.

(b) The Republic may enter contracts to borrow, issue bonds or securities for the same, or make any legal agreement to borrow consistent with this chapter; provided that if securities and bonds are issued as collateral or notice of debt, interest paid on such securities and bonds are free from the gross revenue tax of the Republic and no state or municipality may tax such interest. Once issued, securities and bonds of the Republic are in no way transferable without the prior written consent of the President. The President may promulgate any rules or regulations necessary to carry out the provisions of this subsection including, but not limited to, the issuing of such securities and bonds, the style and design thereof, denomination, term, interest rate of each and provisions for loss or destruction of the same, and determination of United States tax status of such securities and bonds.

(c) The provisions of this chapter apply only to the Republic's relationship with private persons.

(d) The Republic shall pledge as repayment of any borrowing from private persons

only those monies or goods as are available from local revenues and foreign aid and assistance not otherwise obligated or directed to specific purposes or projects by law, and private lenders shall have recourse only to those monies or goods.

(e) The total amount borrowed from private persons shall at no time exceed three hundred million dollars (\$300,000,000) United States dollars or its equivalent; provided that any borrowing from private persons which will result in the total amount of principal owed by the Republic to private persons to exceed at any given time the sum of thirty five million dollars (\$35,000,000) United States dollars or its equivalent must be approved by joint resolution of the same by the Olbiil Era Kelulau.

(f) Any issuance of securities or bonds by the Republic must be authorized and approved by joint resolution of Olbiil Era Kelulau.

(g) At all times in the negotiation for any borrowing by the Republic from private persons, the President shall keep the Olbiil Era Kelulau informed of the terms, amount, interest rates and conditions being considered for such agreement.

(h) In no case shall a lender to the Republic assign, hypothecate, transfer, cause or let an encumbrance or lien be placed on or allow any claim against, such agreement, contract, security or bond entered into or issued by the Republic without the prior written consent of the President.

(i) Notwithstanding any other law of the Republic governing maximum interest rates recoverable on loans, the Republic may pay such rate, allowance or interest permitted under the provisions of this chapter.

(j) The Republic shall not pay, either directly or indirectly, any finder's fee in connection with private borrowing.

(k) The Republic may pay any points or fee for servicing such loan as is normal and consistent with customary practices for the execution of private borrowing.

(l) The Republic may make any other agreement or contract that may be necessary, reasonable and proper for the execution of a private borrowing agreement; provided such agreement is consistent in its terms with the provisions of this chapter.

(m) All programs, projects, or capital improvements funded by private borrowing by the Republic shall be for public purposes only.

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- (n) The annual unified budget shall reflect all private borrowings, obligations and issuances of securities and bonds of the Republic in detail, for every year such borrowing is in effect.
- (o) Any contract to borrow must include the acceptance by all parties of the provisions of this chapter.
- (p) The courts of the Republic shall, wherever practicable, have exclusive jurisdiction over any agreement, contract or action respecting private borrowing by the Republic .
- (q) The Republic may require a performance bond of any party to a private borrowing by the Republic.
- (r) The Olbiil Era Kelulau shall authorize and appropriate such sums as may be necessary to meet the legal obligations incurred by the Republic under this chapter.
- (s) Line of Credit. In addition to the authority granted above, and not in lieu thereof, the President is hereby authorized to negotiate for, execute all documents relating to, and obtain a revolving line of credit for no more than three (3) years with a Lender in the maximum amount of three million dollars (\$3,000,000), at a reasonable interest rate, on the following conditions:
- (1) The President is authorized to seek a line of credit from any Lender able to advance the funds on the terms and conditions set forth herein in the maximum amount of three million dollars (\$3,000,000) for a term not more than three (3) years, and may seek the line of credit from the National Development Bank of Palau.
 - (2) Funds drawn down from such a revolving line of credit shall be used solely as a source of cash to supplement cash flow for a given fiscal year and in particular shall be drawn for a timely disbursement of the following expenditures only:
 - (A) State block grants;
 - (B) The National Scholarship Fund;
 - (C) The purchase of goods or services authorized under specific grants(s), the provisions of which require reimbursement of such expenditures from the grantor to the Republic of Palau; and/or

(D) The payment of all current and past due lawful debts owed to local vendors that are subject to gross revenues tax under Chapter 12 of 40 PNC.

(3) To the extent funds drawn down from the revolving line of credit are expended pursuant to subsection (s)(2)(C) above, they shall be repaid to the Lender for the specific purpose of paying down the balance of the revolving line of credit, within thirty (30) days of the date that the reimbursement is received from or on behalf of the grantor, by the Republic of Palau for each reimbursable expenditure made. All repayments are authorized and appropriated for the sole purpose of paying off any amount owed on the revolving line of credit, and the source of such repayments shall be the grant reimbursements received.

(4) For the payments of all draw downs from such a line of credit, including interest and related costs, the following shall apply:

(A) Where the terms of the loan agreement state that the draw down from the line of credit is to be repaid before the end of the same fiscal year as the signing of the loan agreement then the loan shall be paid back in full by the end of the fiscal year so that the amount owed on the line of credit is zero (\$0) as of the close of business on September 30 of the fiscal year of the signing of the loan agreement.

(B) Where the terms of the loan agreement state that the draw down from the line of credit is to be repaid beyond the end of the fiscal year in which it is signed then all payments of the loan shall be “current” so that there is no overdue balance to the Lender as of the close of business on September 30 of each year.

(C) In all cases where the terms of the loan agreement state that the draw down from the line of credit is to be repaid beyond the end of the fiscal year in which it is signed the loan must be completely paid back within three (3) fiscal years of the signing of the loan agreement so that the amount owed on the line of credit is zero (\$0) as of the close of business on September 30 of the third fiscal year after which the loan agreement is signed.

(5) Payments to the Lender, which are not reimbursable under the terms of grants, including principal, interest and related costs of obtaining or extending the line of credit, are hereby authorized and appropriated and shall be paid by local revenues.

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(6) For the purpose of effective use of a line of credit authorized under this Section and to assure timely repayment of the funds drawn from such a revolving line of credit, the Minister of Finance shall report to the Olbiil Era Kelulau for every draw down on the line of credit.

(7) For all funds received by the national government from a draw down on the Line of Credit the following shall apply:

(A) The funds received are hereby appropriated pursuant to the amount specified in the annual fiscal year appropriation enacted by the Olbiil Era Kelulau for the sole purpose of making up for any shortfall in the cash flow in a fiscal year in relation to an expenditure specified in subsection 504(s)(2).

(B) A draw down on the Line of Credit shall not cause an increase in the overall budget for the fiscal year that the draw down on the Line of Credit was entered into.

Source

RPPL 1-20 § 3, as amended by RPPL 2-21 § 3, modified. Subsection (s) added by RPPL 7-53 § 6, modified. Subsection (s) is amended by RPPL 8-9 § 5(C). Subsection (s) is further amended by RPPL 8-24 § 1, modified.

§ 505. Inapplicability of chapter 4, Title 33 of the Trust Territory Code, interest and terms of borrowing permissible.

(a) Notwithstanding the provisions of chapter 4 of Title 33 of the Trust Territory Code, the Republic may pay such rate of interest as it feels is reasonable to accomplish the public purposes for which any borrowing is made.

(b) The Republic may agree to such terms and conditions as it may feel are reasonable to accomplish the public purpose for which any borrowing is made provided that such terms and conditions are consistent with the provisions of this chapter.

Source

RPPL 1-20 § 4, modified.

§ 506. Conflict of laws.

Any provision of law or regulation promulgated thereunder which is in conflict with this chapter is deemed superseded and void to the extent of the conflict.

Source
RPPL 1-20 § 5, modified.

**Chapter 6
Statutory Framework for National Government Procurement**

**Subchapter I
Procedures for Government Procurement**

- § 601. Purpose; interpretations.
- § 602. Requirement of good faith.
- § 603. Application.
- § 604. Severability.
- § 605. Retention of written determinations.
- § 606. Definitions.
- § 607. Procurement authority.
- § 608. Procurement Officer.
- § 609. Delegation.
- § 610. Procurement regulation.
- § 611. Collection of data.
- § 612. Duties of Attorney General.
- § 613. Methods of source selection.
- § 614. Competitive sealed bidding.
- § 615. Invitation for bids.
- § 616. Public notice.
- § 617. Bidding time.
- § 618. Bidder's mailing list.
- § 619. Bid receipt.
- § 620. Bid opening and recording.
- § 621. Bid acceptance and evaluation.
- § 622. Bid rejection.
- § 623. Correction or withdrawal of bids; cancellation of awards.
- § 624. Awards.
- § 625. Small purchase.
- § 626. Competitive negotiated contracts.
- § 627. Sole source procurement.
- § 628. Emergency procurement.
- § 629. Professional services.
- § 630. Cancellation of invitation for bids or request for proposals.
- § 631. Responsibility of bidders and offerors.
- § 632. Prequalifications of offerors and bidders.
- § 633. Right to inspect place of business.

- § 634. Reports of anti-competitive practices
- § 635. Retention of procurement record.
- § 636. Contract file documentation.
- § 637. Required contract clauses.
- § 638. Duties of the Procurement Officers.
- § 639. Relationship with using agencies.
- § 640. Maximum practicable competition.
- § 641. Content of specifications.
- § 642. Application.
- § 643. Invitation for bids.
- § 644. Bid security.
- § 645. Contract performance and payment bonds.
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- § 647. Fiscal responsibility.
- § 648. Architect-engineer and land surveying services.
- § 649. Authority to resolve protested solicitations and awards.
- § 650. Remedies.
- § 651. Authority to resolve contract dispute.
- § 652. Definition of terms.
- § 653. General standards.
- § 654. Employee conflict of interest.
- § 655. Employee disclosure requirements.
- § 656. Kickbacks and gratuities.
- § 657. Contract clauses.
- § 658. Restrictions on employment of present and former employees.
- § 659. Use of confidential information.
- § 660. Collusion by bidders.
- § 661. Penalties.
- § 662. Recovery of value transferred or received in breach of ethical standards.
- § 663. Authority to debar or suspend.

§ 601. Purpose; interpretations.

- (a) This chapter shall be construed and applied to promote its underlying purposes and policies.
- (b) The purposes and policies of this chapter are as follows:
 - (1) to ensure the fair and equitable treatment of all persons who deal with the

procurement system of the Republic or any state government;

(2) to provide for increased economy in all procurements and to maximize purchasing value of public funds;

(3) to encourage competition;

(4) to provide for public confidence in the procurement procedures; and

(5) to allow for the continued development of procurement policies and practices; and

(6) to provide safeguards for the maintenance of a procurement system of quality and integrity.

Source

RPPL 3-54 § 1, modified.

Notes

ROP v. Sakuma, 10 ROP 221 (Tr. Div. 2003).

In re Rechucher, 7 ROP Intrm. 28, 29 (1998).

§ 602. Requirement of good faith.

All parties, including government employees, contractors, offerors and bidders, involved in the negotiation, bidding, offering, performance and administration of government contracts shall act in good faith.

Source

RPPL 3-54 § 2.

§ 603. Application.

(a) This chapter applies only to procurement actions taken or contracts entered into after the effective date hereof.

(b) Except as otherwise specified by law, this chapter applies to every expenditure of public funds by the national government or any government agency, except P.U.C. and P.N.C.C., that receives national government funding or state governments, irrespective of source, including United States Federal assistance monies. This chapter shall also apply to contracts between the national and state governments or other governments, except, however, in cases in which the Procurement Officer concerned makes a written and

substantiated determination that the contract involved is of such a nature that only governments may perform it.

Source

RPPL 3-54 § 3, modified. Subsection (b) amended by RPPL 5-7 § 64.

Notes

RPPL 5-7 § 65 required two public corporations (P.U.C. and P.N.C.C.) to adopt regulations substantially similar to 40 PNCA Chapter 6.

Shell Co. v. Palau Pub. Utils. Corp., 15 ROP 158, 161 (Tr. Div. 2008).

§ 604. Severability.

If any provision of this chapter or any application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end, the provisions of this chapter are declared to be severable.

Source

RPPL 3-54 § 4, modified.

§ 605. Retention of written determinations.

Written determinations required by this chapter shall be retained in the appropriate official contract file of the Procurement Officer.

Source

RPPL 3-54 § 5, modified.

§ 606. Definitions.

The terms used in this chapter shall have the following meanings unless the context otherwise requires:

- (a) “Attorney General” means the Attorney General of the Republic of Palau.
- (b) “Bidding time” means the time between the issuance of a solicitation and the opening of bids or the due date for proposals.
- (c) “Business” means any corporation, partnership, sole proprietorship, individual,

joint venture, or any other private legal entity.

(d) “Change order” means a written order signed by the Procurement Officer, directing the contractor to make changes which the changes clause of the contract authorizes the Procurement Officer to order without the consent of the contractor.

(e) “Construction” means the process of building, altering, repairing, improving or demolishing of a public structure, or building or other public improvements of any kind to any real property. It does not include the routine operation, routine repair, or routine maintenance of existing structures, buildings, or real property.

(f) “Contract” means all types of national or state government agreements, regardless of what these may be called, for the procurement of supplies, services, or construction, or for the disposal of government property.

(g) “Contract modification” means any written alteration in specifications, delivery point, time, price, quantity, or other provisions of any contract accomplished by mutual action of the parties to the contract.

(h) “Contractor” means any person having a contract with the Republic or any state government.

(i) “Cost-reimbursement contract” means a contract under which a contractor is reimbursed for costs which are allowable and allocable in accordance with the contract terms and a fee, if any.

(j) “Dispute” means a disagreement concerning the terms of the contract and the legal rights and obligations of the contracting parties.

(k) “Employee” means an individual receiving a salary from any government of the Republic, including elected and appointed officials.

(l) “Firm-fixed price contract” means a contract under which a contractor agrees to perform the work required for a price which is not subject to any adjustment.

(m) “Goods” means all properties including but not limited to equipment, materials, supplies, and other tangible personal property of any kind or nature, leases of real and personal property, and sale or disposal of real or personal property of any kind.

- (n) “Grant” means the furnishing by the government of assistance, whether financial or otherwise, to any person to support a program authorized by law.
- (o) “Invitation for bids” means all documents and announcements, whether attached or incorporated by reference, utilized for soliciting bids.
- (p) “Offeror” means a person who has submitted a proposal in response to a request for proposals.
- (q) “Person” means an individual, sole proprietorship, partnership, joint venture, corporation, other unincorporated association or private legal entity.
- (r) “Procurement” means the acquisition by any means, including purchase, lease or rental, of any goods or services. It also includes all functions that pertain to the obtaining of construction, goods or services, including description of requirements, selection and solicitation of sources, preparation and award of contracts and all phases of contract administration. It does not include personal service contracts with individuals who will be employed by Republic officials.
- (s) “Procurement Officer” means any person authorized by the Republic or by a state governor as the official responsible for procurement activities including entering into and administering contracts.
- (t) “Purchase description” means the words used in a solicitation to describe the construction materials, goods, or services to be procured.
- (u) “Request for proposals” means all documents utilized for soliciting proposals under the negotiation method of procurement.
- (v) “Services” means the provision to the Republic of time, labor, or effort by a contractor of any government of the Republic which does not involve the production or delivery of a specific end product other than reports, plans, and incidental documents.
- (w) “Specification” means any description of the physical or functional characteristics, or the nature of a supply, service, or construction item. It may include a description of any requirement for inspecting, testing or preparing a supply service, or construction item for delivery.
- (x) “Using agency” means any government organization which utilizes any supplies,

services, or construction procured under these regulations.

Source

RPPL 3-54 § 6, terms put into alphabetical order and section modified.

Notes

ROP v. Sakuma, 10 ROP 221, 222 (Tr. Div. 2003).
Renguul v. ASPLA, 8 ROP Intrm. 282, 283 (2001).

§ 607. Procurement authority.

Except as otherwise provided by law, all rights, powers, duties and authority relating to the procurement of construction materials, goods, and services, and the management, control, warehousing, sale, and disposal of construction materials, goods, and services are hereby vested in the duly authorized Procurement Officer, except with regards to disposal of national government property which shall be done pursuant to Executive Order No. 100.

Source

RPPL 3-54 § 7, modified.

§ 608. Procurement Officer.

The Procurement Officer for the purchase of goods shall be the Chief of Property and Supply who will report to the Minister of Finance. The Procurement Officer for construction and architectural and engineering contracts shall be the Director of the Bureau of Public Works. The Procurement Officer for the purchase of contractual services shall be the Director of the Bureau of Public Service System. The Procurement Officer for each state government shall be that person designated by each state governor. The Procurement Officers for professional services for the House of Delegates shall be the Speaker and for the Senate shall be the Senate President. For the purchase of medical supplies by the Ministry of Health, the Minister of Health shall be deemed the procurement officer under 40 PNC § 608.

Source

RPPL 3-54 § 8, modified. Amended by RPPL 5-7 § 64. Amended by RPPL 5-34 § 12, modified.

Notes

“Minister of Finance” read “Minister of Administration” which was amended by RPPL 6-26 § 33.

§ 609. Delegation.

A Procurement Officer may delegate his authority with the prior written approval of the Minister of Finance or, with regards to state governments, with the prior written approval of the Governor. A Procurement Officer may suspend, limit or revoke any delegation of authority made under the provision of this section. Delegations must be in writing from the Procurement Officer involved and include the name and title of the individual being delegated the authority.

Source

RPPL 3-54 § 9, modified.

Notes

“Minister of Finance” read “Minister of Administration” which was amended by RPPL 6-26 § 33.

§ 610. Procurement regulation.

This chapter shall not change existing contract rights. Neither this chapter nor any regulations promulgated hereunder shall change any existing contractual commitment, right, or obligation of the national government or of a contractor under a contract in existence on the effective date of such chapter or regulations.

Source

RPPL 3-54 § 10, modified.

§ 611. Collection of data.

The Procurement Officer shall cooperate with the Chief of Finance, Budget Officer, Public Auditor and National Planner in preparation of statistical data relating to procurement, usage, and disposition of all goods, services, and construction. The using government agencies shall furnish such reports as the Procurement Officer may require concerning usage, needs, and stocks on hand. The Procurement Officer shall have the authority to prescribe forms for requisition, ordering and reporting of supplies, services and construction.

Source

RPPL 3-54 § 11, modified.

§ 612. Duties of Attorney General.

The Attorney General or his designee shall serve as legal counsel and provide necessary legal services to the Procurement Officers. The Attorney General or in the case of state government contracts, the State Attorney, if any, shall certify the form and legality of every government contract and change order.

Source
RPPL 3-54 § 12, modified.

§ 613. Methods of source selection.

It is the policy of the Republic that all purchases and procurement actions be executed in a manner that provides open and free competition and avoids purchasing unnecessary or duplicative items. When appropriate, an analysis shall be made of lease and purchase alternatives to determine which would be the most economical practical procurement.

Source
RPPL 3-54 § 13.

§ 614. Competitive sealed bidding.

Contracts shall be awarded by competitive sealed bids except as otherwise provided by law. In using this method of procurement the following condition shall be met. Invitations for bids shall contain a clear, complete and accurate description of the goods or services to be procured. This description shall not contain unnecessarily restrictive requirements which may unduly limit the number of bidders.

Source
RPPL 3-54 § 14.

§ 615. Invitation for bids.

An invitation for bids shall be issued and shall include at a minimum:

- (a) notice that bids are being accepted;
- (b) an invitation for bids number;

- (c) date of issuance;
- (d) name, address, and location of issuing office and location where copies of the invitation for bids and plans may be obtained;
- (e) specific address/location where bids must be submitted;
- (f) date, hour, and place of bid opening;
- (g) a purchase description in adequate detail to permit full and open competition and allow bidders to properly respond;
- (h) quantity of goods or services to be furnished;
- (i) time, place, and method of delivery or performance requirements;
- (j) essential contractual terms and conditions;
- (k) any bonding requirements;
- (l) any local preference evaluation factors; and
- (m) closing date of bids.

Source
RPPL 3-54 § 15, modified.

§ 616. Public notice.

Public notice of the invitation for bids shall be made a reasonable time at least fifteen (15) days prior to the date of the initial day of the bidding time. The notice shall be furnished to all state governments and to all persons who have requested to be included in bidders mailing lists within the previous twelve (12) months; be published in a newspaper of general circulation in the Republic or in a foreign newspaper if the Procurement Officer determines that publication would benefit the government; and shall be publicly posted for at least fifteen (15) days at the office of the Procurement Officer concerned, the post office building, the Courthouse, the Bureau of Domestic Affairs office, and announced on all radio and television stations within the Republic.

Source
RPPL 3-54 § 16, modified.

§ 617. Bidding time.

A bidding time of at least thirty (30) calendar days shall be provided unless the Procurement Officer makes a written and substantiated determination that a shorter time period is reasonable and necessary. The minimum time period should not be less than fifteen (15) days after the notice of invitation for bids is posted.

Source
RPPL 3-54 § 17.

§ 618. Bidder's mailing list.

A list of potential bidders and suppliers requesting copies of invitation for bids in response to the public notice shall be maintained by the Procurement Officer concerned. The list will be updated by the Procurement Officer on an annual basis.

Source
RPPL 3-54 § 18.

§ 619. Bid receipt.

Bids, upon receipt at the location specified in the invitation for bids, shall be kept unopened and secured in a locked receptacle. Bids which are opened in a time or in a manner not complying with section 620 herein shall be resealed in the envelope and the person who opened the bid shall write his signature and title on the envelope and deliver it to the Procurement Officer. No information contained in the bid shall be disclosed prior to bid opening.

Source
RPPL 3-54 § 19, modified.

§ 620. Bid opening and recording.

The bid opening shall be conducted by the Procurement Officer [or] his designee. The bids will be opened publicly in the presence of at least two (2) witnesses at the time and place designated in the invitation. The Procurement Officer shall record the amount of each bid together with the name of each bidder and prepare a written summary of the bid opening, to be countersigned by the witnesses. All bids and the summary shall be opened for public inspection.

Source
RPPL 3-54 § 20.

Notes

The bracketed “[or]” does not appear in the original legislation.

Shell Co. v. Palau Pub. Utils. Corp., 15 ROP 158, 161 (Tr. Div. 2008).
Black Micro Corp. v. Rengulbai, 14 ROP 196, 198 (Tr. Div. 2007).

§ 621. Bid acceptance and evaluation.

Bids shall be unconditionally accepted without alteration or correction except as authorized by this chapter. Bids shall be evaluated based on the requirements set forth in the invitation for bids.

Source

RPPL 3-54 § 21, modified.

§ 622. Bid rejection.

A bid may be rejected for any of the following reasons as determined by the Procurement Officer concerned in writing:

- (a) failure to comply with material requirements of the invitation for bids such as specifications or time of delivery;
- (b) imposition of conditions by the bidder, which conditions limit the bidder’s liability or modify requirements for the invitation. For example, bids may be rejected when the bidder:
 - (1) protects against future changes in conditions, such as increased cost; or
 - (2) fails to state a definite price; or
 - (3) states a price but qualifies it as subject to price in effect at time of [delivery];
or
 - (4) limits the rights of the government; or
 - (5) is nonresponsive.
- (c) A bid may be rejected if the bidders is not responsible as determined in accordance

with section 631 of this chapter.

Source

RPPL 3-54 § 22, modified.

Notes

The bracketed “[delivery]” in § 622(b)(3) does not appear in the original legislation.

Black Micro Corp. v. Rengulbai, 14 ROP 196, 198 (Tr. Div. 2007).

§ 623. Correction or withdrawal of bids; cancellation of awards.

Correction or withdrawal of inadvertently erroneous bids, before or after award, or cancellation of awards or contracts based on bid mistakes must be approved in writing by the Procurement Officer concerned in writing. After the bid opening no changes in bid price or other provisions or bids prejudicial to the interest of the government or fair competition shall be allowed. If the bidder alleges an error, the government shall only permit correction of the bid or withdrawal of the bid in accordance with subsections (a) or (b).

(a) Correction of bids shall only be permitted when:

(1) an obvious clerical mistake is clearly evident from examining the bid document. Examples of such mistakes are errors in addition or the obvious misplacement of a decimal point; or

(2) the otherwise low bidder alleges a mistake and the intended bid is evident from the bid document or is otherwise supported by clear and convincing evidence as to the bid intended and the corrected bid remains the low bid. A low bidder may not be permitted to correct a bid mistake resulting from an error in judgment.

(b) Withdrawal of bid shall only be permitted where the otherwise low bidder alleges a mistake and there is clear and convincing evidence as to the existence of a mistake.

(c) Cancellation of awards or contracts shall be permitted only when:

(1) evidence as to the existence of the mistake could not reasonably be discovered until after the award; or

(2) there exists no clear and convincing evidence to support the bid intended; or

- (3) performance of the contract at the award price would be unconscionable.

Source

RPPL 3-54 § 23, modified.

§ 624. Awards.

(a) The contract must be awarded in accordance with this chapter with reasonable promptness, but in no event later than thirty (30) days after opening of the bids, by written notice to the responsible bidder whose bid fully meets the requirements of the invitation for bids and this chapter. Unsuccessful bidders also shall be promptly notified.

(b) Notice of an award shall only be made by the presentation of a contract with all of the required government signatures to the bidder. Government contracts shall contain a clause which states that the signature of the private contractor shall be the last in time to be affixed to a contract and that no contract can be formed prior to the approval of all required government officials. These officials are the Procurement Officer concerned or his designee, the Attorney General or the States Attorney, if any, and the Director of the Bureau of Program, Budget, and Management, or in the case of state government contracts, the Governor or his designee.

(c) In the event all bids exceed available funds and the bid of the lowest responsive and responsible bidder does not exceed those funds by more than five percent (5%), the Procurement Officers may negotiate an adjustment of the bid price including changes in bid requirements with the lowest responsive and responsible bidder in order to bring the bid price within the amount of available funds. The negotiation shall be documented in writing and attached to the bidding documents.

(d) The person responsible for the obligation or expenditure of funds shall accept the lowest responsible bid from the lowest responsible bidder who offers to perform the project according to the set standards at the lowest cost within thirty (30) days following the opening of a bidding; provided, that if a responsible bid in an amount less than one hundred thousand dollars (\$100,000) is submitted by an entity wholly owned by a person or persons of Palauan citizenship is no more than twenty five percent (25%) higher than the lowest responsible bid submitted by an entity not of by wholly Palauan ownership, then the bid by wholly Palauan entity shall be accepted; provided further that the National Director of Budget and Finance first certifies on the bid document that sufficient funds are available to meet the bid, and such acceptance shall form a contract.

Source
RPPL 3-54 § 24, modified.

§ 625. Small purchases.

(a) Any procurement not exceeding ten thousand dollars (\$10,000) may be made in accordance with the small purchase procedures to be established by regulations promulgated by the Minister of Finance. However, procurement requirements shall not be artificially divided so as to constitute a small purchase.

(b) Formal bidding is not required but it is encouraged for all items not exceeding ten thousand dollars (\$10,000). Except that the competitive bidding procedure shall be required on any items sought by the state governments of five thousand dollars (\$5,000) or more.

(c) For all small purchases over two thousand dollars (\$2,000), and for the purchase of event hosting services over five thousand dollars (\$5,000) not put to bid, the Procurement Officer concerned or his designee shall obtain price quotations from at least three (3) vendors and base the selection on competitive price, quality, delivery time and other relevant factors. A written documentation of the three (3) price quotes, the vendors submitting the quotes and the basis for selection shall be maintained in the purchase order file. Small purchases under five thousand dollars (\$5,000) may be limited to local vendors. On small purchases under two thousand dollars (\$2,000) and on purchases of event hosting services under five thousand dollars (\$5,000), procurement officers are encouraged to obtain multiple price quotations, but it is not required. Three price quotations are not required on any small purchase under ten thousand dollars (\$10,000) if there is adequate documentation that there are fewer than three (3) suppliers of the items within the Republic.

(d) Purchase orders may be utilized for small purchases when there is no requirement to use a contract.

Source
RPPL 3-54 § 25, modified. Subsection (c) amended by RPPL 7-25 § 2, modified.

Notes

Section 625(b) codified as it appears in original legislation.

The legislative findings regarding the amendment of subsection (c) appears in Section 1 of RPPL 7-25 which reads: "Section 1. Legislative findings. The Olbiil Era Kelulau finds that there is some confusion in the Ministry of Finance about the requirements for multiple bids on government procurement of small purchases under \$5,000.

The Olbiil Era Kelulau finds that it is the intent of the current law not to require multiple bids or price quotes on small purchases under \$5,000. Due to the confusion at the Ministry of Finance, the Olbiil Era Kelulau finds that it is appropriate to clarify the law on this issue by amending 40 PNC 625(c).”

“Minister of Finance” in subsection (a) read “Minister of Administration” which was amended by RPPL 6-26 § 33.

§ 626. Competitive negotiated contracts.

(a) When the Procurement Officer determines in a substantiated writing that the use of competitive sealed bidding is either not practical or not advantageous to the government, contracts may be awarded by competitive negotiation.

(b) A request for proposals shall be issued and shall include:

- (1) request for proposal number;
- (2) date of issuance;
- (3) name, address, and location of issuing office, including address for submission of proposals;
- (4) closing date [for] submission of proposals;
- (5) description of required goods or services to be procured;
- (6) evaluation criteria to be used by the government in comparing technical proposals;
- (7) instructions for offerors to use in submitting technical and cost proposals, including number of copies required;
- (8) quantity of goods or services to be provided;
- (9) time, place and method of delivery or performance requirements; and
- (10) any local preference evaluation factors.

(c) Adequate public notice of the request for proposals shall be given in the same manner as provided for in competitive sealed bids.

- (d) The Procurement Officer concerned shall maintain a list of prospective offerors. This list shall be updated by the Procurement Officer on an annual basis.
- (e) Proposals shall be opened and used only by government personnel authorized to participate in the evaluation process until the award. Proposals shall be available for public inspection after contract award.
- (f) Proposals projected to require expenditures in excess of one million dollars (\$1,000,000) shall be evaluated by a minimum of three government or private evaluators in accordance with the evaluation criteria contained in the request for proposals. Each evaluator shall document the results of his or her evaluation. The Procurement Officer concerned shall review the evaluations and select the best proposal. The Procurement Officer's decision shall be included in the contract file.
- (g) Discussions shall be conducted with those responsible offerors whose proposals are determined by the Procurement Officers to have a reasonable chance of being selected for award. These discussions shall be conducted for the purpose of obtaining clarification from the offeror on the proposal and to ensure full understanding of and responsiveness to requirements of the request for proposal. Offerors shall be accorded fair and equal treatment with respect to any opportunity or discussion and revision of proposals and such revisions may be permitted after submission and prior to award for the purpose of obtaining the best final offers. In conducting discussions there shall be no disclosure of any information derived from proposals submitted by competing [offerors].
- (h) Award shall be made to the responsible offeror whose proposal is determined in writing to be most advantageous to the Republic taking into consideration price and other evaluation factors set forth in the request for proposals. No other factors or criteria shall be used in the evaluation, and the contract file shall contain a detailed description of the findings and the basis on which the award is made.

Source

RPPL 3-54 § 26, modified.

Notes

In subsection (b)(4) the bracketed "[for]" reads "or" in the original legislation RPPL 3-54. In subsection (g) the bracketed "[offerors]" reads "of errors" in the original legislation.

§ 627. Sole source procurement.

(a) Contracts which require an expenditure of ten thousand dollars (\$10,000) or less may be awarded for a supply, service, or construction item without competition when the Procurement Officer determines in a substantiated writing that there is only one reliable source of the required supply, service, or construction item.

(b) The written determination shall be included in the contract file and shall contain the following information:

(1) the unique capabilities of the source that are required, why they are required, and the degree of consideration given to other sources;

(2) the facilities or equipment of the source that are required and why they are required; and

(3) whether the work experience of the source on similar efforts will eliminate unnecessary expense for time or duplication of effort required to bring another source up to that level of experience.

(c) Other potential suppliers of the supply, service or construction item may protest the determination of the Procurement Officer. Upon showing that such potential suppliers can qualify as responsible offerors and bidders any future procurement of such items shall be conducted using a method other than single source procurement.

Source

RPPL 3-54 § 27, modified.

§ 628. Emergency procurement.

Notwithstanding any other provision of this chapter, the President acting under Article VIII, section 14 of the Constitution and 34 PNCA § 5305, or other authorizing legislation, may authorize the Procurement Officer concerned to make an emergency procurement when the President determines the existence of a threat to public health, welfare, or safety. An emergency procurement shall be as competitive as practicable under the circumstances. A detailed and substantiated written determination describing the emergency, the extent of competition obtained if any, and the basis for selection of a particular contractor shall be prepared by the Procurement Officer concerned and made part of the contract file.

Source
RPPL 3-54 § 28, modified.

§ 629. Professional services.

(a) The services of accountants, dentists, physicians, lawyers, or other professional services subject to negotiation based upon proposals submitted and/or qualifications shall be procured as provided in this section, except when authorized as a small purchase, emergency procurement, or sole-source procurement. This section and chapter shall not apply to personnel contracts providing for the employment of professionals in normal government positions.

(b) It is the policy of the Republic to publicly announce all requirements for professional services and negotiate contracts on the basis of demonstrated competence and qualifications at the fair and reasonable price. The Procurement Officers shall maintain files of current statements of qualifications of professional firms. Persons engaged in providing professional services may submit statements of qualifications and expressions of interests in providing such types of services. These statements will be retained by the Procurement Officers for a period of one (1) year, after which time the person should file a new statement.

(c) Adequate notice of the need for such services, a minimum of fifteen (15) days, shall be given by the Procurement Officer concerned or his designee through a request for proposals. The request for proposals shall describe the services required, list the type of information and data required of each offeror, and state the relative importance of particular qualifications. The notice shall be given in the same manner as competitive sealed bids.

(d) The Procurement Officer concerned or his designee may conduct discussion with any offeror who has submitted a proposal to determine such offeror's qualification for further consideration. In all cases involving employment of professionals, the Procurement Officer shall consult with the using agency and with members of the same profession who are employed by the government. The decision to hire a particular professional shall be rendered by agreement between the Procurement Officer and the using agency. Discussions shall not disclose any information derived from proposals submitted by other offerors.

Source
RPPL 3-54 § 29, modified.

§ 630. Cancellation of invitation for bids or request for proposals.

(a) An invitation for bids or request for proposal may be cancelled and any bids or proposals may be rejected when such action is determined in writing by the Procurement Officer concerned to be in the best interest of the government based upon:

- (1) inadequate specifications contained in solicitation; or
- (2) the goods or services being procured are no longer required; or
- (3) a change in specifications; or
- (4) all offers received being at unreasonable prices; or
- (5) bids or proposals received indicating that the needs of the government can be met by a less expensive good or service;
- (6) collusive bids; or
- (7) all bids or proposals exceeding the funds available.

(b) A written determination of the reasons for the cancellation or rejection will be included in the contract file.

Source
RPPL 3-54 § 30, modified.

§ 631. Responsibility of bidders and offerors.

(a) Awards shall be made only to responsible bidders or offerors. Responsible bidders or offerors shall:

- (1) have adequate financial resources to perform the contract or the ability to obtain the finances;
- (2) be able to comply with required delivery or performance schedule;
- (3) have the necessary organization, experience, and skills required to perform the contract or have ability to obtain them;

- (4) have the necessary production, construction, and technical equipment facilities or the ability to obtain them; and
- (5) be qualified and eligible to receive the award under applicable laws and rules.

(b) Prior to award, the Procurement Officer concerned may obtain information from the bidder or offeror necessary to make a determination of responsibility using the factors in subsection (a) above. A written, detailed, and substantiated determination of responsibility shall be made prior to the award of any contract calling for purchases of goods or services exceeding one hundred thousand dollars (\$100,000). The failure of a bidder or offeror to supply information in connection with an inquiry with respect to responsibility may be grounds for determination of non-responsibility. For the purposes of determining responsibility the Procurement Officer may request inspection of the plant or place of business of the bidder or offeror at a reasonable time, and the Procurement Officer may request the bidder or offeror to submit documents or other records for inspection. Failure to comply promptly with such requests shall be grounds for a determination that the bidder or offeror has failed to meet the standards of responsibility.

Source
RPPL 3-54 § 31, modified.

632. Prequalifications of offerors and bidders.

Prospective suppliers may be prequalified for particular types of supplies, services, and construction. Solicitation of mailing lists of potential contractors shall include but shall not be limited to such prequalified suppliers. Prequalification lists shall be maintained for one (1) year. When a bidder or offeror is disqualified for failure to meet the standards of responsibility, a written determination shall be prepared and placed in the contract file.

Source
RPPL 3-54 § 32, modified.

§ 633. Right to inspect place of business.

All invitations to bid and all requests for proposals shall contain the following clause:

“Bidder or Offeror acknowledges that the submission of a bid or offer provides the Republic of Palau the right to inspect at reasonable times the part of the plant or place

of business of a contractor or subcontractor which is related to the performance of any contract awarded by the government. Failure to allow inspection may result in the rejection of the bid or proposal or contract.”

Source

RPPL 3-54 § 33.

§ 634. Reports of anti-competitive practices.

When for any reason collusion or other anti-competitive practices are suspected among any bidders, offerors, or contractors, notice of the relevant facts shall be transmitted to the Attorney General for further investigation and prosecution.

Source

RPPL 3-54 § 34.

§ 635. Retention of procurement record.

(a) All procurement records shall be retained and disposed of in accordance with rules and schedules approved by the Minister of Finance except for emergency and sole source procurements. Records for emergency and sole source procurements shall be maintained for a period of three (3) years.

(b) Each of the records shall contain:

- (1) contractor’s name and address;
- (2) the amount and type of each contract; and
- (3) a listing of the suppliers, services, or construction procured under the contract.

Source

RPPL 3-54 § 35, modified.

Notes

“Minister of Finance” in subsection (a) read “Minister of Administration” which was amended by RPPL 6-26 § 33.

§ 636. Contract file documentation.

An official contract file shall be established for each contract and contain the following information:

- (a) purchase requisition;
- (b) public notice;
- (c) bid or offeror's mailing list;
- (d) invitation for bids or request for proposals;
- (e) bid abstract or record;
- (f) evaluation results in the case of a negotiated procurement;
- (g) notice of award to unsuccessful bidders or offerors;
- (h) contract;
- (i) basis for cost or price; and
- (j) determination (e.g. emergency sole source, or non-responsibility).

Source
RPPL 3-54 § 36, modified.

§ 637. Required contract clauses.

All contracts will include the following types of clauses:

- (a) a prohibition against gratuities and kickbacks as required by section 656 of this chapter;
- (b) clauses providing for:
 - (1) remitted adjustments in prices, if any;
 - (2) time of performance;

- (3) liquidated damages, as appropriate;
 - (4) specified excuses for delay or non-performance;
 - (5) termination of the contract for default; and
 - (6) termination of the contract in whole or in part for the convenience of the government, if applicable;
- (c) right to inspect place of business;
- (d) right to examine, copy, and audit books and records of contractors and subcontractors;
- (e) right to make change orders in construction contracts;
- (f) contractor shall sign contract only after all authorized government officials have signed; and
- (g) contractor records shall be maintained for three (3) years from the date of final payment by the government.

Source
RPPL 3-54 § 37, modified.

§ 638. Duties of the Procurement Officers.

The Procurement Officers or their designees shall be responsible for monitoring the use of specifications for construction, goods, and services to be procured.

Source
RPPL 3-54 § 38.

§ 639. Relationship with using agencies.

The Procurement Officer concerned shall obtain expert advice and assistance from personnel of using agencies in the development of specifications and may delegate in writing to a using agency the authority to prepare and utilize its own specifications.

Source
RPPL 3-54 § 39.

§ 640. Maximum practicable competition.

All specifications shall seek to promote overall economy for the purposes intended and encourage competition in meeting the needs of the Republic and shall not be unduly restrictive.

Source
RPPL 3-54 § 40.

§ 641. Content of specifications.

(a) Specifications shall, whenever practicable, present a description of the qualitative nature of the construction material, goods, or service being procured and set forth, when necessary, the essential characteristics to which it must conform in order to satisfy its intended use. Specifications normally do not specify a particular product peculiar to one manufacturer unless the particular product is essential to the requirements of the government and not available from other companies.

(b) The requirements of sections 638 through 641 shall apply to all specifications, including those prepared by architects, engineers, and land surveying services for public contracts.

Source
RPPL 3-54 § 41, modified.

§ 642. Application.

Sections 643 through 647 of this chapter shall apply to the procurement of construction services.

Source
RPPL 3-54 § 42, modified.

§ 643. Invitation for bids.

(a) The Procurement Officers shall determine the fee (not less than fifty dollars (\$50.00)) required for potential bidders to obtain an invitation for bids.

- (b) The invitation for bids shall be prepared in accordance with section 615 of this chapter. In addition, the following items shall be included in the invitation.
- (1) Notice to Bidders - general information about the project;
 - (2) Instruction to Bidders - information concerning bid preparation, bid security special banking requirements, and forms and certifications that must be submitted with the bid;
 - (3) General - standard contract clauses governing performance of work;
 - (4) Special Conditions - special contract clauses resulting from the nature of the work to be performed; and
 - (5) Technical specification - specifications governing the technical aspects of the work to be performed.

Source

RPPL 3-54 § 43, modified.

§ 644. Bid security.

- (a) Bid security shall be required for all competitive sealed bidding construction contracts when the Procurement Officer concerned estimates that the price exceeds fifty thousand dollars (\$50,000). The bid security shall be in the form of a bid bond, cash, certified check, cashier's check, or other form acceptable to the government. Nothing herein prevents the Procurement Officer concerned from requiring bid security for contracts under fifty thousand dollars (\$50,000) when it would be in the best interest of the government.
- (b) Bid security shall be an amount equal to at least ten percent (10%) of the amount of the bid.
- (c) Once the bids are opened, they shall be irrevocable for the period specified in the invitation for bids, except as provided for in section 623 of this chapter. If a bidder is permitted to withdraw its bid before award, no action shall be taken against the bidder or the bid security. Bidders allowed to cancel awards under section 623 shall forfeit their bid security.

(d) Except as otherwise provided by this chapter, bid security shall be reimbursed within one hundred twenty (120) days after the opening of the bids, if such a bid did not receive the award.

(e) Insofar as the provisions of this law are inconsistent with grant terms imposed by foreign donors, the Minister of Finance shall be authorized to suspend the application of those provisions of this law which are inconsistent with the grant terms provided that the Minister of Finance shall exercise this authority only upon written notice to the President, the Presiding Officers of the Olbiil Era Kelulau, and the Public Auditor addressing the nature of any such inconsistency.

Source

RPPL 3-54 § 44, modified.

Notes

“Minister of Finance” in subsection (e) read “Minister of Administration” which was amended by RPPL 6-26 § 33.

§ 645. Contract performance and payment bonds.

(a) When a construction contract is awarded in excess of one hundred thousand dollars (\$100,000), the following bonds or security shall be delivered to the government and shall be binding on the parties upon execution of the contract:

(1) a performance bond acceptable to the government, executed by a surety acceptable to the government in an amount equal to one hundred percent (100%) of the price specified in the contract; and

(2) a payment bond acceptable to the government, executed by a surety acceptable to the government, for the protection of all persons supplying labor and material to the contractor or its subcontractors for performance of the work specified in the contract. The bond shall be an amount equal to one hundred percent (100%) of the price specified in the contract.

(b) The Procurement Officer may reduce or waive the performance and payment bond requirements for any construction contract awarded in excess of one hundred thousand dollars (\$100,000) but not more than two hundred fifty thousand dollars (\$250,000) if it is determined to be in the best interest of the government to do so because of lack of qualified bidders meeting the bonding requirements.

(c) The Procurement Officer may reduce the amount of the performance and payment

bonds for any construction contracts awarded in excess of two hundred fifty thousand dollars (\$250,000) provided he determines that the lesser amount is sufficient to protect the government's interest. The reduced amount shall not be below fifty percent (50%) of the price specified in the contract for either the performance or payment bonds.

Source

RPPL 3-54 § 45, as amended by RPPL 4-1 § 15(c), modified.

Notes

The \$100,000 limit in § 645(a) applies to contracts awarded after October 1, 1992. The prior limit was \$50,000.

§ 646. Suits on payment bonds.

Notwithstanding any other provision of law:

(a) Every person who has furnished labor or material to a contractor or its subcontractors for the work provided in the contract in respect of which a payment bond is furnished under section 645, and who has not been paid in full therefore before the expiration of ninety (90) days after the day on which the last of the labor was performed by such person or material was furnished or supplied by such person for which such claim is made, shall have the right to sue on the payment bond for the amount, or the balance thereof, unpaid at the time of institution of such suit and to prosecute said action for the sum or sums justly due such person; provided, however that any person having a direct contractual relationship with a subcontractor of the contractor but no contractual relationship express or implied with the contractor furnishing said payment bond, shall have a right of action upon the payment bond upon giving written notice to the contractor within ninety (90) days from the date on which such person did or performed the last of the labor or furnished or supplied the last of the material upon which such claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the material was furnished or supplied or for whom the labor was done or performed. Such notice shall be personally served or served by mailing the same by registered or certified mail, postage prepaid in an envelope addressed to the contractor at any place the contractor maintains an office or conducts its business.

(b) Every suit instituted upon a payment bond shall be brought in the Supreme Court of the Republic; but no such suit shall be commenced after the expiration of one (1) year after the day on which the last of the labor was performed or material was supplied by the person bringing suit. The obligee named in the bond need not be joined as a party in any such suit.

Source

RPPL 3-54 § 46, modified.

§ 647. Fiscal responsibility.

Every contract modification, change order, or contract price adjustment under a construction contract shall be subject to prior written certification by the Procurement Officer concerned as to the effect of the contract modification, change order or adjustment in contract price on the total project budget or the total contract budget. In the event that the certification discloses a resulting increase in the total project budget and/or the total contract budget, such contract modification, change order, or adjustment in contract price shall not be made unless sufficient funds are available therefore, or the scope of the project or contract is adjusted so as to permit the degree of completion that is feasible within the total project budget and/or total contract budget as it existed prior to the contract modification, change order or adjustment in contract price under consideration; provided, however, that with respect to the validity, as to the contractor, of any executed contract modification, change order or adjustment in contract price which the contractor has reasonably relied upon, it shall be presumed that there has been compliance with the provisions of this subsection.

Source

RPPL 3-54 § 47.

§ 648. Architect-engineer and land surveying services.

(a) Architect-engineer and land surveying services shall be procured as provided for in this section except when authorized as a small purchase, emergency, or sole source procurement.

(b) It is the policy of the Republic to publicly announce all requirements for architect-engineer and land surveying services and to negotiate contracts based on demonstrated competence and qualifications for the type of services required at a fair and reasonable price.

(c) The Procurement Officers or other designated officials shall maintain files of current statements of qualifications of architect-engineer and land surveying businesses. These lists will be updated on annual basis by the Procurement Officers. After public announcement of a requirement for these services, the Procurement Officers or designated officials shall evaluate current statements of qualifications and performance on file together with those that may be submitted by other businesses in response to the public announcement. Discussions shall be conducted with no fewer than three of the businesses regarding contract requirements and technical approach, and a selection made therefrom, in order of preference of no less than three businesses determined to be

the best qualified to perform the service.

(d) The Procurement Officer concerned or his designee shall negotiate a contract with the best qualified architect-engineer or land surveying service at a price determined to be fair and reasonable to the government. In this negotiation process, the Procurement Officer shall take into account the value, the scope, the complexity, and nature of the services to be provided. If the Procurement Officer cannot negotiate a fair and reasonable price with the best qualified firm, negotiations shall be terminated and negotiations shall be undertaken with the second-highest qualified firm. Failing accord with the second firm the Procurement Officer shall terminate negotiations and shall undertake negotiations with the third most qualified firm. Should the Procurement Officers be unable to negotiate a fair and reasonable price with any of the three best qualified firms, the Procurement Officers shall select additional firms in order of their competence and qualifications and shall continue negotiations in accordance with this section until an agreement is reached.

Source

RPPL 3-54 § 48, modified.

§ 649. Authority to resolve protested solicitations and award.

(a) Any actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation or award of a contract may protest to the Procurement Officer concerned. The protest shall be submitted in writing within fourteen (14) days after such aggrieved person knows or should have known of the facts giving rise thereto.

(b) The Procurement Officers shall have the authority, prior to the commencement of an action in the Supreme Court of the Republic concerning the controversy, to settle and resolve a protest of an aggrieved bidder, offeror, or contractor, actual or prospective concerning the solicitation or award of a contract. The Procurement Officer will acknowledge receipt of protests within five (5) working days after receipt and shall render a final decision within thirty (30) days after receipt of the protest.

(c) If the protest is not resolved by mutual agreement, the Procurement Officer concerned shall promptly issue a decision in writing. This decision shall state in detail the reasons for the actions taken.

(d) A copy of the decision under subsection (c) of this section shall be mailed or otherwise furnished immediately to the protestor and any other party intervening within

thirty (30) days after receipt of the protest.

(e) A decision under subsection (c) of this section shall be final and conclusive, unless fraudulent, or unless any person adversely affected by the decision seeks review of the decision by the Supreme Court of the Republic within six (6) months after notice of the decision is served.

(f) In the event of a timely protest under subsection (a) of this section the government shall not proceed further with the solicitation or with the award of the contract until the Procurement Officer concerned makes a written determination that the award of the contract without delay is necessary to protect substantial interests of the government.

Source

RPPL 3-54 § 49, modified.

§ 650. Remedies.

(a) If, prior to an award, the Procurement Officer concerned determines that a solicitation or award of contract is in violation of law or these regulations, then the solicitation or proposed award shall be cancelled or be revised to comply with law or regulation.

(b) If after an award, the Procurement Officer concerned determines that a solicitation or proposed award of a contract is in violation of law or regulation, then:

(1) if the person awarded the contract has not acted fraudulently or in bad faith:

(A) the contract may be ratified and affirmed provided it is determined by the Procurement Officer in a detailed and substantiated writing that doing so is in the best interests of the government; or

(B) the contract may be terminated and the person awarded the contract shall be compensated for the actual expenses reasonably incurred under the contract, plus a reasonable profit prior to termination.

(2) if the person awarded the contract has acted fraudulently or in bad faith:

(A) the contract shall be declared null and void; or

(B) the contract may be ratified and affirmed if such action is in the best interests of the government without prejudice to the government's rights to such damages as may be appropriate.

Source
RPPL 3-54 § 50, modified.

§ 651. Authority to resolve contract dispute.

(a) This section applies to controversies between the government and a contractor and which arise under, or by virtue of, a contract between them. This includes, without limitation, controversies based upon performance, interpretation, or compensation due under said contract.

(b) The Procurement Officer concerned is authorized to settle and resolve a controversy described in subsection (a) above.

(c) Any dispute must be filed in writing with the Procurement Officer concerned within fourteen (14) calendar days after obtaining knowledge of the facts surrounding the dispute. If such a dispute is not resolved by mutual agreement, the Procurement Officer shall issue a decision in writing within ninety (90) days after receipt of notice of dispute. The decision shall include:

- (1) a description of the dispute;
- (2) reference to pertinent contract terms;
- (3) a statement of factual areas of disagreement or agreement; and
- (4) a statement of decision as to the factual areas of disagreement and conclusion of the dispute with any supporting rationale.

(d) A copy of the decision under subsection (c) above shall be mailed or otherwise furnished immediately to the contractor within ninety (90) days after receipt of the notice of dispute.

(e) The decision under subsection (c) of this section shall be final and conclusive unless fraudulent or unless any person adversely affected by the decision seeks review of the decision by the Supreme Court within six (6) months after notice of the decision

is served.

(f) A contractor that has a dispute pending before a Procurement Officer must continue to perform according to the terms of the contract and failure to continue shall be deemed to be material breach of the contract unless the contractor obtains a waiver of this provision from the Procurement Officer.

(g) If the Procurement Officer does not issue the written decision required under subsection (c) of this section within ninety (90) days after written request for a final decision, or within such longer period as may be agreed upon by the parties, then the contractor may proceed as if an adverse decision had been received.

Source
RPPL 3-54 § 51, modified.

§ 652. Definition of terms.

As used in section 653 through 660 of this chapter:

(a) “Confidential information” means any information which is available to an employee only because of the employee’s status as an employee of a government organization and is not a matter of public knowledge or available to the public on request.

(b) “Conspicuously” means written in such special or distinctive form, print, or manner such that a reasonable person affected by the writing would have been aware of it.

(c) “Dependent” means a son, daughter, parties, brother, sister or other person if such person receives from the employee or provides to the employee more than one-half of his financial support.

(d) “Direct or indirect participation” means involvement through decision, approval, disapproval, recommendation, and preparation of any part of a purchase request, influencing the content of any specification or procurement standard, rendering of advice, or participation in any other advisory capacity.

(e) “Financial interest” means any interest, ownership, or involvement in any relationship which would result in the holder receiving a direct or indirect benefit or a future entitlement to receive more than ten thousand dollars (\$10,000) per year or its

equivalent or holding a position in a business such an officer, director, trustee, partner, employee or holding any position of management.

(f) “Gratuity” means a payment, loan, subscription, advance, or deposit of money, services, or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is received.

(g) “Immediate family” means a spouse, parents, child, or sibling and any other person residing in the same household as the employee who is a dependent of the employee or of whom the employee is a dependent.

Source

RPPL 3-54 § 52, terms put into alphabetical order and section modified.

Notes

ROP v. Sakuma, 10 ROP 221, 222 (Tr. Div. 2003).

§ 653. General standards.

Any attempt to realize personal gain through public employment by conduct inconsistent with the proper discharge of the employee’s duties is a breach of a public trust. In order to fulfill this ethical standard, employees must meet the requirements of sections 655 through 660 herein. Any effort to influence any public employee to breach the standards of ethical conduct set forth in these regulations is also a breach of ethical standards.

Source

RPPL 3-54 § 53, modified.

§ 654. Employee conflict of interest.

(a) It is a breach of ethical standards for any employee of a government agency to participate directly or indirectly in a procurement with that government agency if:

(1) the employee or any member of the employee’s immediate family or a dependent of the employee has a financial interest pertaining to the procurement;
or

(2) a business or organization in which the employee, or any member of the employee’s immediate family or dependent has a financial interest pertaining to the procurement; or

(3) any other person, business or organization with whom the employee or any member of the employee's immediate family is negotiating or has an arrangement concerning prospective employment is involved in the procurement.

(b) It is permissible for an employee to have an interest in a procurement with a government agency other than the one at which he is employed provided:

(1) the employee does not participate directly or indirectly in the procurement nor does he attempt to influence actions relative to the award of the procurement;

(2) the employee discloses his ownership interest; and

(3) the procurement is awarded as a result of a competitive sealed bidding or competitive negotiation.

(c) Upon discovery of an actual or potential conflict of interest, an employee shall promptly file with the Procurement Officer concerned a written statement of disqualification and shall withdraw from further participation in the transaction involved. The employee may, at the same time, apply to the Public Auditor for an advisory opinion as to what further participation, if any, the employee may have in the transaction.

Source

RPPL 3-54 § 54.

Notes

In section 654(b)(1), the word "nor" reads "not" in the original legislation.

ROP v. Sakuma, 10 ROP 221, 222, 223 (Tr. Div. 2003).

Renguul v. ASPLA, 8 ROP Intrm. 282, 283, 285 (2001).

§ 655. Employee disclosure requirements.

An employee shall disclose to the Attorney General or State Attorney, if any, and the Procurement Officer, on forms provided by the Procurement Officer all interests, ownership, or involvement with any business which has bid on a government procurement actions recommendation, if the employee was involved in the preparation of any part of a program requirement or a purchase order request, or influenced the content of any specification or procurement standard, rendered advice, or participated in any other advisory capacity in any proceeding or application relative to the procurement of goods, services, or construction.

Source

RPPL 3-54 § 55.

§ 656. Kickbacks and gratuities.

It shall be a breach of ethical standards for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher subcontractor or any person associated therewith as an inducement for the award of a subcontract or order. It shall be a breach of ethical standards for any person to offer, give or agree to give any employee or former employee, or for any employee or former employee to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of a program requirement or a purchase request influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application request for ruling, determination, claim, or controversy, or other particular matter pertaining to any program requirement or a contract or subcontract or to any solicitation or proposal thereof.

Source

RPPL 3-54 § 56, modified.

§ 657. Contract clauses.

The prohibitions against gratuities and kickbacks shall be conspicuously set forth in every contract and solicitations therefor.

Source

RPPL 3-54 § 57.

§ 658. Restrictions on employment of present and former employees.

(a) It shall be a breach of ethical standards for any employee who is participating directly or indirectly in the procurement process to become an employee of a person contracting with the employee's government agency within a year after the award of the contract or the cancellation of invitation for bids.

(b) It shall be a breach of ethical standards for any former employee knowingly to act as a principal or as an agent for any person, other than the government, in connection

with any judicial or other legal proceeding, request for a ruling or other determination, claim, charge, or controversy regarding a procurement action in which the employee participated personally and substantially through decision, approval, disapproval, or recommendation.

(c) It shall be a breach of ethical standards for a business in which an employee has a financial interest knowingly to act as a principal or as an agent for anyone other than the government in connection with any judicial or other legal proceedings, or contract claim, or charge or controversy in which the employee either participates personally and substantially through decision approval, disapproval, recommendation[,] the rendering of advice or otherwise.

Source

RPPL 3-54 § 58, modified.

Notes

The “[,]” in subsection (c) does not appear in the original legislation.

§ 659. Use of confidential information.

It shall be a breach of ethical standards for any employee or former employee to knowingly use confidential information for actual or anticipated personal gain, or the actual or anticipated personal gain of any other person.

Source

RPPL 3-54 § 59.

§ 660. Collusion by bidders.

Collusion or secret agreements between bidders for the purpose of securing an advantage to the bidders against the authorizing agent in the awarding of contracts is prohibited. The Procurement Officers may declare the contract void if he finds sufficient evidence after a contract has been let that the contract was obtained by a bidder or bidders by reason of collusive or secret agreement among the bidders to the disadvantage of the government.

Source

RPPL 3-54 § 60.

§ 661. Penalties.

(a) An employee who violates the provisions of this chapter shall be subject to adverse action as may be appropriate in his particular circumstances. This action includes, but is not limited to, reprimand, suspension without pay, termination of employment, civil injunction, civil suit for damages or return of government money, or criminal prosecution. Procurement Officers may conduct proceedings providing for reprimand and/or suspension without pay for up to sixty (60) days.

(b) A contractor who violates a provision of these rules and regulations shall be subject to a written warning of reprimand, the termination of the contract or suspension from being a contractor or subcontractor under a government contract, in addition to other penalties prescribed by law.

(c) All proceedings under this section must be in accordance with due process requirements including, for employees, the provisions of the Administrative Procedure Act and Title 33 of the Palau National Code Annotated and for non-employees a right to notice and an opportunity for a hearing prior to imposition of any termination, debasement, or suspension from being a contractor or subcontractor under a government contract.

Source

RPPL 3-54 § 61, modified.

§ 662. Recovery of value transferred or received in breach of ethical standards.

(a) The value of anything transferred or received in breach of the ethical standards of this article or regulations promulgated hereunder by an employee or non-employee may be recovered from either the employee and non-employee by the government. Upon showing that a subcontractor made a kickback to a prime contractor or a higher tier subcontractor in connection with the award of a subcontract or order thereunder, it shall be conclusively presumed that the amount thereof was included in the price of the subcontract or order and ultimately borne by the government and such amount will be recoverable hereunder from the recipient. In addition said amount may also be recovered from the subcontractor making such kickbacks. Recovery from one offending party shall not preclude recovery from other offending parties.

(b) Any citizen of the Republic shall have standing to bring his own cause of action to enforce the provisions of sections 655 through 660 of this chapter. Any citizen who

prevails in a suit brought pursuant to this subsection shall be entitled to recover reasonable attorney's fees and court costs associated with the prosecution of such action, including appeals proceedings, as part of the damages awarded.

Source

RPPL 3-54 § 62, modified.

Notes

ROP v. Sakuma, 10 ROP 221, 223 (Tr. Div. 2003).

§ 663. Authority to debar or suspend.

(a) After reasonable notice to the person involved and reasonable opportunity for the person to be heard, the Procurement Officers, after consultation with the Attorney General shall have authority to debar a person for cause from consideration for award of contracts. The debarment shall not be for a period of more than three (3) years. The same Officer, after consultation with the Attorney General, shall have authority to suspend a person from consideration for award of contracts if there is probable cause for debarment. The suspension shall not be for a period exceeding three (3) months.

(b) The causes of debarment or suspension include the following:

(1) conviction for commission of a criminal offense incident to obtaining or attempting to obtain a public or private contract or subcontract or in the performance of such contract or subcontract;

(2) conviction under statutes prohibiting cheating, embezzlement, theft, forgery, bribery, or any other offense indicating a lack of business integrity, or business honesty;

(3) violation of contract provisions as set forth below of a character which is regarded by the Procurement Officers to be so serious as to justify debarment action:

(A) deliberate, and without specific good cause, failure to perform in accordance with the specifications within the time limits provided in the contract; or

(B) a recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contract; provided that failure

to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered a basis for debarment.

(4) any other cause that the Procurement Officer determines to be so serious and compelling as to affect responsibility as a government contractor including debarment by another government entity; and

(5) for violation of any of the ethical standards set forth in this chapter.

(c) The Procurement Officer shall issue a written decision to debar or suspend. The decision shall state the reasons for the action taken.

(d) A copy of the decision shall be mailed or otherwise furnished immediately to the debarred or [suspended] persons.

(e) A decision under subsection (c) of this section shall be final and conclusive.

Source

RPPL 3-54 § 63, modified.

Notes

The bracketed “[suspended]” in subsection (d) read “suspend” in the statute.

**Subchapter II
Project Inspection**

§ 681. CIP Project Inspection.

§ 681. CIP project inspection.

(a) All capital improvement projects funded in whole or in part from funds from the National Treasury shall be inspected by personnel from the CIP office during construction of the project to ensure proper construction and compliance with sound construction practices and with the architectural and engineering plans for the project. Within five (5) days of each inspection, the inspector(s) shall prepare a written report of the results of the inspection, and the report shall be reviewed, approved and certified by an engineer who has an engineering degree from a college or university. If the reviewing engineer determines that the project is not proceeding in a satisfactory manner, the reviewing engineer shall inform the inspector(s) of the reason therefor, and shall direct the

inspector(s) to take such actions as he shall deem necessary to ensure proper construction and compliance with sound construction practice and with the architectural and engineering plans for the project. Each certified inspection report shall be submitted to the Minister of Public Infrastructure, Industries and Commerce and the Olbiil Era Kelulau within five (5) days of certification.

(b) Within ninety (90) days after the effective date of this section, the CIP Office shall adopt regulations which set standards for building government construction projects. Any construction work funded in whole or in part from funds from the National Treasury which falls below those standards shall be stopped by the CIP Office. To stop construction work on a project, the CIP Office shall issue a Stop Work Order to the project manager. No construction may continue on the project until the CIP Office issues a Release Order after it is satisfied that the project conforms to the appropriate standards set by the CIP Office.

Source

RPPL 5-34 § 26, modified.

Notes

“Minister of Public Infrastructure, Industry and Commerce” in subsection (a) read “Minister of Resources and Development” which was amended by RPPL 7-43 § 2, *see* 2 PNCA § 102.

**Chapter 7
Government Property**

- § 701. Legislative findings.
- § 702. Transfer of national government boats.
- § 703. Inventory of all government vehicles.
- § 704. Establishment of national government boat pool.
- § 705. Use of government vehicles and boats.
- § 706. Criminal penalties.
- § 707. Civil penalties.
- § 708. Boats purchased with grant funds.
- § 709. Unofficial use of government boats prohibited.

§ 701. Legislative findings.

The purpose of this chapter is to create a national government boat pool to more efficiently utilize government boats, and to prohibit the use of government vehicles and boats for nongovernmental purposes.

Source

RPPL 5-7 § 61(a), modified.

§ 702. Transfer of national government boats.

Not later than October 30, 1997, the Olbiil Era Kelulau, and all ministries, bureaus, divisions, offices and other agencies of the executive branch, and all boards, commissions, and other national government entities that receive funding from the national government shall:

- (a) transfer title to and possession of all boats under their possession or control to the Division of Transportation; and
- (b) submit to the OEK and the Division of Transportation an inventory of all vehicles under their control.

Patrol boats used by the Bureau of Public Safety and the Bureau of Marine Resources and all boats owned by the Judiciary shall be exempt from this requirement.

Source

RPPL 5-7 § 61(b), modified. Amended by RPPL 5-15 § 28(b).

Notes

“Bureau of Marine Resources” in the last paragraph reads “Bureau of Natural Resources and Development” in RPPL 5-15 § 28(b) which was eliminated by RPPL 6-26 § 17.

§ 703. Inventory of all government vehicles.

Within sixty (60) days after the effective date of this chapter, the Division of Transportation shall compile an inventory of all vehicles and shall submit a written recommendation to the Olbiil Era Kelulau regarding how best to reduce the number of vehicles owned by the national government.

Source

RPPL 5-7 § 61(c), modified.

§ 704. Establishment of national government boat pool.

(a) Upon the transfer of boats required by this chapter, the Division of Transportation shall establish a boat pool consisting of all boats owned by the national government, except those owned by the Judiciary. The Division may establish a central location for all boats, or the Division may allow one or more of the boats to remain where they were located prior to October 1, 1997; provided, that the Division shall take possession of all keys to all of the boats in the boat pool and shall maintain those keys in one central location. The Division shall adopt written guidelines for the use of all boats in the boat pool. These guidelines shall specify the procedures for reserving, using, and returning the boats. Boats may only be used in conformity with the guidelines.

(b) The Division of Transportation, with the assistance of the Bureau of Public Works, shall be responsible for maintaining all boats in the boat pool, and the Chief of the Division shall be responsible for providing adequate security to protect the boats against damage and vandalism.

(c) The Minister of Finance, in cooperation with the Chief of the Division of Transportation, shall sell all surplus boats by sealed bid to the highest bidder; provided that no agency of the national government may purchase a boat from the boat pool. The Minister may purchase insurance for the boats as he deems appropriate.

Source

RPPL 5-7 § 61(d), modified. Subsection (a) amended by RPPL 5-8 § 1(61)(d) and RPPL 5-15 § 28 (d)(1).

Notes

Subsection designations were changed from numbers to letters to conform to Code format. “Minister of Finance” in subsection (c) read “Minister of Administration” which was amended by RPPL 6-26 § 33.

§ 705. Use of government vehicles and boats.

National government vehicles and boats may be used only for transportation related to the performance of official government functions.

Source

RPPL 5-7 § 61(e) as amended by RPPL 5-8 § 1(61)(e).

Notes

Original legislation combined criminal and civil penalties in one section. The Code Commission divided the legislation into the current sections 705, 706 and 707 for clarity. Thus, the term “section” refers to sections 705, 706 and 707.

§ 706. Criminal penalties.

Any person who uses a national government vehicle or boat for any other purpose shall be: guilty of a misdemeanor punishable by a fine of one hundred dollars (\$100) for the first offense, five hundred dollars (\$500) for the second offense, and one thousand dollars (\$1,000) for each subsequent offense; subject to disciplinary action; and personally liable for any damage caused to the vehicle or boat, or to any other property or person, during the time the vehicle or boat was being used in violation of this section. For the purposes of this sections 705, 706 and 707, the term “vehicle” means every device in, upon or by which any person or property may be transported upon a public highway,

Source

RPPL 5-7 § 61(e) as amended by RPPL 5-8 § 1(61)(e), modified.

Notes

Original legislation combined criminal and civil penalties in one section. The Code Commission divided the legislation into the current sections 705, 706 and 707 for clarity. Thus, the term “section” refers to sections 705, 706 and 707.

§ 707. Civil penalties.

The Attorney General may institute a civil action to enforce this chapter. In addition, any person residing in the Republic may bring a civil action to enforce this chapter. If a judgment is entered

against the defendant in an action brought by a resident of the Republic, the plaintiff shall receive fifty percent (50%) of the amount recovered, and shall be entitled to recover from the defendant the plaintiff's costs of litigation, including reasonable attorneys' fees. Before a resident may bring an action pursuant to this chapter, the resident must submit a written request to the Attorney General asking that the Attorney General bring a civil action. If the Attorney General fails to file a complaint within sixty (60) days after receipt of the written request, the resident may thereafter bring a civil action pursuant to this section.

Source

RPPL 5-7 § 1(61)(e) as amended by RPPL 5-8 § 1(61)(e), modified.

Notes

Original legislation combined criminal and civil penalties in one section. The Code Commission divided the legislation into the current sections 705, 706 and 707 for clarity. Thus, the term "section" refers to sections 705, 706 and 707.

§ 708. Boats purchased with grant funds.

If a boat was purchased with grant funds and the terms of the grant restrict the use of the boat to the receiving entity or otherwise restricts the use of the boat, that boat shall nevertheless be transferred to the boat pool; provided, that the grant restrictions shall still be applicable to that boat.

Source

RPPL 5-7 § 61(f).

Notes

Original legislation combined criminal and civil penalties in one section. The Code Commission divided the legislation into the current sections 705, 706 and 707 for clarity. Thus, the term "section" refers to sections 705, 706 and 707. This section was formerly § 705 and became section 708 to conform with Code format.

§ 709. Unofficial use of government boats prohibited.

No boat owned by the national government, a state government, or any of the subdivisions or agencies of the national or a state government may be used for recreational activities, picnicking, or Palauan customary functions. Every person who violates this section shall be subject to a civil fine of ten thousand dollars (\$10,000).

Source

RPPL 6-37 § 34, modified.

Notes

Original legislation combined criminal and civil penalties in one section. The Code Commission divided the legislation into the current sections 705, 706 and 707 for clarity. Thus, the term “section” refers to sections 705, 706 and 707. This section was formerly § 708 and became section 709 to conform with Code format.

Commission Comment

This section was codified as § 709 by the Code Commission because of the subject matter addressed. RPPL 6-37 § 34 was not designated as an amendment to RPPL 5-7, 5-8, or 5-15 which were the laws that were codified in this chapter at the time it was passed.

**Chapter 8
National Petroleum Revenue Management and Sharing Act**

**Subchapter I
Introduction**

- § 801. Name and Constitutional recognition.
- § 802. Application and paramountcy.
- § 803. Interpretation and definitions.

§ 801. Name and Constitutional recognition.

(a) This chapter shall be formally known as “the National Petroleum Revenue Management and Sharing Act” or by its short name “the Petroleum Revenue Act.”

(b) This chapter recognizes the right of the Olbiil Era Kelulau to levy and collect taxes, duties and excises, which shall be uniformly applied throughout the nation, and to implement policies for the promotion of the national economy and the social welfare of the citizens. This chapter further recognizes the rights of:

(1) the National Government to all revenue derived from the exploitation of Petroleum located beyond the areas owned by a State; and

(2) a State Government to revenues derived from the exploitation of Petroleum located in areas owned by such State.

Source

RPPL 8-36 Chapter 1 § 3, modified.

Notes

Numbering section in RPPL 8-36 are re-lettered to comply with the code format. In this chapter the word “Act” in reference to the “Petroleum Revenue Act” is changed to “chapter” to conform with the standard format used in the PNCA.

RPPL 8-36 Section 1 reads: Legislative findings.

(1) The Eighth Olbiil Era Kelulau hereby finds and recognizes the following:

(a) In order to carry out the responsibilities vested in the National Government by Article VI of the Constitution, to “...take positive action to attain these national objectives and implement these national policies: conservation of a beautiful, healthful and resourceful natural environment; promotion of the national economy; protection of the safety and security of persons and property; promotion of the health and social welfare of the citizens...”, it is imperative that it enact a comprehensive petroleum revenue management law prescribing transparent and efficient procedures and manners by which certain revenue

derived from the exploitation of Petroleum is to be paid, equitably shared between state governments and national government, and prudently saved for the benefit of current and future generations alike; and

(b) “Each state shall be entitled to revenues derived from the exploration and exploitation of all living and non-living resources, except highly migratory fish, and fines collected for violation of any law within the marine area extending from the land to twelve (12) nautical miles seaward from the traditional baselines” (Constitution, Article XII, Section 6 (a)); and

(c) The Olbiil Era Kelulau shall have the power to “to levy and collect taxes, duties and excises, which shall be uniformly applied throughout the nation” (Constitution, Article IX, Section 5(1)); and

(d) “The National Government shall be entitled to all revenues derived from the exploration and exploitation of all living and non-living resources, except highly migratory fish, and fines collected for violation of any law beyond the areas owned by the state” (Constitution, Article XII, Section 6 (b)); and

(e) “Subject to the approval of the Olbiil Era Kelulau, the state legislatures shall have the power to borrow money to finance public programs or to settle public debt” (Constitution, Article XI, Section 4); and

(f) “There shall be a National Treasury and a state treasury for each of the states. All revenues derived from taxes or other sources shall be deposited in the appropriate treasury. No funds shall be withdrawn from any treasury except by law.” (Constitution, Article XII, Section 1); and

(g) “The President shall submit an annual unified national budget to the Olbiil Era Kelulau for consideration and approval..... no appropriation bill may be enacted by the Olbiil Era Kelulau until a bill appropriating money for the budget has been enacted.” (Constitution, Article XII, Section 3(a)).

RPPL 8-36 Section 2 reads. Intent and Purpose. It shall be the intent and purpose of this Act to establish a petroleum revenue management and sharing law, incorporating international guidelines and practices in the field, that will promote the prudent management of Petroleum Revenue in a transparent and fiscally sustainable manner, by reducing the impact on the economy of volatile and uncertain petroleum revenues, promoting the equitable sharing of the benefits derived from the exploitation of Petroleum, and accumulating savings to support economic development in preparation for the time when Petroleum will be exhausted.

§ 802. Application and paramountcy.

(a) This chapter applies to the payment, management, use and oversight of Petroleum Revenue derived from Petroleum Operations within the Territory.

(b) Where there is any conflict between the provisions of this chapter and:

(1) any Applicable Law; or

(2) any terms or conditions contained in any lease, license or other arrangement, on the collection, use and management of petroleum revenue, the provisions of this chapter shall prevail.

Source

RPPL 8-36 Chapter 1 § 4, modified.

§ 803. Interpretation and definitions.

(a) All references to this chapter and Applicable Law hereunder, shall include any amendment, variation, modification or replacement as may be made to same from time to time.

(b) In this chapter the following definitions shall apply:

(1) “Act” means this Petroleum Revenue Act enacted by the Olbiil Era Kelulau, together with the regulations hereunder.

(2) “Applicable Law” means this Act, together with any act, regulation, by-law, code, rule or enactment lawfully enacted and promulgated by a Government, and any international convention or treaty to which a Government is a signatory, having application to any matter which may be incidental to a matter dealt with pursuant to this chapter.

(3) “Approved Bank” means any foreign commercial bank, or its branches or agencies, in a foreign location, which is rated Aa3 or higher by the Moody’s rating agency or rated AA– or higher by Standard & Poor’s rating agency.

(4) “Approved Foreign Government” means the national government of any foreign country, which is rated Aa3 or higher by the Moody’s rating agency or rated AA– or higher by Standard & Poor’s rating agency.

(5) “Approved Multilateral Organization” means any reputable international organization whose membership comprises governments and other international organizations, which is rated Aa3 or higher by the Moody’s rating agency or rated AA– or higher by Standard & Poor’s rating agency.

(6) “Budgeted Expenditure” means expenditure included in the National Budget or a State Budget as approved by the Olbiil Era Kelulau and the State legislature for a financial year.

(7) “Budgeted Revenue” means revenue included in the National Budget or State Budget approved by the Olbiil Era Kelulau and the State legislature for a financial year.

(8) “Compact Trust Fund” means the trust fund established pursuant to the

Compact of Free Association between the United States of America and the Republic.

(9) “Code of Ethics” means the Code of Ethics Act, Chapter 6 of Title 33 of the Palau National Code.

(10) “Constitution” means the Constitution of the Republic of Palau ratified on July 9, 1980 and entered into force on January 1, 1981, as amended in the 1993 and the 2008 constitutional referenda.

(11) “Consumer Price Index” means the Consumer Price Index for All Urban Consumers, as published by the Bureau of Labor (United States Department of Labor Statistics) or such other successor agency.

(12) “Custody Bank” means the institution at which the Petroleum Revenue Accounts are opened pursuant to this chapter.

(13) “Distribution Account” means the account established pursuant to subchapter II.

(14) “Dollars” means United States Dollars.

(15) “Government” means the National Government or the State Government as applicable and “Governments” means both of them.

(16) “Gross Petroleum Revenue” means as defined in subchapter II, section 812.

(17) “International Financial Reporting Standards” means the accounting standards issued by the International Accounting Standards Board, and shall include the International Accounting Standards issued by the International Accounting Standards Committee.

(18) “Heritage Fund” means the Heritage Fund of Palau established pursuant to subchapter VII.

(19) “Management Agreement” means the agreement between the Government and the Custody Bank for the custody, management and operation of the Petroleum Revenue Accounts as set forth in subchapter X.

(20) “Ministry” means the Ministry of Finance and Administration, or any successor public authority from time to time designated by the National Government to administer all or part of the activities subject to this chapter.

(21) “Minister” means the Minister of Finance and Administration, or any successor public official from time to time designated by the National Government to administer this chapter.

(22) “MPIIC” means the Ministry of Public Infrastructure, Industries and Commerce, or any successor public authority from time to time designated by the National Government to administer the Petroleum Act.

(23) “National Budget” means the estimate of revenues and expenditures of the National Government comprised within the Unified Budget submitted to the Olbiil Era Kelulau in each financial year for the following financial year as provided for in the Constitution.

(24) “National Government” means the government of the Republic of Palau, acting through its appropriate representatives, officials or ministers, in accordance with, and pursuant to, the Constitution.

(25) “National Petroleum Funds” means the Petroleum Revenue Stabilization Fund and the Petroleum Revenue Heritage Fund.

(26) “National Treasurer” means the Director of the Bureau of National Treasury, or any successor public official from time to time designated by the National Government to perform similar functions and activities

(27) “National Treasury” means the Bureau of National Treasury within the Ministry of Finance, or such successor public authority as may be designated by the National Government to perform similar functions and activities.

(28) “National Treasury Account” means the general account of the National Treasury.

(29) “Net Petroleum Revenue” means Petroleum Revenues less any amount to which a State is entitled pursuant to subchapter III, section 821.

(30) “Person” includes any individual, firm, partnership, joint venture,

corporation, body politic, government agency, estate, trust, or other association, however organized.

(31) “Petroleum” means crude oil, natural gas, and any other naturally occurring hydrocarbon or mixture of such hydrocarbons, whether in a gaseous, liquid or solid state.

(32) “Petroleum Act” means the Petroleum Act, enacted by the Olbiil Era Kelulau, together with the regulations hereunder.

(33) “Petroleum Funds” means the Petroleum Revenue Stabilization Fund, the Petroleum Revenue Heritage Fund, and the State Saving Fund.

(34) “Petroleum Revenue” means Gross Petroleum Revenues less any amount debited to the Distribution Account pursuant to subchapter II, section 813(a)(1).

(35) “Petroleum Revenue Accounts” means the Distribution Account, the Stabilization Fund, the Heritage Fund, and any State Saving Fund.

(36) “Petroleum Operations” means the exploration, development, extraction, production, field separation, transportation, storage, sale or other disposal of Petroleum; but does not include any transportation or other operations beyond the point of export or, in the case of petroleum which is processed within the Territory, beyond the point of entry into a refinery or liquefaction or natural gas treatment plant.

(37) “Production” means the activities involved in the extraction of Petroleum as defined in Applicable Law.

(38) “Public Official” means an Employee, Former Employee or Public Official, as defined pursuant to the Code of Ethics Act, 33 PNC § 601(o).

(39) “Republic” means the Republic of Palau.

(40) “Saving Ratio” means as defined in subchapter V, section 841.

(41) “Stabilization Fund” means the Petroleum Revenue Stabilization Fund of Palau established pursuant to subchapter VI.

(42) “State Budget” means the estimate of revenues and expenditures of a State prepared by the State Government and submitted to the State legislature in each financial year for the following financial year as provided for [in] the Constitution, Article XII, Section 3(b).

(43) “State Government” means the government of each State of the Republic, acting through its appropriate representatives, officials or ministers, in accordance with, and pursuant to, the Constitution.

(44) “State Saving Fund” means a saving fund opened at Custody Bank in accordance with subchapter III, section 822.

(45) “State Territory” means the land territory and internal waters within a State and its territorial seas extending to twelve (12) nautical miles from the lower water mark as set forth in the Constitution.

(46) “State Treasurer” means the treasurer, or any successor public official from time to time designated by the State Government to perform similar functions and activities.

(47) “State Treasury” means the treasury and finance department, or such other public authority as may be designated by the State Government to perform similar functions and activities.

(48) “State Treasury Account” means the general account of a State Treasury;

(49) “Sustainable Benchmark Revenue” means the estimated sustainable income determined in accordance with subchapter IV, section 831(e).

(50) “Territory” means “all terrestrial and oceanic areas over which the Republic of Palau has sovereignty and jurisdiction which”...consist of all the islands, atolls, reefs, and shoals that have traditionally been in the Palauan archipelago, including Ngeruangel Reef and Kayangel Island in the north and Hatohobei Island (Tobi Island) and Hochaihie (Helen’s Reef) in the south and all land areas adjacent and in between, and also consist of the internal waters and archipelagic waters within these land areas, the territorial waters around these land areas and the airspace above these land and water areas extending to a two hundred (200) nautical miles exclusive economic zone, unless otherwise delimited by bilateral agreements or as may be limited or extended under international law.” (Constitution, Article I

(1)(a)), and shall include the Republic of Palau’s continental shelf areas as determined by the United Nations Commission on the Limits of Continental Shelf (UNCLOS) as set forth in Chapter 1, Section 1(a) and Article I, Section 2(a) of the Constitution, and any modification thereof.

(51) “Trust Agreement” means the agreement between the National Government and a State Government for the custody and management of the State Saving Fund.

(52) “Unified Budget” means the estimate of revenues and expenditures of the Republic prepared by the National Government and submitted to the Olbiil Era Kelulau in each financial year for the following financial year as provided for in the Constitution, Article XII, Section 3(a).

Source

RPPL 8-36 Chapter 1 § 5, modified.

Notes

The bracketed [in] in subsection (b)(42) above does not appear in the original legislation.

**Subchapter II
Distribution Account**

- § 811. Establishment of the Distribution Account.
- § 812. Deposits into the Distribution Account.
- § 813. Withdrawals from the Distribution Account.
- § 814. Fees and charges.

§ 811. Establishment of the Distribution Account.

- (a) There is hereby established a Distribution Account, within the national treasury, as a designated account at a Custody Bank to be selected pursuant to this chapter, which shall receive and disburse all Gross Petroleum Revenue due to the Republic and derived from Petroleum Operations in accordance with the provisions of this chapter.
- (b) Petroleum Revenue credited to the Distribution Account shall be transferred to the National Treasury, the State Treasuries, and the Petroleum Funds in accordance with this chapter.
- (c) Except as provided for in this subchapter II, no other use of Gross Petroleum Revenue credited to the Distribution Account shall be permitted.

Source

RPPL 8-36 Chapter 2 § 6, modified.

§ 812. Deposits into the Distribution Account.

- (a) The following Gross Petroleum Revenue shall be credited to the Distribution Account:
 - (1) any cash bonus, rental fee, royalty, petroleum rent tax, and corporate income tax payment and other payment of similar nature made by a person in respect of Petroleum Operations pursuant to the Petroleum Act;
 - (2) any amount received by the Government from the sale of Petroleum taken in kind pursuant to the Petroleum Act, net of commissions and brokerage fees if any;
 - (3) in the event that the National Government, directly or through a public

agency, publicly owned corporation, or similar entity as may be designated by the National Government in accordance with the Petroleum Act, participates in, or carries out, Petroleum Operations within the Territory or otherwise:

(A) any amount received from such direct participation; and

(B) any amount paid by such public agency, publicly owned corporation or entity as dividend, cash bonus, rental fee, royalty, petroleum rent tax, corporate income tax, and other payment of similar nature.

(4) any amount received by the Government relating, directly or indirectly, to Petroleum Operations not covered in section 812(a)(1) to (3), except for decommissioning funds, personal income tax, social [security] contributions, customs duties, penalties, fines, administrative and service fees, and other payments of similar nature provided for in Applicable Law; and

(5) any transfer from the Heritage Fund in accordance with subchapter VII, section 863(b).

(b) All payments into the Distribution Account shall be made by direct transfer by the Persons liable to make such payments.

Source

RPPL 8-36 Chapter 2 § 7, modified.

§ 813. Withdrawals from the Distribution Account.

(a) Withdrawals from the Distribution Account may be made for the following purposes:

(1) any payment listed in subchapter II, section 812(a) received by a Government in excess of a Person's liability to pay; and

(2) any amount to be transferred to the Petroleum Funds and to the accounts of the National Treasury and State Treasuries in accordance with this chapter.

(b) To the extent practicable, the Management Agreement shall provide for the automatic, formula-based execution by the Custody Bank of the transfers from the Distribution Account to the National Treasury Account, the State Treasury Accounts, and the Petroleum Funds as set forth in subchapter X, section 893.

Source

RPPL 8-36 Chapter 2 § 8, modified.

§ 814. Fees and Charges.

Reasonable and customary fees and charges for the establishment, holding and management of the Distribution Account by the Custody Bank set forth in the Management Agreement, shall be charged to the National Treasury Account. The Minister shall include such charges and fees as current expenditure for the National Budget in relevant financial year.

Source

RPPL 8-36 Chapter 2 § 9, modified.

**Subchapter III
Special Rights**

§ 821. Special Rights of the States.

§ 822. State Saving Fund.

§ 821. Special Rights of the States.

(a) A share of Petroleum Revenue credited to the Distribution Account in a financial year and arising from Petroleum Operations carried out in a State Territory, shall be transferred to the State Treasury Account and/or subject to subchapter III, section 822, the State Saving Fund of such State, in accordance with the Management Agreement, as follows:

(1) Petroleum Revenue paid pursuant to any lease, license, agreement or other arrangements issued or entered into by the State following the enactment of this chapter:

(A) 100 percent of any rental fee;

(B) 50 percent of any cash bonus;

(C) fifteen percent (15%) of the Petroleum Revenue remaining after deducting the amounts set forth in paragraphs (A) and (B) above; and

(2) Petroleum Revenue paid pursuant to any lease, license, agreement or other arrangements issued or entered into by the State prior to the enactment of this chapter:

(A) 100 percent of any royalty; and

(B) 100 percent of any rental fee.

(b) To the extent practicable, the Management Agreement shall provide for the automatic, formula-based execution by the Custody Bank of the transfers from the Distribution Account to the State Treasuries Accounts and the State Saving Funds as set forth in subchapter X, section 891.

(c) No appropriation from the Olbiil Era Kelulau or a State legislature shall be required to effect the transfers referred in suchapter III, section 821(a).

Source

RPPL 8-36 Chapter 3 § 10, modified.

§ 822. State Saving Fund.

(a) Subject to subchapter III, section 822(c), following the discovery of commercial quantities of Petroleum in a State Territory but before commencement of Production from any block within the State Territory, the Minister shall instruct the Custody Bank to open a State Saving Fund which shall be held in trust by the National Government for such State.

(b) The objective of the State Saving Fund, whether permanent saving, short-term stabilization, long-term saving, or a combination of the foregoing, and any special rule applicable to its management, shall be defined in a Trust Agreement to be entered into between the National Government and the State Government prior to the opening of the State Saving Fund, which shall include:

(1) the right of the State Government to dispose of any monies standing to the balance of the State Saving Fund;

(2) the manner of proof, deadlines, authorization and certifications of transactions; and

(3) that all gains, interest, losses, customary fees and other charges associated with the establishment, holding, and management of the State Saving Fund shall be credited or debited to the same as they are earned or incurred.

(c) Prior to the commencement of commercial Production from any block within a State Territory, or following the establishment of a State Saving Fund pursuant to subchapter III, section 822(a), the State Government may, by notice in writing to the Minister:

(1) elect to administer all of its entitlement under subchapter III, section 821(a) directly, in which case all monies to which the State is entitled under subchapter III, section 821(a) shall be transferred to the State Treasury Account; or

(2) request that a share of its entitlement under subchapter III, section 821(a) be transferred to the State Treasury Account, and any residual amount be credited to the State Saving Account to be managed in accordance with this chapter and the Trust Agreement.

Source

RPPL 8-36 Chapter 3 § 11, modified.

**Subchapter IV
Annual Planned Withdrawals**

§ 831. Determination of the Annual Planned Withdrawals.

§ 832. Transfers of the National Planned Withdrawals and State Planned Withdrawals to the Treasuries.

§ 831. Determination of the Annual Planned Withdrawals.

(a) The Unified Budget for a financial year shall include an Annual Planned Withdrawal, being the amount to be withdrawn from the Distribution Account, in accordance with subchapter IV, section 831, to finance public expenditure included in the National Budget and State Budgets for the financial year. No transfer shall be made from the Distribution Account with respect to the Annual Planned Withdrawal unless such budgets have been approved by the Olbil Era Kelulau and the relevant State legislatures.

(b) The Annual Planned Withdrawal shall be the lower of:

(1) the sum of the National Planned Withdrawal and the State Planned

Withdrawals determined in accordance with subchapter IV, section 831(c) to (e) below; and

(2) the Sustainable Benchmark Revenue as determined in accordance with subchapter IV, section 831(e).

(c) The National Planned Withdrawal for a financial year shall be the sum of:

(1) all Budgeted Expenditure for the financial year, including block grants, if any, and unpaid Budgeted Expenditure carried forward from the previous financial year; less

(2) all Budgeted Revenue for the financial year that is not Petroleum Revenue, including all transfers from the Compact Trust Fund, grants and interests earned on monies deposited or invested in financial assets held by the National Government, other than the National Petroleum Funds.

(d) A State Planned Withdrawal for a financial year shall be the sum of:

(1) all Budgeted Expenditure for the financial year, and unpaid Budgeted Expenditure carried forward from the previous financial year; less

(2) all Budgeted Revenue for the financial year that is not Petroleum Revenue, including block grants and other transfers from the National Budget, grants, technical assistance, and interest earned on monies deposited or invested in financial assets held by the State Government, including any State Saving Fund.

(e) The Sustainable Benchmark Revenue for a financial year is the maximum amount that can be appropriated from the Petroleum Revenue Accounts in the financial year and leave sufficient resources in the Petroleum Revenue Accounts for an amount of equal real value to be appropriated in all later financial years as determined in accordance with the formula set forth in subsection (a) below.

(1) The estimated sustainable income for a financial year shall be calculated according to the following formula:

$$E_t = r \times V + \sum_{t=0}^n \frac{R_t}{(1+i)^t}$$

where:

(A) E_t is the estimated Sustainable Benchmark Revenue for the financial year.

(B) r is the average long-term nominal rate of return, being the expected annual rate of return on the National Petroleum Funds over the period of calculation of the Sustainable Benchmark Revenue, calculated on the basis of a portfolio composed of assets proportionate to the assets held in the National Petroleum Funds at the date of the calculation, and adjusted for inflation using the variation rates of the official price indexes of the currencies in which the National Petroleum Funds asset portfolios are invested. The long-term real rate of return shall not exceed five percent (5%).

(C) V is the estimated closing balance of the National Petroleum Funds at the end of the previous financial year.

(D) $R_0 .. R_t$ are the budget projections for expected annual Net Petroleum Revenue for the financial year (R_0) and future financial years (R_1 to R_t) as determined in accordance with this Act.

(E) I is the discount rate used to determine the present value of future Net Petroleum Revenues, which shall always be no less than two percentage points higher than the long-term real rate of return.

(F) n is the number of years until no further deposits of Net Petroleum Revenue are expected to be made into the Petroleum Revenue Accounts.

(2) all assumptions upon which the calculations of the Sustainable Benchmark Revenue are made shall be prudent and reflect internationally accepted financial principles and methods. All such assumptions, including any changes in subsequent calculations, shall be clearly identified and documented in the reports to be submitted to the Olbiil Era Kelulau pursuant to this chapter.

(f) Withdrawals from the Distribution Account for the purposes of refund of tax in the event of overpayment shall not be considered as part of the appropriation approved under subchapter IV, section 831(a).

Source

RPPL 8-36 Chapter 4 § 12, modified.

§ 832. Transfers of the National Planned Withdrawals and State Planned Withdrawals to the Treasuries.

- (a) The total amount transferred from the Distribution Account and from the Stabilization Fund in a financial year to:
- (1) the National Treasury Account shall not exceed the amount of the National Planned Withdrawal as approved by the Olbiil Era Kelulau for the financial year; and
 - (2) any State Treasury Account shall not exceed the State Planned Withdrawal for such State as approved by Olbiil Era Kelulau for the financial year.
- (b) No budget approval shall be granted by the Olbiil Era Kelulau and no transfer shall be made from the Distribution Account to the National Treasury Account or the State Treasury Accounts in a financial year unless the Minister has first provided the Olbiil Era Kelulau with:
- (1) a report detailing the calculation of the Sustainable Benchmark Revenue for the financial year for which the transfer is proposed to be made and the Sustainable Benchmark Revenue for the preceding financial year, which shall be prepared or certified by a reputable independent auditor; and
 - (2) where the proposed Annual Planned Transfer for a financial year exceeds the Sustainable Benchmark Revenue for the financial year:
 - (A) a report, prepared or certified by such auditor, estimating the amount by which the Sustainable Benchmark Revenue for subsequent financial years will be reduced as a result of the transfer from the Distribution Account of an amount in excess of the estimated Sustainable Benchmark Revenue for the financial year in which the transfer is proposed to be made; and
 - (B) a detailed explanation of the impact on the economic development and fiscal sustainability of transferring Petroleum Revenue in excess of the estimated Sustainable Benchmark Revenue.
- (c) The National Treasurer shall provide written notification, countersigned by the Minister, to the Custody Bank of the amounts approved by the Olbiil Era Kelulau in

respect of the National Planned Withdrawal and State Planned Withdrawals for the financial year in accordance with the Management Agreement, including any change thereof resulting from amendments to the Budget Law during the financial year.

(d) During the course of a financial year, any Petroleum Revenue standing to the balance of the Distribution Account after all transfers to the State Treasury Accounts, the State Saving Funds (if any), the Stabilization Fund and the Heritage Fund pursuant to subchapters III, VI and VII have been made, shall be transferred as follows:

(1) a share corresponding to the product of such balance and the ratio between each State Planned Withdrawal and the Annual Planned Withdrawal, to the State Treasury Accounts of the relevant State; and

(2) any balance remaining on the Distribution Account after all transfers pursuant to subchapter IV, section 832(d)(1) have been made, to the National Treasury Account.

(e) To the extent practicable, the Management Agreement shall provide for the automatic, formula-based execution by the Custody Bank of the transfers from the Distribution Account to the National Treasury Account and the State Treasuries Accounts referred to in subchapter IV, section 832(d)(1) and (2).

Source

RPPL 8-36 Chapter 4 § 13, modified.

**Subchapter V
Saving Ratio**

§ 841. Determination of the Saving Ratio.

§ 841. Determination of the Saving Ratio.

The Saving Ratio to be used in determining the share of Net Petroleum Revenue to be transferred to the National Petroleum Funds pursuant to this chapter shall be calculated according to the following formula:

$$SavingRatio = \frac{eNPR - APW}{eNPR}$$

where:

(a) *eNPR* is the Petroleum Revenue for a financial year as estimated by the Ministry in accordance with subchapter VIII less the amount corresponding to the Special Rights of the States set forth in subchapter III, section 821; and

(b) *APW* is the Annual Planned Withdrawal authorized by the Olbiil Era Kelulau in the financial year.

Source

RPPL 8-36 Chapter 5 § 14, modified.

Subchapter VI

Petroleum Revenue Stabilization Fund of Palau

- § 851. Establishment of the Stabilization Fund.
- § 852. Deposits into the Stabilization Fund.
- § 853. Withdrawals from the Stabilization Fund.
- § 854. Exceptional Withdrawals.
- § 855. Gains, Interests, Losses, and Charges.

§ 851. Establishment of the Stabilization Fund.

(a) Following the discovery of commercial quantities of Petroleum in the Territory but no later than the commencement of Production from any block within the Territory, the Minister shall establish, at a Custody Bank to be selected pursuant to this chapter, the Petroleum Revenue Stabilization Fund of Palau, to be known as the “Stabilization Fund”.

(b) The objective of the Stabilization Fund shall be to mitigate the impact on or sustain public expenditure capacity during periods of unanticipated shortfalls in Petroleum Revenue whether caused by a fall in Petroleum prices or through adverse changes in production levels.

Source

RPPL 8-36 Chapter 6 § 15, modified.

§ 852. Deposits into the Stabilization Fund.

(a) Subject to subchapter VI, section 852(b), all transfers made to the Stabilization Fund from the Distribution Account in a financial year shall be equal to fifty percent (50%) of the value obtained by multiplying the Saving Ratio by any Net Petroleum Revenue credited to the Distribution Account during the fiscal year.

(b) As soon as the sum of all transfers of the Net Petroleum Revenue made from the Distribution Account to the National Treasury Account and the State Treasury Accounts in a financial year equals the amount of the Annual Planned Withdrawal authorized by the Olbiil Era Kelulau for the financial year, fifty percent (50%) of the value of all subsequent transfers of Net Petroleum Revenue out of the Distribution Account shall be made to the Stabilization Fund.

(c) The share of the savings earmarked for stabilization purposes under subchapter VI, section 852(a) and (b), shall be reviewed every three (3) years by the Minister, and any recommended change shall be approved by the Olbiil Era Kelulau, provided that such share shall not exceed seventy percent (70%).

(d) The amount accumulated in the Stabilization Fund shall not exceed a predetermined threshold as recommended by the Minister and approved by Olbiil Era Kelulau and such threshold shall be reviewed from time to time to reflect macroeconomic conditions. Once the predetermined threshold is attained, subsequent transfers to the Stabilization Fund pursuant to subchapter VI, section 852(a) and (b) shall be limited to amounts necessary to maintain the target threshold, and any excess amount shall be transferred to the Heritage Fund.

(e) To the extent practicable, the Management Agreement shall provide for the automatic, formula-based execution by the Custody Bank of the transfers from the Distribution Account to the Stabilization Fund as set forth in subchapter X, section 893.

(f) At the end of a financial year:

(1) the National Treasurer shall ensure that any amount transferred to the National Treasury Account from the Distribution Account and the Stabilization Fund in the financial year that remains unspent is credited to the Stabilization Fund; and

(2) the State Treasurers shall ensure that any amount transferred to their State

Treasury Accounts from the Distribution Account and the Stabilization Fund that remains unspent is credited to the Stabilization Fund.

(g) All amounts credited to the Stabilization Fund pursuant to subchapter VI, section 852(f) shall become part of the general pool of revenues to be used for stabilization purposes in accordance with this chapter.

(h) At the beginning of a financial year interest earned on the investment portfolio of the Heritage Fund may be credited to the Stabilization Fund in accordance with subchapter VII.

Source

RPPL 8-36 Chapter 6 § 16, modified.

§ 853. Withdrawals from the Stabilization Fund.

(a) Subject to subchapter IV, section 832(a), monies standing to the balance of the Stabilization Fund at any time during a financial year may be transferred to the National Treasury Account and the State Treasury Accounts to respond to short-term treasury management needs. Instructions to the Custody Bank in respect of such transfers shall be signed by the National Treasurer, and countersigned by the Minister or the State Treasurer as appropriate.

(b) Subject to subchapter IV, section 832(c), monies standing to the balance of the Stabilization Fund at any time during a financial year may be transferred to the National Treasury Account and the State Treasury Accounts if, due to a fall in Petroleum prices or production levels, the sum of all transfers of Net Petroleum Revenue to be made during a financial year to the National Treasury Account and to the State Treasury Accounts are expected by the Minister to be lower than the National Planned Withdrawal and the State Planned Withdrawals authorized by the Olbiil Era Kelulau for the financial year.

(c) Notwithstanding the provisions of subchapter VI, section 853(a) and (b), the sum of all withdrawals from the Stabilization Fund made in a financial year pursuant to subchapter VI, section 853 shall in no event be more than forty percent (40%) of the balance standing to the credit of the Stabilization Fund at the beginning of the financial year.

Source

RPPL 8-36 Chapter 6 § 17, modified.

§ 854. Exceptional withdrawals.

(a) In, and only in, exceptional circumstances, may an amount additional to the National Planned Withdrawal be transferred from the Stabilization Fund to the National Treasury Account in a financial year.

(b) For the purposes of subchapter VI, section 854(a), exceptional circumstances means:

(1) devastation caused by man-made environmental disasters, including any accidental spill of Petroleum;

(2) natural disasters, including hurricanes, earthquakes, famines, and droughts;

(c) devastation caused by civil turmoil; and

(d) acts of war which, in the opinion of the National Government, affect a significant proportion of the population or require urgent remedial actions, and for which additional financial support is required, inter alia, through the transfer and application of funds from the Stabilization Fund.

(c) The additional amount referred to in subchapter VI, section 854(a):

(1) may only be transferred pursuant to an Act of the Olbiil Era Kelulau authorizing the transfer of such additional amount for that financial year in accordance with Applicable Law; and

(2) shall in no event exceed eighty percent (80%) of the monies standing to the balance of the Stabilization Fund at that time of such authorization.

(d) The Bill mentioned in subsection (c) above shall not be voted upon on its final reading unless fourteen (14) days have elapsed since the Minister has provided the Olbiil Era Kelulau with a report containing a fully reasoned explanation of the need for the transfer of the additional amount, together with a detailed plan of expenditure. The Olbiil Era Kelulau shall debate the report of the Minister as a matter of urgency and determine the appropriation of the additional amount.

(e) Upon receipt of an original written instruction of the Minister, the National Treasurer may instruct the Custody Bank, in the manner provided in the Management Agreement, immediately to transfer an amount other than the National Planned Withdrawal to the

National Treasury Account. The National Treasurer's written instruction to the Custody Bank shall be countersigned by the Minister and the President of the Republic.

Source

RPPL 8-36 Chapter 6 § 18, modified.

§ 855. Gains, interests, losses, and charges.

All gains, interest, losses, customary and reasonable commissions, fees and other charges associated with the management of the Stabilization Fund and of its portfolio of assets shall be credited or debited to the same as they are earned or incurred.

Source

RPPL 8-36 Chapter 6 § 19, modified.

**Subchapter VII
Petroleum Heritage Fund of Palau**

- § 861. Establishment of the Heritage Fund.
- § 862. Deposits into the Heritage Fund.
- § 863. Withdrawals from the Heritage Fund.
- § 864. Gains, interests, losses, and charges

§ 861. Establishment of the Heritage Fund.

(a) Following the discovery of commercial quantities of petroleum in the territory but no later than the commencement of production from any block within the territory, the Minister shall establish, at a Custody Bank to be selected pursuant to this chapter, the Petroleum Heritage Fund of Palau, to be known as "Heritage Fund".

(b) The object of the Heritage Fund is to provide a permanent endowment to support economic development and the welfare of future generations long after the petroleum has been depleted.

Source

RPPL 8-36 Chapter 7 § 20, modified.

§ 862. Deposits into the Heritage Fund.

- (a) All transfers made to the Heritage Fund from the Distribution Account in a financial year shall be equal to fifty percent (50%) of the value obtained by multiplying the Saving Ratio by any Net Petroleum Revenue credited to the Distribution Account during the fiscal year.
- (b) In the event that the share of savings earmarked for stabilization purposes is amended pursuant to subchapter VI, section 852(c), the share of savings earmarked for the Heritage Fund shall be adjusted accordingly.
- (c) One financial year after the end of Production from any area in the Territory, the balance standing to the credit of the Stabilization Fund shall be transferred to the Heritage Fund, and the Stabilization Fund shall be closed.
- (d) To the extent practicable, the Management Agreement shall provide for the automatic, formula-based execution by the Custody Bank of the transfers from the Distribution Account to the Stabilization Fund as set forth in subchapter X, section 893.

Source

RPPL 8-36 Chapter 7 § 21, modified.

§ 863. Withdrawals from the Heritage Fund.

- (a) There shall be no withdrawal of the principal of the Heritage Fund, which shall be used only for those income-producing investments specifically designated by this chapter as eligible for permanent fund investments.
- (b) All income from the Heritage Fund, less:
 - (1) an amount sufficient to offset the effect of inflation on the principal during that financial year, as determined in accordance with subchapter VII, section 863(d); and
 - (2) losses, commissions, fees and other charges set forth in subchapter VII, section 863(c) shall be deposited into Stabilization Fund, to the extent permitted under subchapter VI, or the Distribution Account if the Stabilization Fund has been closed pursuant to subchapter VII, section 862(c).

(c) The National Treasurer shall compute the income of the Heritage Fund annually as of the last day of the financial year in accordance with generally accepted accounting principles, excluding any unrealized gains or losses.

(d) The National Treasurer shall calculate the amount to transfer to the principal under subchapter VII, section 863(b) by:

- (1) computing the average of the monthly Consumer Price Index for each of the two previous calendar years;
- (2) computing the percentage change between the first and second calendar year average; and
- (3) applying that rate to the value of the principal of the Heritage Fund on the last day of the previous financial year.

Source

RPPL 8-36 Chapter 7 § 22, modified.

§ 864. Gains, interests, losses, and charges.

Subject to subchapter VII, section 863(c), all gains, interest, losses, customary and reasonable commissions, fees and other charges associated with the management of the Heritage Fund and the investment of its portfolio of assets shall be credited or debited to the same as they are earned or incurred.

Source

RPPL 8-36 Chapter 7 § 23, modified.

**Subchapter VIII
Estimated Petroleum Revenue**

§ 871. Calculation of estimated Petroleum Revenue.

§ 871. Calculation of estimated Petroleum Revenue.

(a) The following criteria shall be applied to estimate the value of Petroleum Revenue for the purposes of preparing the Unified Budget, National Budget, and State Budgets, and

calculating the Sustainable Revenue Benchmark:

(1) The expected average price of a barrel of crude oil produced from within the Territory shall be determined with reference to the forecast price for Dated Brent FOB Sullom Voe, or other representative crude oil reference price, as published by an internationally recognized forecasting agency, adjusted by a price differential reflecting the difference in quality between the reference crude oil and the different types of crude oil produced within the Territory, and transport costs. The expected future average price for natural gas shall be the reference future average price adopted in natural gas contracts, or other suitable price marker, adjusted pursuant to the terms set forth for crude oil;

(2) The expected future sales of crude oil and natural gas shall be based solely on the anticipated production from producing fields or fields for which a development plan has been approved in accordance with Applicable Law and a final investment decision has been made by the relevant license holder, and shall be consistent with the production estimates provided by the license holder;

(3) Estimates of operating expenditures, depreciation of capital expenditures, and other expenditure[,], the deduction of which is allowed under Applicable Law for the purpose of determining the tax liability of a taxable entity[,], shall be based on the projections contained in annual budgets and in development plans approved in accordance with Applicable Law; and

(4) All assumptions made shall be prudent and reflect internationally recognized accounting principles and practice.

(b) The estimates referred to in subchapter VIII, section 871(a) shall be jointly prepared by the Ministry and the MPIIC, and shall be clearly explained in the reports to be submitted to the Olbiil Era Kelulau pursuant to this chapter.

Source

RPPL 8-36 § 24, modified.

Notes

The bracketed [,] in subsection (3) does not appear in the original legislation.

Subchapter IX
Investment of the Petroleum Funds

- § 881. The Investment Management Board.
- § 882. Composition of Investment Management Board.
- § 883. Disclosure of interest.
- § 884. Tenure of office.
- § 885. Funding.
- § 886. Permitted investments.
- § 887. Implementation of the Investment Policy and Strategy.

§ 881. The Investment Management Board.

- (a) Prior to the opening of the Petroleum Funds, an Investment Management Board shall be established in accordance with this chapter.
- (b) The Investment Management Board shall be responsible for:
 - (1) defining the Investment Policy and Strategy of the Petroleum Funds in accordance with the Investment Policy set forth in [subsection (c)];
 - (2) setting performance benchmarks for desired returns from, and appropriate risks of, the investments of the Petroleum Funds;
 - (3) defining the investment instructions to be provided to the Custody Bank pursuant to the Management Agreement;
 - (4) evaluating the performance of the Custody Bank;
 - (5) selecting the Custody Bank;
 - (6) establishing the minimum qualification criteria for Fund Managers, selecting Fund Managers, defining their mandate, approving the terms of their appointment, and evaluating their performance; and
 - (7) defining the terms of the Management Agreement which shall, in all material respects, comply with this chapter.

(c) In defining the Investment Policy and Strategy of the Petroleum Funds, the Investment Management Board shall exercise the judgment and care that an institutional investor of ordinary prudence, discretion and intelligence would exercise in the management of large investments entrusted to it, with due regard to the safety of the principal, the optimization of income over the long-term, and the particular objectives of the Petroleum Funds, namely short-term stabilization and permanent saving.

(d) A copy of the Investment Policy and Strategy, in a form readily understandable by the general public, shall be published by the Minister after the approval of the Unified Budget by the Olbiil Era Kelulau.

(e) The Investment Management Board, its members, staff, agents and delegates, shall not be liable for anything done or omitted to be done in good faith and without negligence in the performance of their duties.

Source

RPPL 8-36 Chapter 9 § 25, modified.

Notes

In subsection (b)(1), the bracketed [subsection (c)] replaced the wording "Schedule 3" in the original legislation per Code Commission.

§ 882. Composition of Investment Management Board.

(a) The members of the Investment Management Board shall be:

- (1) the Minister (who shall be the chairperson);
- (2) the National Treasurer (who shall be the chairperson in the absence of the Minister of Finance);
- (3) the Executive Commissioner of the Financial Institutions Commission;
- (4) the Administrator of the Civil Service Pension Plan;
- (5) the Administrator of the Social Security Administration; and
- (6) two members, who may not hold any other Government office, position or employment, either elective or appointive, appointed by the other five members of the Investment Management Board from the public.

- (b) The public members of the Investment Management Board shall be appointed within one month from the constitution of the Investment Management Board, and must have recognized competence and wide experience in investment and management of large portfolios of assets, finance and financial market risk analysis.
- (c) The Minister of Finance and the National Treasurer shall appoint an alternate in writing in the event that they are unavailable for any proceedings of the Investment Management Board.
- (d) A quorum for a meeting of the Investment Management Board shall be five members and must include at least one of the public members. All decisions shall be made by the affirmative vote of a majority of the members present and voting, and if there is an equality of votes, the chairman shall have the casting vote. All such votes shall be in writing.
- (e) The Investment Management Board shall decide its own rules and procedures which shall comply with the provisions of this chapter and shall be publicly disclosed.

Source

RPPL 8-36 Chapter 9 § 26, modified.

§ 883. Disclosure of interest.

- (a) A member of the Investment Management Board who has an interest in a matter for consideration by the Board:
- (1) shall disclose the nature of that interest and such disclosure shall form part of the record of the consideration of the matter; and
 - (2) shall not participate in the deliberations of the Investment Management Board in respect of that matter.
- (b) Failure by a member of the Investment Management Board to disclose an interest in a matter before the Investment Management Board shall result in the termination of such member's appointment.
- (c) In addition to their obligations under this chapter, all members of the Investment Management Board shall be bound by the Code of Ethics and other Applicable Law for members of Government boards or other Government entities of similar nature or purpose.

Source

RPPL 8-36 Chapter 9 § 27, modified

§ 884. Tenure of office.

(a) A public member of the Investment Management Board shall hold office for three (3) years, and may not be appointed again until four (4) years after his term expires.

(b) A member of the Investment Management Board may at any time resign from office by notifying the Minister in writing.

(c) A member who is absent for two (2) consecutive meetings of the Investment Management Board without sufficient cause ceases to be a member of the Investment Management Board and shall be immediately replaced in accordance with this chapter.

(d) The Minister may remove [a] public member of the Investment Management Board from office only for cause. A removal by the Minister shall be in writing and shall state the reason for the removal. A member who is removed by the Minister may not participate in Investment Management Board business and may not be counted for purposes of establishing a quorum after the member receives written notice of removal from the Minister.

(e) A vacancy on the Investment Management Board shall be promptly filled by appointment by the Minister. An appointee to a vacancy shall have recognized competence and wide experience in investment and management of large portfolios of assets, finance and financial market risk analysis. An appointee shall hold office for the balance of the term for which the appointee's predecessor on the Investment Management Board was appointed.

(f) A vacancy on the Investment Management Board shall not impair the authority of a quorum of the Investment Management Board to exercise all the powers and perform all the duties of the Investment Management Board.

Source

RPPL 8-36 Chapter 9 § 28, modified.

Notes

The bracketed [a] in subsection (d) read "the" in the original legislation.

§ 885. Funding.

- (a) The Minister shall estimate the amounts reasonably necessary to meet the budget of the Investment Management Board in a financial year and shall include such estimate as current expenditure in the National Budget for the financial year.
- (b) An honorarium determined by the Minister, and approved by the Olbiil Era Kelulau, shall be paid to the public members of the Investment Management Board.
- (c) The Ministry shall provide the secretariat for the Investment Management Board and any other administrative support or technical staff required by the Investment Management Board for the performance of its functions.

Source

RPPL 8-36 Chapter 9 § 29, modified.

§ 886. Permitted investments.

- (a) All investments of the Petroleum Funds shall comply, in all material respect, with the Investment Policy and Strategy defined by the Investment Management Board and with the following principles:
 - (1) sufficient liquidity to ensure the availability of cash from the Stabilization Fund to respond to stabilization needs;
 - (2) optimizing returns, subject to specified levels of acceptable risk for the investment horizon;
 - (3) transparent, modern and diversified management of the financial assets that are part of the investment portfolio;
 - (4) limiting investment to only low-risk investments for a specified minimum number of initial years of the establishment of the Petroleum Funds; and
 - (5) risk diversification by ensuring that, as practically possible, a variety of different financial assets are held in the Petroleum Funds and that a limit is set for the maximum investment that may be made in any single financial asset.
- (b) The Investment Policy and Strategy shall include, as a minimum:

- (1) the types of permitted investments, including categories of assets and instrument;
- (2) ratings and classifications of permitted investments, based on ratings from no less than two (2) internationally recognized credit rating agencies;
- (3) rules relating to asset diversification including sectors and issuers, and, in the case of fixed-income assets, horizon and maturity;
- (4) the acceptable level of market value fluctuation during the term of the investment;
- (5) the acceptable level of exposure to foreign exchange risk; and
- (6) the rules established to ensure sufficient liquidity for the Annual Planned Withdrawals requirement.

(c) Not less than ninety percent (90%) of the amounts in the Petroleum Funds shall be invested only in qualifying instruments described in subsection (d) below.

(d) Investments shall be held only in the form of the following instruments, known as qualifying instruments:

- (1) cash bank deposits with an Approved Bank;
- (2) negotiable direct obligations issued by an Approved Foreign Government;
- (3) securities issued or fully and directly unconditionally guaranteed or insured by any Approved Foreign Government;
- (4) negotiable direct obligations issued by, and securities issued or fully and directly unconditionally guaranteed or insured by, any Approved Multilateral Organization;
- (5) bankers acceptances, and floating rate certificates of deposit issued by or unconditionally guaranteed or insured by an Approved Bank;
- (6) investments in money market funds, the assets of which shall be limited to securities of the type described above; and

- (7) other financial instruments of similar risk, profitability and liquidity.
- (e) Not more than ten percent (10%) of the amount in the Petroleum Funds may be invested in financial instruments other than qualifying instruments and may only be invested in such non-qualifying financial instruments if such instruments are:
 - (1) not issued domestically;
 - (2) liquid and transparent; and
 - (3) traded in a financial market of the highest regulatory standard.
- (f) The range of qualifying instruments shall be reviewed by the Minister, and approved by the Olbiil Era Kelulau, five (5) years after the establishment of the Petroleum Funds, having regard to the size of the Petroleum Funds and the level of institutional capacity.
- (g) The investments of the Petroleum Funds shall be made in stable and freely convertible currencies.
- (h) The Petroleum Funds may not invest domestically, whether directly or indirectly, any such investment being reserved to the National Development Bank or other similar institution mandated for this purpose.

Source

RPPL 8-36 Chapter 9 § 30, modified.

§ 887. Implementation of the Investment Policy and Strategy.

- (a) The National Treasurer shall implement the Investment Policy and Strategy by written instructions to the Custody Bank given in accordance with the Management Agreement.
- (b) The National Treasurer shall keep the investments of the Petroleum Funds under constant review and shall provide the Investment Management Board with all information in respect of such investments as the Investment Management Board may reasonably request in order to discharge its obligations.

Source

RPPL 8-36 Chapter 9 § 31, modified.

**Subchapter X
Management of the Petroleum Revenue Accounts**

- § 891. Responsibility of the Minister.
- § 892. Appointment of the Custody Bank.
- § 893. Content of the Management Agreement.
- § 894. Appointment of the Fund Managers.

§ 891. Responsibility of the Minister.

(a) The Minister shall have overall responsibility for the management of the Petroleum Revenue Accounts, including:

- (1) appointing the Custody Bank and terminating its appointment;
- (2) appointing the Fund Managers and terminating their appointment;
- (3) opening the Petroleum Revenue Accounts;
- (4) executing the Management Agreement with the Custody Bank;
- (5) executing the Trust Agreement with a State Government;
- (6) ensuring that the calculations of the Petroleum Revenue, National Planned Withdrawal, State Planned Withdrawals, Saving Ratio, and Sustainable Benchmark Revenue are made in accordance with this chapter;
- (7) setting investment constraints beyond those specified in this chapter;
- (8) setting the target return on investment of the Petroleum Funds for the financial year;
- (9) presenting the Investment Policy and Strategy to the Olbiil Era Kelulau at the time of presentation of the Unified Budget;
- (10) preparing a report containing detailed calculations of the Sustainable Revenue Benchmark for a financial year and presenting the same to the Olbiil Era Kelulau at the time of presentation of the Unified Budget;

- (11) ensuring that regular independent audits of the Petroleum Revenue Accounts are carried out in accordance with this chapter;
 - (12) ensuring the preparation of the statements and reports on the operations, management and performance of the Petroleum Revenue Accounts; and
 - (13) ensuring the publication of the audit reports and status reports.
- (b) The Minister shall have the power to delegate to any Public Official, agency, advisor or consultancy, the execution of any of the functions assigned to him under this chapter.

Source

RPPL 8-36 Chapter 10 § 32, modified.

§ 892. Appointment of the Custody Bank.

- (a) The Minister shall ensure that the Petroleum Revenue Accounts are opened and maintained with an internationally recognized financial institution to be referred to as the Custody Bank, its branch or agency, in an internationally recognized financial center, both as recommended by the Investment Management Board.
- (b) The Custody Bank shall be given the highest rating by two (2) internationally recognized risk analysis agencies, and shall maintain such rating throughout the duration of the Management Agreement.
- (c) The Minister shall transfer the Petroleum Revenue Accounts to another institution if:
 - (1) the Custody Bank ceases to be qualified under subchapter X, section 892(a) and (b) or resigns its mandate; or
 - (2) the Minister, with the approval of the Investment Management Board, deems it appropriate and prudent.
- (d) Upon the transfer of the role of Custody Bank from one institution to another, the Minister shall, within seven (7) days of such transfer, provide a full written explanation of the reasons to the Olbiil Era Kelulau and the Office of the Public Auditor, and shall publicize the explanation in accordance with subchapter XIII.

Source

RPPL 8-36 Chapter 10 § 33, modified.

§ 893. Content of the Management Agreement.

- (a) All Petroleum Revenue Accounts shall be managed in accordance with this chapter and the Management Agreement.
- (b) The Minister shall ensure that the procedures set forth in any Management Agreement are transparent, efficient and comply, in all material respects, with this chapter.
- (c) The Management Agreement to be executed by the Minister, on behalf of the Government, and the Custody Bank shall contain provisions related to the following:
 - (1) the payment to the Custody Bank of usual and customary fees and charges for the establishment, holding and management of the Petroleum Revenue Accounts, including related advisory, audit, custodial, investment holding, and similar fees and charges;
 - (2) the manner of proof, the certification and deadlines for all automated transfers from the Distribution Account to the National Treasury Account, all State Treasury Account, the Stabilization Fund, the Heritage Fund, and any State Saving Fund;
 - (3) the manner of proof, the certification, authorizations, and deadlines for all other transactions with and between the Petroleum Revenue Accounts;
 - (4) the authorization for, manner of proof, and certification of investment transactions;
 - (5) the manner of proof and certification of returns on investments of the Stabilization Fund, the Heritage Fund, and any State Saving Fund;
 - (6) the manner of proof and certification of payments of Petroleum Revenues into the Distribution Account made by the persons liable to make such payments;
 - (7) the provision of regular statements of accounts by the Custody Bank; and
 - (8) such other matters as the parties may agree, as may reflect international good practice in the field, be reasonable in the circumstances, and not contrary to this chapter.

(d) The Management Agreement shall provide that:

- (1) the provisions of this chapter shall be an integral part of the agreement;
- (2) transfers from Petroleum Revenue Accounts shall only be effected in accordance with this chapter, and any dealing by the Custody Bank contrary to the foregoing shall be deemed invalid and render the Custody Bank liable for the same if the Custody Bank had knowledge of the circumstances contrary to the provisions of this chapter which make such dealings invalid;
- (3) Custody Bank may only resign its mandate on not less than twelve (12) months written notice to the Minister (or such lesser period as the Minister shall decide);
- (4) the Ministry may terminate the Custody Bank's mandate with or without notice, and that upon termination of such mandate the Custody Bank will execute such transactions as the Minister shall instruct;
- (5) the Custody Bank acknowledges the restrictions provided for in subchapter XI, and that the Custody Bank does not, and shall not, have any claim on the Petroleum Revenue Accounts and the moneys and investments therein, and shall include a similar acknowledgment in regard to all persons holding investments for the Petroleum Funds;
- (6) all deposits and withdrawals to and within the Petroleum Revenue Accounts shall be made by electronic transfer;
- (7) to the extent practicable, transfers from the Distribution Account to the Stabilization Fund, the Heritage Fund, the State Saving Funds, the National Treasury Account and the State Treasuries Accounts pursuant to subchapters III, IV, VI, and VII, shall be formula-based, and shall be made by the Custody Bank daily (or at such other regular interval) at a time to be specified in the Management Agreement, without the need for further instructions by the Government. The balance of the Distribution Account after any such transfer shall be zero;
- (8) save for exceptional withdrawals from the Stabilization Fund pursuant to subchapter VI, section 854, withdrawals from any Petroleum Revenue Account shall require the signature of the National Treasurer (and the State Treasurer if

appropriate) and shall be countersigned by the Minister.

(e) The Management Agreement shall be subject to the approval of the Management Investment Board.

Source

RPPL 8-36 Chapter 10 § 34, modified.

§ 894. Appointment of the Fund Managers.

(a) The Minister may enter into an agreement with one or more internationally recognized Fund Managers with skills, experience, reputation, and credit rating appropriate to their mandate, to advise [him/her] on the implementation of the Investment Strategy and Policy.

(b) Fund Managers shall be selected on the basis of minimum qualification criteria established by the Investment Management Board and following a competitive tender process in accordance with Applicable Law.

(c) A Fund Manager may be given the discretion to make investments of all or part of the Petroleum Funds, in accordance with the Investment Strategy and Policy, and for that purpose the Minister may authorize custody of a portion of the Petroleum Funds to the Fund Manager concerned.

(d) The agreement referred to in subchapter VI, section 854(a) shall be subject to the approval of the Investment Management Board and shall deal with:

(1) the matters set forth in subchapter X, section 893;

(2) the payment to the manager of usual and customary fees and charges by usual and customary means; and

(3) such other matters as may accord with international best industry practice and be reasonable in the circumstances, and in a manner consistent with, and not contrary to, this chapter.

(e) Fund Managers' fees and charges that are not deducted from investment returns shall be included as expenditure in the National Budget.

Source

RPPL 8-36 Chapter 10 § 35, modified.

Notes

The bracketed [him/her] in subsection (a) read “it” in the original legislation.

**Subchapter XI
Prohibitions**

§ 8.101. Encumbrances on the Assets of the Petroleum Revenue Accounts.

§ 8.102. Encumbrances on Petroleum Reserves.

§ 8.101. Encumbrances on the Assets of the Petroleum Revenue Accounts.

(a) The amounts in the Petroleum Revenue Accounts are held in trust for the people of Palau and shall remain the property of the Republic at all times.

(b) No legal or beneficial interest in the Petroleum Revenue Accounts, and present or future Petroleum Revenues payable to such accounts pursuant to this chapter, can be created or exist, in any manner or by any means, including a grant, sale or other disposal, option, mortgage, charge, pledge or lien; and any circumstance, or alleged circumstance, including the act of any person, to the contrary shall be deemed invalid.

(c) The Petroleum Funds, and present or future Petroleum Revenues payable to them under this chapter, cannot be made available or used, for the satisfaction of any sovereign or commercial debt of the Governments, and any circumstance, or alleged circumstance, including the act of any person, to the contrary shall be deemed invalid.

Source

RPPL 8-36 Chapter 11 § 36, modified.

§ 8.102. Encumbrances on Petroleum Reserves.

(a) In order to preserve revenue streams from Petroleum and ensure the objective of this chapter, borrowing against the Petroleum reserves shall be prohibited.

Source

RPPL 8-36 Chapter 11 § 37, modified.

**Subchapter XII
Use of Petroleum Revenue**

§ 8.111. Petroleum Revenues to be Part of the Budget.

§ 8.111. Petroleum Revenues to be Part of the Budget.

(a) Petroleum Revenues, their use and expenditure shall:

- (1) be part of the National Budget and State Budgets;
- (2) be subject to the same budgetary process that is necessary to ensure the efficient allocation and monitoring of any use of public resources;
- (3) promote the equitable distribution of the national wealth among citizens;
- (4) be guided by a long-term development strategy, macro-economic stability, and fiscal sustainability considerations; and
- (5) be aligned with a medium-term expenditure framework as approved by the Olbiil Era Kelulau and the State legislatures in accordance with Applicable Law.

(b) Outside of the National Budget and State Budget allocations, extra budgetary activities and statutory earmarking of Petroleum Revenues for any special considerations shall be prohibited.

(c) The Petroleum Revenue Accounts may only be used in accordance with this chapter.

Except as expressly provided for in this chapter, any appropriation or other disposition of the monies standing to their balances shall not be authorized.

Source

RPPL 8-36 Chapter 12 § 38, modified.

**Subchapter XIII
Accounting and Audit**

§ 8.121. Accounting.

§ 8.122. Internal Audits.

§ 8.123. External Audits.

§ 8.121. Accounting.

(a) The National Treasurer shall maintain accounts and records of all Petroleum Revenue Accounts, in Dollars and in accordance with International Financial and Reporting Standards in force, to reflect their operations and financial condition.

(b) The National Treasurer shall ensure that budgeted Petroleum Revenue and Petroleum Revenue actually credited to the Distribution Account are reconciled at least monthly, and a written report is provided to the Minister and the Governors of each State.

(c) The National Treasurer shall prepare annual accounts of the Petroleum Revenue Accounts for a financial year, which shall be audited in accordance with subchapter XIII, sections 8.122 and 8.123, and presented to Olbiil Era Kelulau within six (6) months after the end of the financial year as set forth in subchapter XIV.

Source

RPPL 8-36 Chapter 13 § 39, modified.

§ 8.122. Internal Audits.

(a) The Minister shall, not later than two (2) months after the end of the financial year, submit to the Public Auditor for audit, statements and relevant documents for the Petroleum Revenue Accounts receipts and withdrawals.

(b) The Public Auditor shall, no later than two (2) months after the submission of the statements referred to in subchapter XIII, section 8.122(a), submit his report on the statements to the Olbiil Era Kelulau.

(c) The Public Auditor shall determine if:

(1) the accounts have been properly kept;

(2) the payments due to the Petroleum Distribution Account, the National Treasury Account, the State Treasuries Accounts, the Stabilization Fund, the Heritage Fund, and any State Saving Fund have been made in accordance with this chapter; and

(3) the Petroleum Funds are managed in accordance with this chapter.

Source

RPPL 8-36 Chapter 13 § 40, modified.

§ 8.123. External Audits.

(a) The Minister shall ensure that the operations of the Petroleum Revenue Accounts are audited annually by a credible independent auditor.

(b) The appointment of the external auditor shall not exceed three (3) years for each contract and is renewable for not more than two (2) contract periods in succession.

(c) The procurement of the services of the independent auditor shall be in accordance with the Public Procurement Act.

Source

RPPL 8-36 Chapter 13 § 41, modified.

**Subchapter XIV
Transparency and Public Access to Information**

§ 8.131. Reports on the Petroleum Revenue Accounts.

§ 8.132. Transparency as a fundamental principle.

§ 8.133. Non-compliance with an obligation to publicize information.

§ 8.134. Penalties.

§ 8.131. Reports on the Petroleum Revenue Accounts.

(a) No later than twenty (20) days after the end of each quarter, the National Treasurer shall submit to the Investment Management Board quarterly management information reports and analyses on the performance and activities of the Petroleum Funds and the operations of the Distribution Account, including transfers to and within accounts, cash

balances and all investments therein (including initial price and current value).

(b) The Investment Management Board shall prepare, in summary form and content readily understandable by the general public, a quarterly statement and explanation of the management reports prepared by the National Treasurer, and the Minister shall ensure the prompt publication of such quarterly statements and management reports in a manner easily accessible to the general public.

(c) No later than six (6) months from the end of a financial year the Minister shall submit an Annual Report on the Petroleum Revenue Accounts to the Olbiil Era Kelulau, prepared in a manner that makes it readily adaptable for dissemination to the public, which shall include the information set out in [subsection (d)].

(d) The Annual Report for the Distribution Account and the Petroleum Funds shall include the following information for the financial year for which the Annual Report is prepared:

(1) financial statements certified by a credible, independent auditor, comprising:

(A) an income and expenditure statement;

(B) a balance sheet, including a note listing the qualifying instruments of the Petroleum Funds, valued at market value;

(C) details of all appropriations and transfers from the Petroleum Funds;

(D) details of all appropriations and transfers from the Distribution Account; and

(E) notes to the financial statements, as appropriate;

(2) a report signed by the Minister describing the activities of the Petroleum Revenue Accounts in the financial year, including all material Investment Policy and Strategy decisions made by the Investment Management Board, and drawing attention to particular issues or matters that may be of concern or interest to the Olbiil Era Kelulau;

(3) a statement by the National Treasurer drawing attention to any accounting issues or practices used in the preparation of the Annual Report that may

materially affect the interpretation of amounts or activities shown within it;

(4) the income derived from the investment of Petroleum Fund assets during the financial year compared with the income of the previous three (3) financial years;

(5) a comparison of the nominal income on the investment of Petroleum Fund assets with the real return after adjusting for inflation;

(6) a comparison of the income derived from the investment of Petroleum Fund assets with the benchmark performance indices established by the Investment Management Board for the financial year;

(7) a comparison of the estimated sustainable income for the financial year with the actual amount of the National Planned Withdrawal and State Planned Withdrawals for the financial year;

(8) in the event of borrowings from a Government, the liabilities shall be reflected in the presentation of Petroleum Funds accounts so as to give a true representation of the past and expected future development of the Governments net financial assets and rate of savings; and

(9) the name of the Custody Bank and a list of Persons holding positions relevant for the operation and performance of the Petroleum Fund, including:

(A) the Minister;

(B) the National Treasurer; and

(C) the members of the Investment Management Board.

(e) The sources of the information described in [subsection (d)], whatever their form, and including all reports and statements, shall be annexed to the Annual Report in unedited form.

Source

RPPL 8-36 Chapter 14 § 42, modified.

Notes

In subsections (c) and (e), the bracketed [subsection (d)] replaced the wording "Schedule 4" in the original legislation per Code Commission.

§ 8.132. Transparency as a fundamental principle.

(a) Subject to subchapter XIV, section 8.132(b), the management of Petroleum Revenue and Petroleum Revenue Accounts shall reflect at all times the highest internationally accepted standards of transparency and good governance for similar activities.

(b) Information or data, the disclosure of which could materially prejudice the performance of the Petroleum Funds, may be declared by the Minister as confidential, subject to the negative resolution of the Olbiil Era Kelulau.

(c) The declaration of confidentiality shall provide a clear explanation of the reasons for treating the information or data as classified, taking into account the principles of transparency and the right of the public as regards access to information.

(d) The declaration of confidentiality shall not limit access to information by the Olbiil Era Kelulau, the State legislatures, the Public Auditor, the Investment Management Board, and any other Public Official who may reasonably need access to such information in order to discharge their duties under Applicable Law.

(e) Any information that is classified at the time when it could have been published, as well as the reason for it being treated as classified, shall be made available to the public upon request three (3) years after the date on which it could have been published unless the reasons for it being classified are still valid.

Source

RPPL 8-36 Chapter 14 § 43, modified.

§ 8.133. Non-compliance with an obligation to publicize information.

A Person who fails to comply with any obligation to publish information provided for in this chapter, or causes another person to fail to comply with, or in any manner hinders or causes another person to hinder the compliance with these obligations, commits an offence and is liable on summary conviction to a fine of up to three hundred thousand dollars (\$300,000).

Source

RPPL 8-36 Chapter 14 § 44, modified.

§ 8.134. Penalties.

(a) A Person who fails to do anything required by this chapter, or unlawfully discloses any document or information pertaining to the operations of the Petroleum Revenue Accounts or uses the information or document for personal benefit or advantage, shall be guilty of a criminal offense and shall be liable upon conviction to: a fine of up to one million dollars (\$1,000,000), to a term of imprisonment for not more than five (5) years, or to both a fine and imprisonment.

(b) A person who instructs, or purports to instruct, or attempts to instruct, the Custody Bank to transfer moneys from the Petroleum Revenue Accounts other than in accordance with this chapter, shall be guilty of a criminal offense and shall be liable upon conviction to: a fine of not more than five hundred thousand dollars (\$500,000), to a term of imprisonment for not more than two (2) years, or to both a fine and imprisonment.

(c) A person who:

(1) willfully hinders or deters any person from the proper exercise of his functions or the performance of his obligations under or in respect of this chapter;

(2) makes, or offers to make, any inducement to any such person to secure an advantage for himself or another, or to influence any such person; or

(3) threatens, or otherwise seeks unlawfully to influence, any such person, commits an offense and is liable on summary conviction to a fine of up to five hundred thousand dollars (\$500,000) and to a term of imprisonment for up to five (5) years or to both.

(d) Penalties provided under this chapter shall not limit a person's liability under Applicable Law.

Source

RPPL 8-36 Chapter 14 § 45, modified.

DIVISION 2
UNIFIED TAX ACT

Chapter 10
General Provisions

- § 1001. Short title.
- § 1002. Definitions.

§ 1001. Short title.

This division shall be known as the "Unified Tax Act."

Source

RPPL 1-63 § 101, modified.

Notes

Palau Marine Indus. Corp., v. ROP, 15 ROP 103, 105 (2008).
Basilus v. ROP, 1 ROP Intrm. 417, 424 (1987).

§ 1002. Definitions.

In this division:

- (a) "Alcoholic Beverage" means any beverage intended for human consumption which contains at least one percent alcohol by volume. Alcoholic beverage includes, but is not limited to, those beverages commonly known as beer, wine, and liquor, but it does not include any substance which is issued pursuant to an order made by a licensed doctor, nurse or health worker for the treatment of an illness.
- (b) "Beer" means any beverage which contains not more than fifteen percent (15%) alcohol by volume and which is made by a process of alcohol fermentation of grains, hops or malts.
- (c) "Bureau" means the Bureau of Revenue, Customs and Taxation in the Ministry of Finance.
- (d) "Business" means any commercial activity carried on by sole proprietors, partnerships, corporations, trusts, joint ventures, or other entity however organized, whether continuous or short term. The Director of the Bureau of Revenue, Customs

and Taxation, however, may exclude by regulation, casual sales from the definitions of “business”. One who qualifies as an employee under this section shall not be considered a business.

(e) “Coin-activated amusement device” means any game or machine which may be activated by the insertion of a coin, or which was originally designed to be so activated, and which is used for amusement purposes.

(f) “Commercial activity” means any form of activity carried on for the purpose, in whole or in part, of economic gain, including, but not limited to manufacturing, processing, hotel keeping, retailing, boardering, selling, transporting, the practice of a profession or trade, the exercise of a skill and the exploitation of personal assets. “Commercial activity” does not include the exercise of one’s status as an employee.

(g) “Deficiency” means the excess of the amount of tax imposed by this division over the sum of the tax payments for the year of the deficiency and refunds due the taxpayer.

(h) “Director” means the Director of the Bureau of Revenue, Customs and Taxation in the Ministry of Finance, or his designee.

(i) “Employee” means any individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee.

(j) “Employer” means any person who pays another in consideration for the rendition of personal services unless the payer is able to demonstrate to the satisfaction of the Director that each such person who was paid for services was an independent contractor. The term “employer” also includes the national and state governments as well as all departments and agencies thereof.

(k) “Farmer” means a person who expends his energies and production efforts in tilling the soil, raising crops and marketing crops, thereby promoting his financial interests.

(l) “Financial institution” means any bank, trust company, savings bank, industrial bank, land bank, savings and loan association, cooperative bank, safe deposit company, private bank, small loan company, sales finance company, or investment company, except the National Development Bank and all credit unions.

(m) “Fishermen” means a person who expends his energies and production efforts in catching, harvesting, and marketing fish or other marine life, thereby promoting his financial interest.

(n) “Gallon” means one hundred twenty-eight (128) fluid ounces.

(o) “Gross revenue” means the total sums of all receipts from sources within the Republic whether in the form of cash or property derived from business, from the exploitation of capital whether in the form of receipts from the disposition of capital assets, interest, dividends, royalties, rentals, fees or otherwise, however, such receipts may be labeled without deduction or offset of any kind or nature. Every taxpayer shall be presumed to be dealing on a cash basis. “Gross revenue” does not include:

- (1) refunds, rebates, and returns;
- (2) monies held in a fiduciary capacity;
- (3) gross receipts from the sale of bonds or other evidence of indebtedness or stocks, or from the sale of land;
- (4) income in the form of wages and salaries; and
- (5) the cost of senior citizen discounts.

(p) “Guest” means an individual who has registered in a hotel and to whom a room has been assigned and who is a transient occupant of a room.

(q) “Hotel” means a building or other structure or group of structures under the same management that is kept, used, maintained, advertised or held out to the public to be a place where sleeping accommodations are furnished for pay to guests, whether with or without meals.

(r) “Hotelkeeper” means any person, firm, corporation, partnership, joint venture, sole proprietor or enterprise devoted to profit in the administration of a hotel.

(s) “Import” means any article of tangible personal property manufactured, grown, produced or created without the Republic and brought to the Republic excluding, however, all personal items carried by transients which will be withdrawn from the Republic when the transient terminates his stay in the Republic or which will be consumed in the Republic by him during his visit.

(t) “Liquor” means and includes all distilled or rectified spirits, alcohol, brandy, cordial (whether the base therefore be wine or liquor), whiskey, rum, gin, and all other distilled alcoholic beverages, including all dilutions and mixtures of one or more of the foregoing.

(u) “Liquid fuel” means and includes all liquids ordinarily, practically, and commercially usable in internal combustion engines for the generation of power and includes liquefied petroleum gases, all distillates and condensates from petroleum, natural gas, coal, coal tar, and vegetable ferments, such distillates and condensates being ordinarily designated as a gasoline, diesel fuel, naphtha, kerosene, benzol, benzine, and alcohols so usable but not restricted to such designation. All aviation fuel which is sold for, used in or used for airplanes is deemed “liquid fuel” whether or not coming within the definition contained in the foregoing sentence.

(v) “Net room charge” means the total sum charged to a guest by a hotel for the use of one or more of its rooms, excluding charges for food, beverages, gratuities and other incidental charges.

(w) “Nonprofit corporation” means as incorporated under Republic law with no part of its income, either directly or indirectly, distributable to its members, directors, or officers and operated exclusively for one or more of the following purposes:

- (1) religious;
- (2) charitable;
- (3) scientific;
- (4) educational;
- (5) prevention of cruelty to the elderly or children;
- (6) prevention of cruelty to animals; or
- (7) to foster national or international sports.

The Director may, in his discretion, determine that a corporation is not a nonprofit corporation for the purpose of this division.

(x) “Person” means any individual, firm, partnership, joint venture, corporation, estate, trust, or other association, however organized.

(y) “Net income” means the gross revenue of such taxpayer received from all sources less the following deductions therefrom:

- (1) salaries, bonuses or other compensation for personal services paid to citizen

employees who are residents of the Republic;

(2) interest or discount paid;

(3) rents paid;

(4) ordinary operating expenses such as supplies, utility services, insurance premiums, other than for life insurance provided that any deductible insurance expenses shall be allowable only to the extent that such a premium is applicable to the tax period against which it is claimed;

(5) loans or obligations charged off the books of the bank as losses unless charged against reserves then in existence;

(6) losses other than loan losses, such as those occasioned by fire or other casualty, theft, embezzlement, and the like, but only to the extent not covered by insurance proceeds collected;

(7) transfer from earnings to reserve for bad debts or other contingencies provided for;

(8) miscellaneous direct expenses such as legal, advertising, auditing, and the like; and

(9) loss on property sold and depreciation on property owned.

(z) “Profession” means the capability to exercise a skill or art including, but not limited to, dentistry, medicine, law, pharmacy, accounting, architecture, psychology, and engineering.

(aa) “Republic” means the Republic of Palau.

(bb) “Retail” means the transfer of property to one who is buying for consumption and not resale.

(cc) “Resident” means every individual domiciled in the Republic, and every other individual whether domiciled in the Republic or not, who resides in the Republic. To “reside” in the Republic means to be in the Republic for other than a temporary or transitory purpose. Every individual who is in the Republic for more than sixty (60) days of the taxable year in the aggregate shall be presumed to be a resident of the Republic.

The Director may, in his discretion, determine that an individual, regardless of the number of days he is in the Republic, is a resident for the purposes of this division depending upon the nature of the individual[']s profession or work in the Republic.

(dd) [Repealed]

(ee) “Taxicab operator” means a person who operates any vehicle, excluding buses or tour vans, upon the public streets or highways for the purpose of transporting passengers upon payment of a certain fare.

(ff) “Tax year” means the calendar year.

(gg) “Wages” or “salaries” means any compensation paid to an employee who is a resident in his capacity as such for the rendition of personal services by him irrespective of whether paid in cash or property and irrespective of whether such compensation is paid evenly, sporadically or in a lump sum. This includes commissions, fees, compensation, emoluments, bonuses, and all other kinds of compensation paid for, credited or attributable to personal services performed by an individual, which services have been performed by such person as an employee. “Wages” and “salaries” shall not include:

(1) any payment on account of sickness or accident disability, or any payment of medical or hospitalization expenses, made by an employer to or on behalf of an employee; provided, that normal wages or salaries paid to an employee for a period of time during which he is excused from work because of sickness shall not be excluded from wages or salaries under this subsection.

(2) remuneration paid for casual or intermittent labor not performed in the ordinary course of the employer's trade or business and for not more than one week in each calendar month.

(3) any payment in the form of scholarship, fellowship, or stipend made to any individual to defray the costs of full-time study at a bona fide educational institution.

(hh) “Wholesaler” means a person making sales at wholesale. The following are sales at wholesale:

(1) sales to a retail merchant, jobber, or other licensed seller for purposes of resale;

(2) sales to a manufacturer of material or commodities which are to be

incorporated by the manufacturer into a finished or saleable product (including the container or package in which the product is contained) during the course of its preservation, manufacture, or processing, including preparation for market, and which will remain in such finished or saleable product form as to be perceptible to the senses, which finished or saleable product is to be sold and not otherwise used by the manufacturer; or

(3) sales to a contractor of material or commodities which are to be incorporated by the contractor into the finished work or project required by the contract and which will remain in such finished work or project form as to be perceptible to the senses.

(ii) “Motor vehicle” means every vehicle which is self propelled and as otherwise defined in Title 42 of the Palau National Code.

Source

RPPL 1-63 § 102, as amended by RPPL 2-8 § 1, modified. Subsections (c), (d) and (h) amended by RPPL 5-7 § 30. Subsection (ii) added by RPPL 5-7 § 30. Subsection (dd) repealed by RPPL 5-7 § 46 effective 1/1/98. Subsection (y) amended by RPPL 6-26 § 27(e). Subsection (o) is amended by RPPL 8-49 § 3, modified.

Notes

See 2 PNCA § 118 concerning the duties and responsibilities of tax, revenue, and custom collection. “Minister of Finance” in subsections (c) & (h) read “Minister of Administration” which has been amended by RPPL 6-26 § 33.

Palau Marine Indus. Corp. v. ROP, 15 ROP 103, 104, 105 (2008).
Palau Marine Industries Corp. v. ROP, 5 ROP Intrm. 333, 334 (Tr. Div. 1995).

Chapter 11
Wages and Salary Tax

- § 1101. Tax on wages and salary.
- § 1102. Withholding by employer; pay over.
- § 1103. Taxes withheld by employer held in trust.
- § 1104. Refunds; contributions to nonprofit corporations.
- § 1105. Retired traditional chiefs and state legislators.

§ 1101. Tax on wages and salary.

There shall be assessed, levied, collected, and paid a tax of six percent (6%) upon the first eight thousand dollars (\$8,000) and twelve percent (12%) upon the amount over the first eight thousand dollars (\$8,000) of all wages and salaries received by every employee.

Source

RPPL 1-63 § 201, modified. Amended by RPPL 6-26 § 27(a)[1101], modified.

§ 1102. Withholding by employer; pay over.

The tax imposed by this chapter shall be collected by the employer by deducting and withholding the tax imposed on any wages and salaries as and when paid or credited to the employee. Every employer required to deduct and withhold the tax imposed shall be liable for the payment to the Director and shall pay over such tax to the Director within thirty (30) days immediately after making disbursement of wages and salaries to the employee. Any employer who violates any of the provisions of this section shall be subject to the penalties prescribed in this division.

- (a) The employer shall, within thirty (30) days following the close of each quarter make a full, true and correct return showing all wages and salaries covered by section 1101 of this chapter paid by him during the preceding quarter, and showing the tax due, withheld and paid over thereon, which return shall be filed with the Director and shall include such other information as shall be required or prescribed by the Director. With respect to salaries and wages paid out of public monies, the Director at his discretion may prescribe special forms for, and different procedures and times for, the filing of such returns by employers paying such compensation, or may, upon such conditions and subject to such rules as he may prescribe from time to time, waive the filing of any such returns. The Director may require more frequent returns and payments as he in his discretion deems advisable. The Director, for good cause, may extend the time for making returns and payments not in excess of forty-five (45) days. Every employer shall keep a payroll

ledger for each employee showing the employee's name, rate of pay, hours worked, gross amount earned, taxes withheld (including social security taxes), net wages received, sales credits for employee's credit purchases, other deductions from his gross amount earned, and such other documentation as the Director may require.

(b) Every employer required to deduct and withhold any tax on the salaries and wages of any employee shall furnish to each such employee on or before January 31, of the succeeding year (or, if his employment is terminated before the close of such calendar year, on the day on which the last payment of compensation is made) a written statement showing the wages or salaries paid by the employer to such employee during the preceding year and the amount of the tax deducted and withheld or paid with respect to such compensation. Such employer shall include with his final return for the calendar year, or shall file on or before January 31, a duplicate copy of each such statement with the Director. The Director may grant to any employer a reasonable extension of time not in excess of sixty (60) days, with respect to any statement required by this subsection to be furnished to any employee or to be filed, and may by regulation provide for the furnishing or filing of statements at such other times and containing such other information as may be required for the administration of this chapter.

(c) Any employer who violates any of the provisions of this section shall be subject to penalties prescribed in this division.

(d) Any employee who receives wages or a salary from an employer that does not have a place of business in the Republic or that does not have an agent in the Republic responsible for withholding and paying over taxes, shall file such returns and pay such taxes as would his employer if he were in the Republic. An individual who is paid or credited wages from the United States or any instrumentality thereof, or from any other foreign nation, shall be under the same duty as an individual who is paid by an employer who does have a place of business within the Republic.

Source

RPPL 1-63 § 202, modified.

§ 1103. Taxes withheld by employer held in trust.

All taxes withheld by any employer under this chapter shall be held in trust by such employer for the government and for payment to the Director in the manner and at the time required by this chapter. Any employer may recover from an employee any amount which he should have withheld but did not withhold from such employee's wages and salaries, if he has been required to pay and has paid the amount to the government out of his own funds pursuant to this section.

Source

RPPL 1-63 § 203.

§ 1104. Refunds; contributions to the nonprofit corporations.

If it is shown upon application by an employee that there has been withheld from his wages or salary any tax not due thereon, then the Director shall refund the amount overpaid within thirty (30) days from the application. If an employee files with the Director a verified receipt indicating money paid for preschool, elementary, secondary or post secondary school tuition for his own children or those under his guardianship, or financial contributions made by such employee to the Palau Community College or nonprofit corporations during the tax year, which all non-profit corporations are subject to regulations and must meet the criteria of eligibility for the individual to receive a financial contributions tax refund then the Director shall refund such amounts within ninety (90) days after the end of the tax year; provided that the amount of such a refund shall not exceed ten percent (10%) of the income taxes paid by that employee in that tax year. Eligibility shall be based upon promulgation of regulations by the Minister of Finance, pursuant to Administrative Procedure Act, 6 PNC Chapter 1.

Source

RPPL 1-63 § 204, modified. Amended by RPPL 4-36 § 6. Amended in its entirety by RPPL 7-13 § 24. Amended by RPPL 7-51 § 5, modified.

§ 1105. Retired traditional chiefs and state legislators.

(a) A retired chief who receives remuneration for performing an obligation arising automatically due to his traditional title of chief shall not be subject to the wages and salary tax of this chapter on any money so earned. This exemption shall not apply to wages and salary received from any voluntarily assumed functions.

(b) A retired person who serves as a state legislator shall not be subject to the wages and salary tax of this chapter on any money earned from his service in a state legislature.

Source

RPPL 5-34 § 32(a).

Chapter 12
Gross Revenue and Net Income Tax

- § 1201. Imposition of tax on retail and wholesale businesses.
- § 1202. Imposition of tax on professions.
- § 1203. Imposition of tax on financial institutions.
- § 1204. Imposition of tax on other businesses.
- § 1205. Quarterly returns.
- § 1206. Refund; business contributions to nonprofit corporations.

§ 1201. Imposition of tax on retail and wholesale businesses.

Every person engaging in the retail or wholesale business shall be assessed and levied and shall pay a tax of four percent (4%) of the gross revenues of the business; provided that the entire amount paid in salaries to citizens who are residents of the Republic shall be subtracted from the gross revenues before assessing the tax under this section.

Source

RPPL 1-63 § 301; as amended by RPPL 2-8 § 2 and RPPL 4-10, § 26. Amended by RPPL 5-7 § 46 effective 1/1/98. Amended by RPPL 6-26 § 27(b).

Notes

Section 471 of the Compact of Free Association between the United States of America and the Republic of Palau reads:

- (a) The Government of the United States and the Government of Palau agree that they have full authority under their respective constitutions to enter into this Compact and its related agreements and to fulfill all of their respective responsibilities in accordance with the terms of this Compact and its related agreements. The Governments pledge that they are so committed.
- (b) The Government of the United States and the Government of Palau shall take all necessary steps, of a general or particular character, to ensure, not later than the effective date of this Compact, that their laws, regulations and administrative procedures are such as to effect the commitments referred to in Section 471(a).
- (c) Without prejudice to the effects of this Compact under international law, this Compact has the force and effect of a statute under the laws of the United States.

Section 142 of the Compact of Free Association reads:

- (a) Any citizen or national of the United States may enter into, lawfully engage in occupations, and reside in Palau, subject to the right of that Government to deny entry to or deport any such citizen or national as an undesirable alien. A citizen or national of the United States may establish habitual

residence or domicile in Palau only in accordance with the laws of Palau. This subsection is without prejudice to the right of the Government of Palau to regulate occupations in Palau in a non-discriminatory manner.

(b) With respect to the subject matter of this Section, the Government of Palau shall accord to citizens and nationals of the United States treatment no less favorable than that accorded to citizens of other countries; any denial of entry to or deportation of a citizen or national of the United States as an undesirable alien must be pursuant to reasonable statutory grounds.

In a section entitled "Listing of Revisions Incorporated into the January 10, 1986 Improved Compacts" on page 506 of a U.S. Government publication entitled "Compact of Free Association - Hearings before the Subcommittee on Public Lands of the Committee on Interior and Insular Affairs - 1986" Serial No. 99-9 Part IV appears the statement: "Section 142(a). A new sentence has been added to the end of this subsection recognizing Palau's right to regulate occupations in a non-discriminatory manner." This same statement is repeated on pages 201, 385, and 440.

§ 1202. Imposition of tax on professions.

Every person engaging in a profession shall be assessed and levied and shall pay a tax of four percent (4%) of the gross revenues of the profession; provided that the entire amount paid in salaries to citizen employees who are residents of the Republic shall be subtracted from the gross revenues before assessing the tax under this section.

Source

RPPL 1-63 § 302; as amended by RPPL 2-8 § 3; and RPPL 4-10 § 26. Amended by RPPL 5-7 § 46 effective 1/1/98. Amended by RPPL 6-26 § 27c), modified.

Notes

See note to 40 PNCA § 1201.

§ 1203. Imposition of tax on financial institutions.

Every person engaging or continuing within the Republic in the business of operating a financial institution shall be assessed and levied and shall pay a tax of four percent (4%) of the net income of the financial institution.

Source

RPPL 1-63 § 303, modified.

§ 1204. Imposition of tax on other businesses.

Every person engaging in any business, trade, activity, or calling not specifically included in

this chapter shall be assessed and levied and shall pay a tax of four percent (4%) of the gross revenues of the business, activity or calling; provided that the entire amount paid in salaries to citizen employees who are residents of the Republic shall be subtracted from the gross revenues before assessing the tax under this section.

Source

RPPL 1-63 § 304; as amended by RPPL 2-8 § 4 and RPPL 4-10 § 26. Amended by RPPL 5-7 § 46 effective 1/1/98. Amended by RPPL 6-26 § 27(d), modified.

Notes

See note to 40 PNCA § 1201.

Palau Marine Industries Corp. v. ROP, 5 ROP Intrm. 333, 333 (Tr. Div. 1995).

§ 1205. Quarterly returns.

Each taxpayer under this chapter shall make and file, on or before the thirtieth day following the close of each quarter, a return to the Director based on its revenues the previous quarter. A remittance covering the full amount of tax liability as evidenced by the quarterly return shall accompany the return.

Source

RPPL 1-63 § 305, as amended by RPPL 2-8 § 5. Amended by RPPL 5-7 § 46 effective 1/1/98.

§ 1206. Business tax refund.

If a business files with the Director a verified receipt indicating financial contributions made by such business to nonprofit corporations, all nonprofit corporations are subject to regulations and must meet the criteria of eligibility for a business donor to receive a tax refund based on regulations promulgated by the Minister of Finance, during the tax year, the Director shall refund such amounts within ninety (90) days after the end of the tax year; provided that the amount of such refund shall not exceed ten percent (10%) of the gross revenue or net income taxes paid by that business in that tax year. Criteria for eligibility of a donor business to receive financial contributions tax refund, shall be based upon promulgation of regulations by the Minister of Finance, pursuant to Administrative Procedure Act, 6 PNC Chapter 1.

Source

RPPL 1-63 § 306, modified. Amended by RPPL 7-13 § 23.

**Chapter 13
Import Tax**

- § 1301. Imposition of import tax.
- § 1302. Refund.
- § 1303. Entry of imports.
- § 1304. Entry documents.
- § 1305. Import tax; general application; interpretation.
- § 1306. Exemptions.

§ 1301. Imposition of import tax.

(a) Every person who imports into the Republic any of the products set forth as follows in items (1), (2), (4), (5), (6), (7), (8), (9), and (10) below, regardless of purpose, and every person who imports any of the other products set forth below into the Republic for commercial purposes, shall be assessed and levied and shall pay taxes thereon at the following rates:

(1) [REPEALED]

(2) [REPEALED]

(3) perfumery, cosmetics and toiletries, including cologne and other toilet waters, articles of perfumery, and all preparations used as applications to the hair and skin, except soap, toothpaste, shampoo and the like, lipsticks, pomades, powders and other toilet preparations not having medicinal properties: twenty five percent (25%) ad valorem;

(4) carbonated soft-drinks: ten cents (\$0.10) per twelve (12) fluid ounces or fractional part thereof;

(5) beer: three cents (\$0.03) per ounce;

(6) liquor: thirty cents (\$0.30) per ounce;

(7) grape or other fruit-based wine; twenty cents (\$0.20) per fluid ounce or metric equivalent, rounded to the next ounce;

(8) wine coolers or cooking wines with a recognized alcohol content: five cents (\$0.05) per fluid ounce or metric equivalent, rounded to the next ounce;

All other alcoholic beverage products, including liquors, sake, and alcoholic products without grape or fruit-base: thirty cents (\$0.30) per fluid ounce or metric equivalent, rounded to the next ounce.

Personal exemption: Persons arriving in the Republic by common carrier may bring in a quantity of alcoholic products, as selected by that person, in an aggregate amount not to exceed two liters as exempt from import taxes.

(9) liquid fuel and liquid petroleum-based products: five cents (\$0.05) per gallon or metric equivalent, or fraction thereof, rounded to the next quart;

(10) vehicles or vehicles chassis: five percent (5%) ad valorem plus two hundred fifty dollars (\$250); Partial vehicles which constitute more than twenty five (25%) of a vehicle's composition, as determined by the Division of Customs, shall be subject to this rate of tax.

(11) bottled water: 25% ad valorem;

(12) all other imported products except foodstuff, medicines, and medical supplies: three percent ad valorem.

(b) The Director shall promulgate regulations implementing this section that include, but are not limited to, the definition of "commercial purposes".

Source

RPPL 1-63 § 401. Amended by RPPL 3-34 § 20, as amended by RPPL 4-10, § 25, modified. Subsection (a) amended by RPPL 4-40 § 28(a). Subsection (a) amended by RPPL 5-8 § 2. Amended by RPPL 6-12 § 28 and RPPL 6-35 § 5. Subsection (a)(11) recodified as subsection (a)(12) and a new subsection (a)(11) was added by RPPL 6-37 § 24. Subsection (a)(11) is amended by RPPL 7-53 § 10, modified. Subsection (a) is amended by RPPL 9-7 § 1, modified. Subsections (a)(1) and (a)(2) are repealed by RPPL 9-15 § 25.

Notes

RPPL 9-7 § 2 reads: Regulations. The Director of the Bureau of Revenue, Customs and Taxation shall, pursuant to the requirements of the Administrative Procedure Act, 6 PNC Chapter 1, promulgate rules and regulations implementing Section 1 of this Act.

Section 3 of RPPL 6-42 reads: "A state government is not a 'person' subject to import taxation as that term is used in 40 PNC 1301(a)."

§ 1302. Refund.

Any person who imports products into the Republic and then exports such products shall be entitled to a refund of any import taxes actually paid on such products. In lieu of a refund, such person may claim and shall then be entitled to an offset of such taxes against any import taxes then due or owing on other imported products. For the purposes of this section, products shall be deemed exported if delivered to the buyer at a point or points within the Republic in a manner whereby such products may not reenter the Republic without customs examination and control.

Source

RPPL 1-63 § 402.

§ 1303. Entry of imports.

Except as otherwise provided, the consignee of imported merchandise shall make entry therefor, either in person or by an agent authorized by him at the office of the Director within 48 hours, exclusive of weekends and holidays after the entry of the importing vessel or plane.

Source

RPPL 1-63 § 403.

§ 1304. Entry documents.

(a) Entry may be made upon presentation to the Director of a nonnegotiable copy of the bill of lading and vendors' invoices covering all merchandise arriving on one vessel and consigned to one consignee. If proper documents are not available within 48 hours after arrival of the merchandise, the estimated import tax shall be paid subject to adjustment when documents arrive.

(b) In addition to the nonnegotiable copy of the bill of lading and vendors' invoices, each importer shall sign an Entry Certificate stating that, under penalty of perjury, that the vendors' invoices are true and correct and that no alterations or changes have been made thereto. The Entry Certificate shall be obtained from the Director and signed at the time of the entry.

(c) All cargo, including ship's stores, carried on the vessel or aircraft entering the Republic must be included on the manifest and related bills of lading. Willful failure to so include such cargo or the presentation of a willfully falsified manifest shall be deemed to be a violation of this chapter.

- (d) Within four hours after arrival, the master of a vessel or aircraft shall deliver to the Director two copies of the manifest and bills of lading and he shall also deliver a true and correct copy of any correction of such manifest and bills of lading filed on entry of his vessel or aircraft.
- (e) Cargo shall be retained at the place of unloading until the import tax has been paid. Any cargo not released shall remain in the physical possession of the terminal operator at the expense of the consignee, but under technical customs custody until entry is made and the import tax paid.
- (f) No carrier, agent, or terminal operator shall release or turn over to a consignee any merchandise being imported into the Republic without prior official written permission of the Director.
- (g) The Director may board and examine any vessel or aircraft bringing merchandise into the Republic when in his opinion it is necessary to carry out the provisions of this chapter.
- (h) The Director may detain, open, and examine any package mailed to an address within the Republic from without the Republic when he deems such acts necessary to carry out the provisions of this chapter, provided that he does not act inconsistently with the provisions of the Palau National Postal Organization Act of Title 32 of this Code.

Source

RPPL 1-63 § 404, modified.

§ 1305. Import tax; general application; interpretation.

A sale, use, manufacture, lease, or rental of goods, commodities, resources, or merchandise is, for purposes of this section, the first sale, use, manufacture, lease, or rental of goods, commodities, resources, or merchandise in the Republic if it is so in fact, or if the goods, commodities, resources, or merchandise were previously exempt from taxation on account of their sale, use, manufacture, lease, or rental within or into a free trade zone and further sale, use, manufacture, lease, or rental occurs within the Republic to or outside a free trade zone, or if the goods, commodities, resources, or merchandise, although previously taxed under this section, have lost their identity on account of manufacturing, remanufacturing, processing, reprocessing, production, assembly, or other activity within a free trade zone.

Source

RPPL 6-40 § 27(a)[1305].

§ 1306. Exemptions.

(a) The following are exempt from the import tax imposed pursuant to §1301:

(1) capital equipment, machinery, spare parts, and other items brought into a free trade zone and used to operate facilities located within the zone(s) pursuant to an exemption granted by the Free Trade Zone Authority, to the extent (amount and duration, which shall not exceed ten (10) years) prescribed by such exemption;

(2) raw materials and other goods, except if they enter the Palau customs territory, brought into a free trade zone for incorporation into products produced or assembled within the free trade zone, to the extent (amount; and duration, which shall not exceed ten (10) years) of an exemption granted by the Free Trade Zone Authority; provided, that this exemption shall not apply to consumable supplies used in the course of ordinary business operations or to construction materials;

(3) domestic articles on which an import tax has previously been paid, re-entering the Palau customs territory from a free trade zone, to the extent of the tax previously paid; provided that no exemption shall be allowed if, in the opinion of the Minister, the domestic articles have lost their identity.

(b) The Minister may prescribe regulations to exempt any other goods, commodities, resources, or merchandise from taxation under this chapter. The Minister may prescribe regulations for the supervision and identification of goods sent into a free trade zone from the customs territory.

Source

RPPL 6-40 § 27(b), modified.

**Chapter 14
Other Taxes**

- § 1401. Hotel room and vessel cabin occupancy tax.
- § 1402. Amusement device tax.
- § 1403. Departure tax.
- § 1404. Road use tax.
- § 1405. Foreign water vessel tax; annual levy.
- § 1406. Fish export tax.
- § 1407. Vessel cabin tax.
- § 1408. Remittance tax.

§ 1401. Hotel room and vessel cabin occupancy tax.

(a) An excise tax of twelve percent (12%) of the net room charge for the room of vessel cabin, or twelve dollars (\$12) per room or per vessel cabin whichever amount is greater is hereby levied and imposed against transient occupants of a room in a hotel, motel, lodging house, or similar facility located in the Republic; in addition, such excise tax shall also apply against any transient occupants of a cabin on ship or other water vessel owned or operated by persons or business entities licensed to do business in the Republic.

(b) The tax imposed pursuant to subsection (a) shall not be assessed on each transient occupant; rather, the tax shall be assessed per room or per cabin, per day, for every day that the room or cabin is occupied by at least one transient. If the room or cabin is rented more than once within a twenty-four hour period, each time of occupancy shall be subject to the tax for such accommodation.

(c) Every hotelkeeper doing business in the Republic, and every owner or operator of a ship or water vessel whose customers are subject to this tax, shall be responsible for collecting the excise tax imposed by this section and shall transmit all of the tax collected pursuant to this section to the Director on or before the fifteenth day of each month. The Director of the Bureau of Revenue and Taxation shall be responsible for the collection of the taxes imposed by this section.

(d) This tax shall apply and be collected by the hotelkeeper when the sale for occupancy is made, regardless of the time when the price is paid or delivered by the transient occupant.

(e) As used in this section “transient occupant” means those persons who occupy a room or cabin in a specific location in the Republic for less than thirty (30) days.

(f) The tax levied under this section shall not be levied against any transient occupant who pays no room charge in connection with an authorized promotional activity on behalf of Palau’s tourism industry, nor shall any hotelkeeper have a legal obligation under this section to collect or pay any excise tax for any room by a transient occupant who pays no room charge in connection with an authorized promotional activity on behalf of Palau’s tourism industry. Palau Visitors Authority shall be responsible for keeping a record of all guests who are authorized under the exception in this subsection and for reporting to the Ministry of Finance, on an annual basis, how many guests stayed in a room or cabin without charge under the exemption contained in this subsection, for how many nights, and in which hotels.

(g) Subject to annual authorization and appropriation, one percent (1%) of the [excise] taxes collected pursuant to this section or one hundred thousand dollars (\$100,000), whichever amount is less, shall be accounted for separately within the National Treasury and earmarked for appropriation to defray the costs associated with the procurement and maintenance of a decompression hyperbaric chamber at the Palau National Hospital.

Source

RPPL 1-63 § 501. Subsection (a) amended by RPPL 7-37 § 20. RPPL 8-33 § 1 amended subsections (a) and (b) in their entirety and adds subsection (c). RPPL 8-40 § 23 repeals section 1401 in its entirety and a new section 1401 is replaced by RPPL 8-40 § 24.

Notes

RPPL 8-40 § 24 added two subsections (e) under section 1401 which have been re-lettered alphabetically by the editor.

In subsection (f), the bracketed “[excise]” replaced the wording “excises” in the original legislation per Code Commission.

§ 1402. Amusement device tax.

Every person who, at any time during the tax year, owns a coin-activated amusement device shall, within thirty (30) days from the effective date of this division or within thirty (30) days of its purchase, and thereafter on an annual basis payable on or before the thirty-first day of January, pay to the Director a tax of five hundred dollars (\$500) for each device that simulates the playing of any card game such as poker or black jack. For all other types of coin-activated amusement devices, a tax of two hundred dollars (\$200) shall be payable on the same basis. All such devices

shall have affixed thereto stamps issued by chapter 16 and subject to the penalties and interest which may be levied under chapter 16 of this division.

Source

RPPL 1-63 § 502, modified.

Notes

Basilus v. ROP, 1 ROP Intrm. 417, 418-19, 422 (1987).

§ 1403. Departure tax.

(a) Every person departing from the Republic shall be levied and assessed and shall pay a tax of twenty dollars (\$20) upon each departure to the Director; provided that children under the age of three, Palauan students traveling to school, medical referral patients and persons accompanying them, and masters, pilots, and other crew members of any vessel or aircraft lawfully operating as a common carrier are exempt from any levy, assessment, and payment under this section; and further provided that Palauan citizens and their spouses shall be levied, assessed, and shall pay fifty percent (50%) of the tax provided in this section.

(b) Effective March 1, 2000, the Division of Customs shall be responsible for collecting the departure tax from persons departing the Republic of Palau. Within sixty (60) days after the effective date of this subsection, the Director of the Bureau of Revenue, Customs and Taxation shall promulgate regulations as may be necessary to implement this subsection, which shall be exempt from the Administrative Procedure Act, 6 PNC Chapter 1.

Source

RPPL 1-63 § 503, as amended by RPPL 3-3 § 4, modified. Subsection (a) amended by RPPL 4-39 § 2. Subsection (c) added by RPPL 4-39 § 2. Section name and subsections (a) and (b) amended by RPPL 5-7 § 28(a). Subsection (c) repealed by RPPL 5-7 § 28(a). Subsection (a) amended by RPPL 5-8 § 5 to exempt Palauan students. The 5-7 amendment was effective 11/1/97, and 5-8 became law on 11/5/97. Subsection (b) is amended by RPPL 5-34 § 28, modified. Subsection (a) amended by RPPL 5-41 § 14. Subsection (b) is amended by RPPL 8-9 § 6.

Commission Comment

Section 5 of RPPL 3-3 states: “Section 5. Conflict; act to govern. The provisions of this Act shall govern where a conflict exists between this Act and any law or regulation in force and effect.”

Notes

See 28 PNCA § 551 concerning appropriation of 70% of traveler’s head tax. RPPL 5-7 § 28(b) reverts all monies in Airport Improvement Fund to the general fund of the National Treasury.

§ 1404. Road use tax.

(a) There is hereby assessed and levied an annual road use tax on all motor vehicles, including vehicles owned by all agencies of the National Government, state governments and state agencies, and public corporations. All agencies and public corporations that may be exempt from taxes under other laws of the Republic shall pay the road use tax. The road use tax shall be payable at the time required for registration of each vehicle to be assessed the road use tax as follows:

- (1) All motor vehicles weighing two thousand (2,000) pounds or less -- fifty dollars (\$50).
- (2) All motor vehicles weighing between two thousand (2,000) and four thousand (4,000) pounds -- seventy five dollars (\$75).
- (3) All motor vehicles weighing between four thousand (4,000) pounds and six thousand (6,000) pounds-- one hundred fifty dollars (\$150). Any person who paid a two hundred dollar (\$200) road use tax in accordance with RPPL No. 9-10 shall receive a credit of fifty dollars (\$50) towards their future road use tax liability.
- (4) All motor vehicles weighing between six thousand (6,000) pounds and eight thousand (8,000) pounds -- three hundred dollars (\$300).
- (5) All motor vehicles weighing between eight thousand (8,000) and ten thousand (10,000) pounds -- five hundred dollars (\$500).
- (6) All motor vehicles weighing over ten thousand (10,000) pounds -- seven hundred fifty dollars (\$750).

(b) Road Maintenance Fund. There shall be established within the National Treasury a separate and distinct account for Road Maintenance. The total amount assessed and levied as an annual road use tax on all motor vehicles shall be deposited into the Road Maintenance Fund as collected to be used solely for the upkeep and maintenance of the Republic of Palau's national and state government roads.

Source

RPPL 1-63 § 504. Amended by RPPL 5-7 § 29, effective 1/1/98. Amended by RPPL 5-34 § 38(a), modified. Amended by RPPL 9-10 § 2, modified. Subsection (a) amended by RPPL 9-18 § 2.

§ 1405. Foreign water vessel tax; annual levy.

There is hereby assessed and levied a tax of fifty dollars (\$50) to be paid for every water vessel entering the territorial waters of the Republic. A water vessel present in the Republic for more than one (1) year is assessed and levied an annual tax of two hundred fifty dollars (\$250) to be paid on or before the thirty-first day of January each year. “Water vessel” for purposes of this section means every description of watercraft owned or operated by a nonresident and used or capable of being used as a means of transportation on water, irrespective of whether the water vessel is a pleasure boat or yacht, or to be leased or sold. Water vessels lawfully operating as common carriers are exempted from levy, assessment and payment of the tax imposed under this section.

Source

RPPL 1-63 § 505, modified.

§ 1406. Fish export tax.

Every person exporting any species of tuna or any species of billfish in any form whatsoever for commercial purposes shall be assessed a tax of thirty-five cents (\$0.35) per kilogram of such tuna or billfish so exported. The Minister of Finance shall promulgate such regulations and inspection procedures as are necessary to ensure the proper collection of this tax. This tax will be effective on January 1, 2008.

Source

RPPL 4-10 § 27. Amended by RPPL 5-8 § 13. Amended by RPPL 7-37 § 21, modified.

§ 1407. [Repealed]

Source

RPPL 4-11 § 17, modified, modified. Repealed by RPPL 8-40 § 23.

§ 1408. Remittance tax.

(a) Definitions. As used in this section, the terms:

- (1) “Remittance” means to give money or monetary value to a remittance company or bank for transmission to a location outside of the Republic of Palau by any and all means, including wire, facsimile, or electronic transfer.

(2) “Remittance company” means a person engaging in remittance as a service or for profit.

(b) An excise tax of four percent (4%) is hereby levied which shall be assessed and collected monthly against each noncitizen person remitting money out of the Republic of Palau. Such tax shall be collected by remittance companies and banks and transmitted to the Ministry of Finance on or before the fifteenth (15th) day of each month. The Ministry of Finance shall have ten (10) days to remit the remittance and money transfer tax to the Civil Service Pension Plan.

(c) The remittance companies and banks doing business located in the Republic of Palau shall indicate the amount of the remittance and money transfer tax as a separate item on the statement of charges to each customer and shall pay over the tax collected to the Ministry of Finance with the business’ revenue tax payment.

(d) Penalties. It is a misdemeanor punishable by a fine not to exceed five hundred dollars (\$500) for any person to remit money out of the Republic of Palau on behalf of another noncitizen in order to avoid the tax levied under this section.

(e) Exclusions. This section shall not apply to:

(1) The Government of the Republic of Palau or any department, agency, state government body, or instrumentality thereof;

(2) Remittance made for the purpose of compliance with the rules and regulations of the Federal Deposit Insurance Corporation;

(3) The United States Postal Service;

(4) Remittance made for the purpose of obtaining goods or services for use or sale in the Republic of Palau.

(f) The Ministry of Finance shall promulgate rules and regulations for the collection and enforcement of the remittance tax within ninety (90) days of the effective date of this Act.

Source

RPPL 9-2 § 7, modified. Amended by RPPL 9-5 § 23.

Notes

RPPL 9-2 § 8(b) reads: (b) This remittance and money transfer tax will be effective six (6) months after the effective date of this Act. (Effective date: April 30, 2013)

**Chapter 15
Business Licenses**

- § 1501. Licenses required; fees.
- § 1502. Transfer; term.
- § 1503. Multiple locations; display.
- § 1504. Identification of business.
- § 1505. Revocation or suspension.

§ 1501. Licenses required; fees.

Any person engaging in business in the Republic shall, as a condition precedent to engaging or continuing to engage in business, obtain from the Director a license to engage in business and pay an annual fee according to the following schedule:

(a) Wholesaler	three hundred dollars	(\$300)
(b) Person engaging in a profession	three hundred dollars	(\$300)
(c) Importer	two hundred dollars	(\$200)
(d) Massage parlor operator	five hundred dollars	(\$500)
(e) Other, General	fifty dollars	(\$50)

(1) Food establishments, and all other licensed businesses may be open twenty-four (24) hours per day. While food establishments and all other licensed business may be open twenty-four (24) hours per day, the hours of sale for alcoholic beverages within such food establishments and other licensed businesses shall continue to be controlled by 11 PNC § 1015(e) as amended by Republic of Palau Public Laws 6-41 and 7-49.

Source

RPPL 1-63 § 601, licenses alphabetized and section modified. Subsections (d), (e) and (f) amended by RPPL 5-7 § 44 effective 1/1/98. Former subsection (d) was deleted by RPPL 5-47 § 34 and the remaining subsections were re-lettered. Subsection (e)(1) added by RPPL 7-12 § 1, modified.

Notes

Isechal v. ROP, 15 ROP 78, 79, 81 (2008).
Becheserrak v. Uludong, (Civil Action No. 306-93).

Cross-reference

For additional statutory provisions on business regulations and licensing, see Title 11, Business and Business Regulation; for statutory provisions on licensing of duty-free concessions, see chapter 6 of Title 28; for statutory provisions on licensing the sale of compressed air or underwater breathing equipment, see subchapter III, chapter 52 of Title 34; for complete listing of licensing provisions in this Code, see index listing, LICENSING.

§ 1502. Transfer; term.

A license issued under this chapter shall not be transferable and shall expire on the thirty-first day of December, regardless of when issued.

Source

RPPL 1-63 § 602.

§ 1503. Multiple locations; display.

Any person who operates two or more businesses in the Republic shall obtain a separate license for each business. Each business shall display its license to operate in a conspicuous place so all who enter into commercial activity with the business will know it is licensed.

Source

RPPL 1-63 § 603, modified.

§ 1504. Identification of business.

Any person engaging in business in the Republic shall register his business with the Revenue and Tax Office and shall obtain an identification number. Every state government issuing retail or other state business licenses shall submit a list of the said businesses to the Director within 30 days of the issuance of its license.

Source

RPPL 1-63 § 604.

§ 1505. Revocation or suspension.

The Director may revoke or suspend any license issued under this chapter upon finding that a taxpayer has not paid taxes due or otherwise violated any provision of this division or regulations issued pursuant to this division.

BUSINESS LICENSES

40 PNCA § 1505

Source

RPPL 1-63 § 605.

Notes

Isechal v. ROP, 15 ROP 78, 79, 80 (2008).

Chapter 16
Collection and Appeals

- § 1601. Records of transactions.
- § 1602. Assessment by director.
- § 1603. Informal hearing.
- § 1604. Adjustment.
- § 1605. Review.
- § 1606. Collection; suit; injunction.
- § 1607. Tax liens.
- § 1608. Suit for refund.

§ 1601. Records of transactions.

Every person, firm, corporation or association engaging in any transaction subject to a tax, fee or charge levied or imposed under this division shall keep a full and accurate record of each such transaction engaged in by him and such record shall be available for examination by the Director or his authorized representative for at least three years after the date of such transaction. Every business shall keep the following:

- (a) a daily record of all cash receipts showing the date, total cash receipts, cash sales, payments on accounts receivable and miscellaneous receipts. Supporting documents comprised of cash register tapes, sales, slips, receipts, and other documents relating to cash received shall be retained in chronological sequence for examination.
- (b) a daily record of credit sales showing, date, name of purchaser, invoice/receipt number, amount, and discount (if applicable). Supporting documents consisting of sales invoices or receipts shall be retained in chronological sequence for examination.
- (c) a daily record of each disbursements showing date, payee, invoice number, amount discount (if applicable), and purpose of payment. Supporting documents consisting of cancelled checks, receipts, invoices, or other evidence of cash disbursed shall be maintained in chronological sequence for examination.
- (d) such other records as the Director may require.

Source
RPPL 1-63 § 701, modified.

§ 1602. Assessment by director.

Upon the failure of any taxpayer to make and file a return required by this division within the time and in the manner and form prescribed, or upon failure to pay or pay over an amount due, the Director may demand that the taxpayer comply with this division. If the taxpayer refuses within thirty (30) days after demand to comply with the demand, the Director may make a return for the taxpayer from any information and records obtainable, levy and assess the appropriate amount of tax, and shall notify the taxpayer of such assessment which shall be presumed to be correct unless the contrary is expressly shown.

Source
RPPL 1-63 § 702.

§ 1603. Informal hearing.

The taxpayer shall have the right within fifteen (15) days of notice of the assessment required under section 1602 or of any other decision made by the Director to request from the Director an informal hearing on the assessment or decision and at that time the taxpayer may submit such data as may be relevant. After receiving a request for a hearing, the Director shall notify the taxpayer of the time and place of such hearing in writing. The decision of the Director after the informal hearing shall be given within fifteen (15) days from the date of the hearing to the taxpayer.

Source
RPPL 1-63 § 703.

§ 1604. Adjustment.

If the Director after informal hearing decides that the tax assessment or his decision was incorrect, he shall make such adjustments as are necessary to correct the assessment or decision, including the issuance of a refund.

Source
RPPL 1-63 § 704.

§ 1605. Review.

If the Director's decision is adverse to the taxpayer, in whole or in part, the taxpayer shall have the right to institute an action for review, within one year from the date of the decision, in the

Trial Division of the Supreme Court. In cases involving an assessment such action shall be commenced by first paying the tax as assessed and then by filing a petition setting forth assignments of errors alleged to have been committed by the Director in determining the assessment, facts relied upon to sustain such assignment of errors, and a prayer for appropriate relief. The Director shall be the respondent in such an action. The action shall be tried by the court without a jury and the petitioner shall have the burden of proof.

Source

RPPL 1-63 § 705.

§ 1606. Collection; suit; injunction.

The Director shall have available for the enforcement of any delinquent tax assessment the following remedies:

(a) Suit--the Director may require the Ministry of Justice to take such legal action as he shall deem proper in the name of the Republic. In a suit for the collection of delinquent taxes, a statement by the Director as to the amount due and the fact it remains unpaid shall be sufficient evidence of these matters, unless the defendant taxpayer expressly shows the contrary. In any civil suit, a written statement of the Director as to the amount of tax due, the fact that it is unpaid, and the person who is authorized to collect it, shall be sufficient evidence of these matters unless the contrary is expressly shown by the taxpayer. The Director, before submitting a case to the Ministry of Justice, shall:

(1) deliver a written notice of the assessment to the taxpayer setting forth the date it was originally due, the amount of the tax due, and the amount of penalties and interest due. Such notice shall be delivered to the taxpayer at the address listed by him on his business license, or if he has none, to his last known address;

(2) certify that at least thirty (30) days have elapsed since the notice was delivered;

(3) certify that the taxpayer has not, within those thirty (30) days, paid the assessment, including penalties and interest, in full or made an agreement for the payment of the same.

(b) Injunction--the Director may request the Ministry of Justice to seek, in a court of competent jurisdiction, an injunction to restrain any person who is delinquent in the payment of any tax liability from continuing to carry on his business until such

delinquent liability is paid, provided the conditions set forth in subsection (a) are first complied with. The Director shall first revoke the business license of the delinquent taxpayer.

Source

RPPL 1-63 § 706, modified.

Notes

Isechal v. ROP, 15 ROP 78, 79, 81 (2008).

§ 1607. Tax liens.

Any taxes imposed or authorized under this division upon property shall be a lien upon the property and may be collected by levy upon it in the same manner as the levy of an execution.

Source

RPPL 1-63 § 707.

§ 1608. Suit for refund.

A taxpayer, within one year from the end of the tax year, may file an action in the Trial Division of the Supreme Court for the refund of any tax imposed and collected by the Director, if he alleges it was erroneously or illegally assessed and collected. The action shall be tried by the Court without a jury and petitioner shall have the burden of proof. The Ministry of Justice shall represent the Director.

Source

RPPL 1-63 § 708, modified.

**Chapter 17
Penalties and Interest**

- § 1701. Penalties.
- § 1702. Interest.
- § 1703. Business license revocation.
- § 1704. General penalty.

§ 1701. Penalties.

The following penalties are hereby levied and shall be assessed and collected by the Director:

- (a) Failure to timely file return, pay or pay over a tax--if any taxpayer, required by this division to file a return, pay or pay over any tax, fee or charge levied or imposed under this division, fails to do so on or before the date set, unless it is shown that such failure is due to reasonable causes, he shall be assessed ten percent (10%) of the amount for each thirty (30) days or fraction thereof elapsing between the due date of the return and the date on which it is actually filed, paid or paid over in addition to the amount due.
- (b) Failure to file return after demand--if any taxpayer, required by this division to file a return, upon notice and demand by the Director fails or refuses within thirty (30) days after receipt of said notice and demand to make and file a return, the Director may estimate the tax assessment and assess a penalty thereon of twenty five percent (25%) of the tax assessed, in addition to any other penalty that may be assessed under this chapter.
- (c) False and fraudulent returns--any person who files a return containing false information with the intent to evade a tax, or any portion thereof shall upon conviction, be imprisoned for not more than three years, fined not more than ten thousand dollars (\$10,000), or both, and be subject to any other penalties that may be assessed under this chapter. In addition, such a person shall be assessed a civil penalty of fifty percent (50%) of the tax owed.
- (d) Failure to file employer statement--any employer required to file a written statement under section 1102(b) of this division, who fails to file such statement on the date prescribed therefor, except with regard to any extension of time for filing, shall be subject to a fifty dollars (\$50) penalty for each statement not filed.

Source
RPPL 1-63 § 801, modified.

Notes

Pamintuan v. ROP, 16 ROP 32, 43, 44 (2008).

Isechal v. ROP, 15 ROP 78, 81 (2008).

§ 1702. Interest.

If any tax or penalty imposed by this division is not paid on or before the date prescribed for such payment, there shall be assessed and collected, in addition to such tax liability at the rate of three percent (3%) per month from its due date until the date it is paid.

Source

RPPL 1-63 § 802, modified.

§ 1703. Business license revocation.

The Director in his discretion may suspend or revoke any business license upon a taxpayer's failure to comply with this division or regulations issued hereunder. The Director, under this section, is not subject to the provisions of the Administrative Procedure Act of chapter 1 of Title 6 of this Code.

Source

RPPL 1-63 § 803, modified.

Notes

Isechal v. ROP, 15 ROP 78, 79, 80 (2008).

§ 1704. General penalty.

Any person who willfully violates any of the provisions of this division for which there is no other designated penalty, or any rule or regulations issued hereunder, shall, upon conviction, be imprisoned for a period of not more than one (1) year, fined not more than one thousand dollars (\$1,000), or both.

Source

RPPL 1-63 § 804, modified.

Notes

Pamintuan v. ROP, 16 ROP 32, 34, 44 (2008).

Isechal v. ROP, 15 ROP 78, 79, 81 (2008).

Chapter 18
Administration

- § 1801. Powers and duties of the Director.
- § 1802. Exchange of tax information.
- § 1803. Inspection of returns.
- § 1804. Prohibited employment.
- § 1805. Legislative appropriations allotment.

§ 1801. Powers and duties of the Director.

The Director shall have the following powers and duties:

- (a) the power to designate from among the employees of the Bureau and to hire such collectors and auditors as may be required to carry out the provisions of this division pursuant to the National Public Service System Act of Title 33 of this Code;
- (b) the duty to make all assessments of taxes levied by this division and to collect all taxes levied by this division;
- (c) the duty to enforce this division and to collect all taxes levied by this division;
- (d) the power to inspect and examine the records, books of account, bank statements, and any other pertinent data of any person for the purpose of enabling him to obtain the information necessary to enforce the provisions of this division;
- (e) the power to issue such rules, regulations and rulings as the Director deems necessary or appropriate to carry out the provisions of this division;
- (f) the duty to prescribe tax return forms and other forms necessary for the administration and collection of all taxes levied by this division;
- (g) the power, with approval of the Minister of Finance, to compromise claims, penalties and interest arising out of any levy in the case of any such compromise he shall place on file for public inspection a statement setting forth:
 - (1) the amount of the tax assessed or which could have been assessed by or in accordance with this division;
 - (2) the amount of penalties and interest imposed, or which could have been

imposed in accordance with this division;

(3) the reasons for the compromise; and

(4) the approval of the Minister of Finance.

(h) the power to enter binding agreements for the installment liquidation of any tax liability due the Bureau of Revenue, Customs and Taxation as he may deem necessary;

(i) the power to approve any reasonable extension of time for the filing of a return or the paying of a tax liability as he may deem necessary;

(j) the power, with the approval of the Minister of Finance, to make refunds on any overpayment of tax made by a taxpayer or any assessment erroneously made and collected;

(k) the duty to give written notice [of] a tax liability and make a written demand for the payment of the same whenever any return or remittance required by this division is not made within the time allotted for such return or remittance. Such notice or demand shall be delivered to the taxpayer's dwelling or place of business or to his last address;

(l) the power to subpoena records, including records of financial institutions and other third parties. Any person failing to comply with a subpoena shall be subject to the penalties provided in section 1704 of this division.

Source

RPPL 1-63 § 901, modified. Subsection (h) amended by RPPL 5-7 § 31.

Notes

The bracketed “[of]” in subsection (k) reads “to” in the original codification. “Minister of Finance” in (g) and (j) read “Minister of Administration” which has been amended by RPPL 6-26 § 33.

§ 1802. Exchange of tax information.

Notwithstanding any other provisions of law, the Director may make available to the properly authorized tax officials of any state, information contained in tax returns or any audit of a taxpayer, provided such state grants a like privilege to the national government.

Source

RPPL 1-63 § 902.

§ 1803. Inspection of returns.

Tax returns and other information required to be filed or furnished by any person shall not be divulged by employees of the Bureau or a state to any person other than employees of the Bureau of National Treasury or authorized tax officials of states as provided in section 1802.

Source
RPPL 1-63 § 903.

§ 1804. Prohibited employment.

The Director and every employee of the Bureau of Revenue, Customs and Taxation while in such employment and for three (3) years following termination of such employment may not act as a tax accountant or consultant for a fee or accept employment from any person preparing tax returns required by this division.

Source
RPPL 1-63 § 904. Amended by RPPL 5-7 § 32, modified.

§ 1805. Legislative appropriations allotment.

Effective October 1, 1995, all appropriations for the legislature shall be apportioned and allotted at the direction of the President of the Senate and the Speaker of the House of Delegates or their designee. The President of the Senate and the Speaker of the House of Delegates or their designee, at the commencement of each fiscal quarter, shall have the authority to withdraw not more than twenty five percent (25%) of all funds appropriated pursuant to this section, and may direct the Minister of Finance to establish a separate bank account outside of the National Treasury to be the depository of such funds. The President of the Senate and the Speaker of the House of Delegates or their designee shall have at their discretion the authority to solely administer, manage, and control all funds deposited in the separate bank account. Any unexpended or unobligated balances of appropriation of this section shall lapse at the end of the fiscal year.

Source
RPPL 4-36 § 2 which amended RPPL 4-32 § 5.

Notes
“Minister of Finance” read “Minister of Administration” which has been amended by RPPL 6-26 § 33.

**Chapter 19
Transition**

§ 1901. Transition.

§ 1901. Transition.

Any tax liability, penalty, interest or other assessment incurred under any law or regulation that is repealed by this division shall not be abated, extinguished or reduced and shall have full force and effect for transactions and activities occurring before the effective date of this division. All rules and regulations currently in effect, shall remain in force and effect, to the extent that they are not inconsistent with the provisions of this division. Notwithstanding any other provision of this division, salary and wages earned prior to October 1, 1984 and not paid or credited until after October 1, 1984, shall be taxed at the rates existing prior to October 1, 1984; and any withholding of taxes on salaries and wages so earned shall be based on the rates existing prior to October 1, 1984.

Source

RPPL 1-63 § 1002, as amended by RPPL 1-72 § 2, last sentence omitted as unnecessary.

**Chapter 20
Exemptions**

§ 2001. Exemption; accountability.

§ 2002. Tax exemption for Virtual Pachinko Business and Internet Digits Lottery Game Business.

§ 2001. Exemption; accountability.

Any nationals or citizens of foreign countries, supplying products, goods, machinery, materials, or services in connection with a project financed entirely by grant-aid assistance whose terms require exemption from internal taxes or fiscal levies as condition precedent to awarding such grant-aid projects provided by the government of any donor nation, shall be exempt from taxation under Title 40 PNCA Division 2, sections 1001-1901, as amended, with respect to such activities. The Director shall administer the application of this provision to such nationals or citizens of foreign countries seeking for or have been granted an exemption as provided herein and shall ensure that such exemptions are properly monitored, fully documented, and certified. The Director shall have the authority to promulgate rules and regulations as necessary to implement this provision consistent with this section.

Source

RPPL 3-31 § 1, modified.

§ 2002. Tax exemption for Virtual Pachinko Business and Internet Digits Lottery Game Business.

All revenues, income, and dividends from a Virtual Pachinko Business or an Internet Digits Lottery Game Business which has been granted [an] exclusive Concession pursuant to 11 PNC Chapter 14 shall be exempt from taxation under 40 PNC Division 2, as amended, and any succeeding tax statute, and shall be considered for purposes of 40 PNC Chapter 21 to be a matter already taxed or charged by the national government.

Source

RPPL 5-45 § 1(c), modified.

Note

The bracketed [an] read “and” in the original legislation.

Chapter 21
State Taxation

- § 2101. Findings.
- § 2102. Power to levy taxes.
- § 2103. Submission to Minister of Justice.
- § 2104. Repeal.
- § 2105. Severability and saving clause.

§ 2101. Findings.

The Olbiil Era Kelulau finds that the Palau Constitution expressly gives all governmental powers to the national government; provided, however that the national government may by law delegate various powers to the state governments and that, subject to laws enacted by the Olbiil Era Kelulau, the state may impose taxes. The Olbiil Era Kelulau finds that it has enacted no laws which delegate any authority to the state governments nor has it enacted any laws which authorize the state governments to enact tax measures. The Olbiil Era Kelulau further finds that certain state governments have enacted various tax measures which have not been authorized by law, which have not been approved by the Olbiil Era Kelulau, and which are subject to laws enacted by the Olbiil Era Kelulau. The Olbiil Era Kelulau further finds that the state tax measures which have been passed are creating a situation which is discouraging investment and inhibiting economic development throughout the Republic due to the lack of uniformity and uncertainty in financial and taxation matters in the Republic of Palau. The Olbiil Era Kelulau finds that the state tax measures which have been enacted are not justified by any services or benefits provided by the state governments. Finally the Olbiil Era Kelulau finds that the state tax measures which have been enacted are inhibiting commerce among the several states of the Republic.

Source

RPPL 3-35 § 1, modified.

Cross-reference

ROP Const., Art. XI.

Notes

Koror State Gov't v. Republic of Palau, 19 ROP 174, 176 (Tr. Div. 2012).

§ 2102. Power to levy taxes.

(a) The state governments of the Republic are hereby prohibited from enacting any taxes or fees on persons, goods, services, sales, income, activities, objects, or other matters already taxed or charged by the national government. If the national government enacts a tax or fee on any persons, goods, services, sales, income, activities, objects, or other matters taxed or charged by any state government, such enactment shall automatically nullify the provisions of any state law imposing a tax or fee on such items.

(b) Any provision of state law presently imposing a tax or fee on any persons, goods, services, sales, income, activities, objects, or other matters taxed or charged by the national government is null and void and of no effect.

(c) No enactment of a state government which would impose a tax, charge, or fee shall be effective unless such enactment shall contain a detailed description of the activity, purchase, or other purposes to be accomplished with the revenue to be generated thereby, and a specific date of termination of such tax, charge, or fee reflecting the anticipated achievement of the objective of the enactment.

Source

RPPL 3-35 § 2, modified.

Notes

Subsections previously codified with number designations have been recodified with letter designations to comply with Code format.

Koror State Gov't v. Republic of Palau, 19 ROP 174, 175, 176, 178 (Tr. Div. 2012).
KSG v. ROP, 3 ROP Intrm. 127, 128 (1992).

§ 2103. Submission to Minister of Justice.

(a) Within thirty (30) days after the effective date of this chapter every state government shall submit to the Minister of Justice for review every state law which has been enacted since 1981 imposing taxes or fees upon persons, goods, services, sales, income, activities, objects, or other matters. The Minister of Justice shall, in conjunction with the Attorney General and within thirty (30) days of such submissions, render a determination as to whether any such enactments are determined to violate section 2102 of this chapter, such enactment shall be declared null and void ab initio and of no effect.

(b) Every state government, upon enactment of any law imposing taxes or fees upon persons, goods, services, sales, income, activities, objects, or other matters, shall submit

such enactment to the Minister of Justice for review. The Minister of Justice shall, in conjunction with the Attorney General and within ten (10) days of such submission, render a determination as to whether such enactment is violative of section 2102 of this chapter. If such enactment is determined to violate section 2102 of this chapter, it shall be void and of no effect. No such enactment shall be effective until it is determined to be not violative of section 2102 of this chapter in accordance with this section.

Source

RPPL 3-35 § 3, modified.

Notes

Subsections previously codified with number designations. The subsections have been recodified with letter designations to comply with Code format.

Koror State Gov't v. Republic of Palau, 19 ROP 174, 175, 176 (Tr. Div. 2012).

§ 2104. Repeal.

This chapter shall repeal every other inconsistent law to the extent of such inconsistency.

Source

RPPL 3-35 § 4, modified.

§ 2105. Severability and saving clause.

If a court of competent jurisdiction holds that a part or parts of this chapter are unlawful, such holding shall not effect or invalidate any of the remaining parts of this chapter.

Source

RPPL 3-35 § 5, modified.

Chapter 22
State Block Grants

- § 2201. Audit compliance.
- § 2202. Withholding of state block grant; certification by Public Auditor.
- § 2203. Release of withheld block grant funds.
- § 2204. Notification of audit recommendations and negative findings.
- § 2205. Ongoing oversight; revocation of certification.
- § 2206. Reporting; failure to report.
- § 2207. Deposit in state treasury.
- § 2208. Regulation.
- § 2209. Sponsorol State.
- § 2210. Minimum salary for Governors.
- § 2211. Withholding of block grants to fund Civil Service Pension Plan.
- § 2212. Withholding of block grants to reimburse the National Treasury.

§ 2201. Audit compliance.

Each State Government of the Republic shall take affirmative action to comply with all recommendations and to remedy all conditions resulting in negative findings, including failure to provide adequate information, set forth in any audit report on such State Government or subdivision thereof.

Source

RPPL 3-60 § 17(1)(a). Restated in substance in: RPPL 4-10 § 6(1)(a); RPPL 4-26 § 11(2)(a); RPPL 4-32 § 6(2)(a); RPPL 4-38 § 6(3)(a); RPPL 4-40 § 6(2)(a) and RPPL 4-55 § 6(2)(a). RPPL 4-55 was not codified and was not repealed. Heading amended by RPPL 5-7 § 6(2).

Notes

RPPL 4-26 was repealed in its entirety by RPPL 4-32 § 49. RPPL 4-38 was repealed in its entirety by RPPL 4-40 § 46. Previously codified at 5 PNC § 401; recodified by RPPL 5-7 § 6(2).

§ 2202. Withholding of state block grant; certification by Public Auditor.

No person may disburse from the National Treasury, and no State Government may receive, a further allotment of any block grant appropriation from the National Government later than forty-five (45) days after the issuance of an audit report on that State Government by the Public Auditor unless the Public Auditor has certified that all recommendations contained in such report have been complied with and that all conditions leading to negative findings have been remedied.

Source

RPPL 3-60 § 17(1)(b). Restated in substance and amended by RPPL 4-10 § 6(1)(b); RPPL 4-26 § 11(2)(b); RPPL 4-32 § 6(2)(b); RPPL 4-38 § 6(3)(b); RPPL 4-40 § 6(2)(a) and RPPL 4-55 § 6(2)(b). RPPL 4-55 was not codified and was not repealed. Amended by RPPL 5-7 § 6(2).

Notes

RPPL 4-26 was repealed in its entirety by RPPL 4-32 § 49. The language of this section in RPPL 4-38 is significantly different. RPPL 4-38 was repealed in its entirety by RPPL 4-40 § 46. Previously codified at 5 PNC § 402; recodified by RPPL 5-7 § 6(2).

Koror State Gov't v. Republic of Palau, 19 ROP 174, 175 (Tr. Div. 2012).

§ 2203. Release of withheld block grant funds.

Upon the certification by the Public Auditor as provided by section 2202, all withheld block grant allotments to the State Government concerned shall be released to such State Government as soon as the availability of funds permits.

Source

RPPL 3-60 § 17(1)(c). Restated in substance in: RPPL 4-10 § 6(1)(c); RPPL 4-26 § 11(2)(c); RPPL 4-32 § 6(2)(c); RPPL 4-38 § 6(3)(c); RPPL 4-40 § 6(2)(a) and RPPL 4-55 § 6(2)(c). RPPL 4-55 was not codified and was not repealed. Amended by RPPL 5-7 § 6(2).

Notes

RPPL 4-26 was repealed in its entirety by RPPL 4-32 § 49. RPPL 4-38 was repealed in its entirety by RPPL 4-40 § 46. Previously codified at 5 PNC § 403; recodified by RPPL 5-7 § 6(2).

§ 2204. Notification of audit recommendations and negative findings.

Upon the issuance by the Public Auditor of a State Government Audit Report which contains any recommendations or negative findings, the Public Auditor shall notify the Minister of Finance and the presiding officers of the Olbiil Era Kelulau. The Minister of Finance shall serve notice on the State Government of the mandatory withholding of block grant allotments and shall promptly implement such withholding in the event that the State Government fails to timely obtain the certification required by section 2202. Failure by the Minister of Finance to serve such notice shall not be grounds for postponement or cancellation of the withholding.

Source

RPPL 3-60 § 17(1)(d). Restated in substance in: RPPL 4-10 § 6(1)(d); RPPL 4-26 § 11(2)(d); RPPL 4-32 § 6(2)(d); RPPL 4-38 § 6(3)(d); RPPL 4-40 § 6(2)(a) and RPPL 4-55 § 6(2)(d). RPPL 4-55 was not codified and was not repealed. Amended by RPPL 5-7 § 6(2).

Notes

RPPL 4-26 was repealed in its entirety by RPPL 4-32 § 49. RPPL 4-38 was repealed in its entirety by RPPL 4-40 § 46. Previously codified at 5 PNC § 404; recodified by RPPL 5-7 § 6(2).

“Minister of Finance” read “Minister of Administration” which has been amended by RPPL 6-26 § 33.

§ 2205. Ongoing oversight; revocation of certification.

The Public Auditor shall maintain ongoing oversight of state government actions to comply with audit recommendations or to remedy conditions leading to negative findings. A certification granted pursuant to section 2202 may be revoked if the state government concerned does not, in the opinion of the Public Auditor, adequately continue to engage in the corrective actions that resulted in the initial grant of the certification. The Minister of Finance shall, commencing thirty (30) days following such a loss of certification, withhold further block grant allotment funding from the state government until the certification has been reinstated.

Source

RPPL 3-60 § 17(1)(e). Restated in substance and amended by RPPL 4-10 § 6(1)(e); RPPL 4-26 § 11(2)(e); RPPL 4-32 § 6(2)(e); RPPL 4-38 § 6(3)(e); RPPL 4-40 § 6(2)(a) and RPPL 4-55 § 6(2)(e). RPPL 4-55 was not codified and was not repealed. Amended by RPPL 5-7 § 6(2), modified.

Notes

RPPL 4-26 was repealed in its entirety by RPPL 4-32 § 49. RPPL 4-38 was repealed in its entirety by RPPL 4-40 § 46. Previously codified at 5 PNC § 405; recodified by RPPL 5-7 § 6(2).

“Minister of Finance” read “Minister of Administration” which has been amended by RPPL 6-26 § 33.

§ 2206. Reporting; failure to report.

The Bureau of National Treasury shall submit a financial report to the Olbiil Era Kelulau detailing the amount of funding made upon disbursement of block grants to recipients thereof, and each state government receiving funds in the form of block grants shall submit within thirty (30) days of the date each funded project is completed a financial report to the Olbiil Era Kelulau and Minister of Finance detailing how the funds were spent. A state government may use its discretion to determine appropriate expenditures out of its block grant for salaries, wages, capital improvement projects, and community programs. If the report is not submitted, the National Treasury may not disburse and the state government may not receive any further allotment of any block grant appropriation from the national government.

Source

RPPL 3-60 § 17(2). Restated in substance and amended by RPPL 4-10 § 6(2); RPPL 4-26 § 11(3), RPPL 4-32 § 6(3), RPPL 4-38 § 6(2)(a) and (b); RPPL 4-40 § 6(3) and RPPL 4-55 § 6(3) and (5). RPPL 4-55 was not codified and was not repealed. Amended by RPPL 5-7 § 6(2), modified. Amended by RPPL 5-15 § 21. Amended by RPPL 5-34 § 6(2). Amended in its entirety by RPPL 7-37 § 24, modified.

Notes

RPPL 4-1 § 21(2) repealed RPPL 3-60 “§ 17(e)(2)”. RPPL 4-26 was repealed in its entirety by RPPL 4-32 § 49. RPPL 4-38 was repealed in its entirety by RPPL 4-40 § 46. See also the last paragraph of RPPL 4-1 § 5(A). Previously codified at 5 PNC § 406; recodified by RPPL 5-7 § 6(2).

“Minister of Finance” read “Minister of Administration” which has been amended by RPPL 6-26 § 33.

Fanna v. Sonsorol State Government, 8 ROP Intrm. 9, 13, 14 (1999).

§ 2207. Deposit in state treasury; capital infrastructure projects.

(a) No state may expend any of the funds appropriated for that state in any national appropriations legislation, including funds which a state governor is responsible for allocating or allotting, until the state deposits those funds into the state treasury and enacts state appropriations legislation. The Bureau of the National Treasury may not disburse any state block grant or other funds to a state unless and until the state transmits to the Bureau a certified copy of duly adopted state legislation appropriating those funds.

(b) No funds may be disbursed for any state capital improvement project for which a state governor is responsible for allocating or allotting funds until thirty (30) days after the state submits a project plan to the Bureau of National Treasury, the Senate and the House of Delegates for review and comment. The plan shall be prepared by the governor and approved by law by the state legislature. The plan shall describe, at a minimum, the scope of the project, the estimated total cost, and the estimated time it will take to complete the project.

(c) After initial funds have been disbursed by the Bureau of the National Treasury for any state capital infrastructure project, including any project for which a state governor is responsible for allocating or allotting funds, additional funds may not be disbursed until the state provides status reports that show to the satisfaction of the Director that adequate progress is being made on the project such that additional disbursement is appropriate.

Source

RPPL 4-55 § 6(6) and RPPL 5-7 § 6(2), which were not codified and were not repealed. Amended by 5-8 § 8,

modified. Subsection (b) is amended by RPPL 5-41 § 34 (b).

Notes

Subsection divisions added to conform to Code format.

§ 2208. Regulation.

The Minister of Finance and the Public Auditor shall jointly promulgate such rules and regulations as are necessary to effectuate the purposes of this chapter.

Source

RPPL 3-60 § 17(3). Restated in substance and amended by RPPL 4-10 § 6(3); RPPL 4-26 § 11(4); RPPL 4-32 § 6(4); RPPL 4-40 § 6(2)(a) and RPPL 4-55 § 6(4). RPPL 4-55 was not codified and was not repealed. “May” amended to “shall” by RPPL 5-7 § 6(2).

Notes

RPPL 4-26 was repealed in its entirety by RPPL 4-32 § 49. This section does not appear in RPPL 4-38. Previously codified at 5 PNC § 407; recodified by RPPL 5-7 § 6(2).

“Minister of Finance” read “Minister of Administration” which was amended by RPPL 6-26 § 33.

§ 2209. Sponsorol State.

Source

RPPL 5-7 § 6(2). Repealed in its entirety by RPPL 9-5 § 24.

§ 2210. State payroll.

For those States for which the Bureau of National Treasury provides central payroll administration services, the Bureau of National Treasury shall withhold each state’s total amount of income withholding taxes, social security contributions and pension plan contributions payable in accordance with law, and shall remit such amounts to the appropriate agencies. For those states which administer their own payroll systems, the Bureau of National Treasury shall establish administrative procedures for ensuring that those states pay income withholding taxes, social security contributions and pension plan contributions to the appropriate agencies in accordance with law, and for retaining such amounts of state block grant funds as are necessary to ensure that such tax and contribution payments are properly and timely remitted.

Source

RPPL 4-55 § 6(7), modified. Amended by RPPL 5-15 § 21.

Notes

RPPL 5-15 § 21 shall take effect 90 days after effective date (September 30, 1998).

§2211. Withholding of block grants to fund Civil Service Pension Plan.

The Minister of Finance shall withhold the lesser of twenty percent (20%) of the annual block grant or the amount actually owed, for any State which is delinquent in its contributions to the Civil Service Pension Plan Trust Fund or Social Security Trust Fund on behalf of its State employees. The Minister shall redirect any funds so withheld to the appropriate Trust Fund. Within thirty (30) days from the effective date of this section, and within thirty (30) days following the end of each fiscal year, the Board of Trustees of the Civil Service Pension Plan and Social Security Trust Fund shall submit to the Minister a list of each State that is delinquent in its contributions and the amount of the delinquency, and the Minister shall make the appropriate deductions.

Source

RPPL 5-41 § 33(a), modified.

Notes

“Minister of Finance” read “Minister of Administration” which has been amended by RPPL 6-26 § 33.

§ 2212. Withholding of block grants to reimburse the National Treasury.

The Minister of Finance shall withhold the lesser of twenty percent (20%) of the annual block grant or the amount actually owed, for any State which is delinquent in its contributions to the Bureau of Revenue, Customs and Taxation for taxes withheld on the wages and salaries on behalf of its State employees. The Minister shall redirect any funds so withheld to the appropriate fund of the National Treasury. Within thirty (30) days from the effective date of this section, and within thirty (30) days following the end of each fiscal year, the Bureau of Revenue, Customs and Taxation shall submit to the Minister a list of each State that is delinquent in its contributions and the amount of the delinquency, and the Minister shall make the appropriate deductions.

Source

RPPL 5-47 § 28(a).

Notes

“Minister of Finance” read “Minister of Administration” which has been amended by RPPL 6-26 § 33.

Chapter 23**Tax Incentives for Development of Agricultural and Aquacultural Industries in Palau**

- § 2301. Purpose.
- § 2302. Definitions.
- § 2303. Operation of fishing vessels excluded.
- § 2304. Tax incentives.
- § 2305. Determination of qualification for tax incentives.
- § 2306. Regulations.
- § 2307. Tax incentives; licensing and issuance.
- § 2308. Same; not to be deemed right or privilege of the applicant.
- § 2309. Same; limited purpose.
- § 2310. Same; limitation on number issued
- § 2311. Sunset provision.

§ 2301. Purpose.

This chapter sets forth a program of tax incentives which may be offered for the purpose of developing sustainable agricultural, maricultural, and aquacultural projects which have been determined to be essential to the welfare of the Republic of Palau and its economy.

Source

RPPL 6-42 § 2.

Notes

Section 1 of RPPL 6-42 reads:

“Legislative findings. Over the past several decades, the ability of the Republic of Palau to grow and produce its own food and to operate its own agricultural, maricultural, and aquacultural industry has declined. In order for Palau to maintain its independence from reliance on imported food and seafood products, it is necessary to reinvigorate and develop this industry. The Republic not only has the potential to meet its domestic needs, but can be expected in the future to develop sufficient capacity in such industries to export agricultural, maricultural, and aquacultural products to other nations. It is therefore important for the Republic of Palau to encourage investors to develop the agriculture, mariculture, and aquaculture industry in Palau by providing tax incentives.

Tax incentive programs, to be successful, must be focused on the specific goal of attracting quality investment, while recognizing that by granting some tax discounts or exemptions to private investors, the Republic will benefit economically through other means. It is further recognized that tax discounts or exemptions granted under a tax incentives program are not a loss in current revenue to the Republic, but represent a necessary stimulus to attract and encourage projects that promise substantial economic benefit for the Republic that would otherwise not be realized at all or would be lost to other nations. Therefore, it is appropriate and in the best interest of the Republic to establish a limited tax incentive program on an experimental basis for purposes of developing agriculture, mariculture, and aquaculture in the Republic.”

§ 2302. Definitions.

For purposes of this chapter, the following definitions shall be used, unless the context indicates otherwise:

(a) “Agricultural project” includes any of the following:

(1) the operation of a facility for the breeding, raising, growing, or maintenance of livestock, poultry, pigs, or similar animal husbandry activities for the production of eggs, meat, milk, or other dairy products; or

(2) the raising, growing, or maintenance of vegetables, fruit, grains, or other plant products for food, medicinal, or other purposes, for sale, use, or consumption within the Republic or for export.

(b) “Aquacultural project or maricultural project” includes the breeding, raising, growing, or maintenance within a confined or specifically designated area in either salt or fresh water of any fish stocks, clams, mollusks, crabs, shrimp, lobsters, sea cucumbers, sea weed, and other sea plants, for food, medicinal, or other purposes, or for aquarium purposes, for sale, use, or consumption within the Republic or for export.

Source

RPPL 6-42 § 2.

§ 2303. Operation of fishing vessels excluded.

For purposes of this chapter, the operation of a fishing vessel, whether foreign or domestic, for purposes of catching fish and other sea products from the open sea or from an unconfined or non-designated area shall not be considered as an aquacultural or maricultural project eligible for the tax incentives offered herein.

Source

RPPL 6-42 § 2.

§ 2304. Tax incentives.

(a) The following tax incentives maybe offered to qualified agricultural, maricultural, and aquacultural projects with an investment value of not less than fifty thousand dollars (\$50,000):

(1) waiver of import taxes for a period not to exceed five (5) years on: seeds; fertilizers; feed for poultry, hogs, and other livestock; insecticides or other pest control products; breeding stock; starter plants and stock; small hand tools; and other equipment used solely for the purpose of agricultural, maricultural, and aquacultural projects; for purposes of this chapter, equipment shall include but not be limited to tractors, chippers/shredders, and other similar machinery;

(2) application of a net income tax at the rate of four percent of net income in lieu of a gross revenue tax for a period not to exceed five (5) years.

(b) No tax incentives shall be granted after January 1, 2008.

Source

RPPL 6-42 § 2, modified.

§ 2305. Determination of qualification for tax incentives.

Tax incentives may be granted under this chapter only to qualified agricultural, maricultural, or aquacultural projects. A “qualified agricultural, maricultural, or aquacultural project” shall be one that meets the following criteria:

- (a) The owner of the project must be a Palauan citizen or a domestic corporation chartered under the laws of the Republic;
- (b) The project must involve the growing of crops, gardens, produce, livestock, poultry, fish, shellfish, or other agricultural, maricultural, or aquacultural products;
- (c) The project must be approved by the Bureau of Agriculture for agricultural projects and the Bureau of Marine Resources for aquacultural and maricultural projects, pursuant to regulations within ten (10) working days from the date of submission of an application;
- (d) Once a project has been approved, the relevant Bureau must provide technical assistance to help the project meet Environmental Quality Protection Board requirements and ensure the EQPB has the information required to issue the necessary permits within sixty (60) days of application for the permit to the EQPB; and
- (e) The Environmental Quality Protection Board shall issue a permit for a qualified agriculture, mariculture and aquaculture project within sixty (60) days of the project’s

application for the permit. The permit may set forth a schedule of conditions that must be met for the project to retain the permit.

(f) The states of Ngiwal, Ngatpang, and Peleliu shall be deemed pilot project areas for the initial testing of the tax incentives program for aquaculture established by this chapter. Accordingly, the Environmental Quality Protection Board shall grant permits within thirty (30) days to all applicants for projects to be established in Ngiwal, Ngatpang, and Peleliu.

Source

RPPL 6-42 § 2, modified.

§ 2306. Regulations.

(a) The Ministry of Public Infrastructure, Industries and Commerce shall promulgate regulations consistent with this chapter pursuant to the Administrative Procedure Act, 6 PNC Chapter 1, as to the review and approval of qualified agricultural, maricultural, and aquacultural projects. Such regulations shall take into consideration the sustainability of the project in the future, the capacity of the project for future growth, and the resulting economic benefits to Palau and its citizens, within ninety (90) days from the effective date of this chapter.

(b) The Bureau of Revenue, Customs and Taxation shall promulgate regulations consistent with this chapter pursuant to the Administrative Procedure Act, 6 PNC Chapter 1, concerning the exemption of eligible items from import taxes and the application of net income tax to qualified projects. In determining the “net income” of a qualified project, the owner of the project shall be entitled to deduct from gross revenue the entire amount paid in salaries to citizen employees, fifty percent (50%) of the amount paid in salaries to noncitizen employees, the cost of raw materials, such as seeds, fertilizer, and other items which are consumed or otherwise depleted during the course of the project, utility costs, and equipment costs used in the project.

Source

RPPL 6-42 § 2, modified.

Notes

“Minister of Public Infrastructure, Industry and Commerce” read “Minister of Resources and Development” which has been amended by RPPL 7-43 § 2, *see* 2 PNCA § 102.

§ 2307. Tax incentives; licensing and issuance.

Pursuant to regulations, the Bureau of Agriculture shall issue a certificate to qualified agricultural, maricultural, or aquacultural projects which shall set forth the nature of the project and eligibility for waiver of import taxes or application of the net income tax or both. The time period for the tax waiver or reduction granted in the certificate shall commence on the date of the issuance of the certificate. A copy of the certificate shall be transmitted to the Bureau of Revenue, Customs and Taxation for use in determining exemption from import taxes and application of the net income tax. The certificate shall be renewable yearly up to a maximum of five (5) years from the date of original issuance, subject to the limitations set forth in section 2304 of this chapter. The certificate shall be non-transferable and subject to cancellation or suspension by the Ministry of Public Infrastructure, Industries and Commerce when the owner ceases to operate the project or substantially changes the nature of the project from that originally proposed to, and reviewed and approved by, the Bureau of Agriculture. The certificate may be suspended, canceled, or revoked by the Ministry of Public Infrastructure, Industries and Commerce if the owner or the project is determined by a non-appealable order of the relevant administrative agency or the Supreme Court to have violated any applicable laws, rules, or regulations.

Source

RPPL 6-42 § 2, modified.

Notes

“Minister of Public Infrastructure, Industries and Commerce” read “Minister of Resources and Development” which has been amended by RPPL 7-43 § 2, *see* 2 PNCA § 102.

§ 2308. Same; not to be deemed right or privilege of the applicant.

The grant of tax incentives pursuant to this chapter is a concession offered by the Republic for the purpose of economic development and is reserved for projects of substantial economic benefit to the Republic. There shall be no right of appeal from a decision denying the grant of such tax incentives.

Source

RPPL 6-42 § 2, modified.

§ 2309. Same; limited purpose.

The waiver of import taxes shall only be granted for those items listed in section 2304(a)(1) which are reasonably necessary for the conduct of the business or project. Regulations shall set

forth the terms and conditions, consistent with section 2307, under which tax incentives may be revoked, suspended, or rescinded. Regulations shall set forth terms and conditions under which taxes waived by the Republic may be recouped in the event items treated as subject to the tax waiver or exemption are subsequently transferred to persons not entitled to such tax waiver or exemption or where such items are used in a manner not reasonably related to the business or project for which tax incentives have been granted. Items as to which the import tax has been waived shall not be transferred or sold within three (3) years of importation to a person or party ineligible to receive such tax waiver without written consent of the Bureau of Revenue, Customs and Taxation. Regulations may provide that excess, used, or abandoned items may be sold or transferred to a person who otherwise is ineligible to receive tax benefits under this chapter, provided that the applicable tax which was waived is paid by the seller prior to such sale or transfer.

Source

RPPL 6-42 § 2, modified.

§ 2310. Same; limitation on number issued.

At no time shall the number of active tax incentive agreements issued exceed five (5) in number.

Source

RPPL 6-42 § 2.

§ 2311. Sunset provision.

(a) This chapter shall expire January 1, 2008, unless otherwise extended by legislative act. Any tax incentives issued prior to, but which are still in effect as of January 1, 2008, shall be allowed to continue until their conclusion; however, no extensions may be granted thereafter.

(b) A report shall be made by the Ministry of Public Infrastructure, Industries and Commerce to the President and the presiding officers of both houses of the Olbiil Era Kelulau on or before January 1, 2008, as to the impact this tax incentive program has had on agriculture, mariculture and aquaculture development in the Republic.

Source

RPPL 6-42 § 2.

Notes

“Minister of Public Infrastructure, Industries and Commerce” read “Minister of Resources and Development” which has been amended by RPPL 7-43, *see* 2 PNCA § 102.

Chapter 24
National Capitol Complex Tax Free Zone

- § 2401. Short title.
- § 2402. Definitions.
- § 2403. Tax free zone created.
- § 2404. Incentives to persons owning existing business or establishing new businesses within the Capitol TFZ.
- § 2405. Certificate of Qualification; application fee, criteria for issuance.
- § 2406. Criteria for the issuance of a Certificate of Qualification.
- § 2407. Effect of a Certificate of Qualification.
- § 2408. Liability for other taxes; compliance laws of the Republic.
- § 2409. Business licenses; delegation of authority to state of Melekeok.
- § 2410. Regulations.
- § 2411. Termination of Certificate of Qualification; recapture of taxes.

§ 2401. Short title.

This chapter may be cited as the National Capitol Complex Tax Free Zone Act.

Source

RPPL 8-20 § 1, modified.

Notes

RPPL 8-20 § 2 reads: Findings and purpose. The Olbiil Era Kelulau finds that it is in the best interests of the Republic to create a tax free zone in the area surrounding the National Capitol Complex at Ngerulmud, Melekeok State. As the Palau National Government relocates its employees to the National Capitol Complex, it is vitally important that new businesses be established and located nearby to spur the economic development of Babeldaob and to conveniently provide goods and services to that expanding population. The creation of a tax free zone will serve as an economic development tool to encourage and promote existing businesses and the establishment of new business and commercial activities to provide those goods and services. The Olbiil Era Kelulau a finds that it is in the best interests of the Republic to provide incentives in the form of tax relief to the owners of existing businesses and to persons establishing new businesses, located within the tax free zone. The Republic will benefit economically through the jobs created and provided by the existing businesses and by the new businesses established to take advantage of the tax free zone, and by other means.

§ 2402. Definitions.

As used in this Act, unless the context requires otherwise:

- (a) “Applicant” means a person applying for the issuance of a Certificate of Qualification;
- (b) “Business” means, as the case may be:
 - (1) any type of commerce or trade; any activity engaged in, or caused to be engaged in, with the object of commercial gain or profit, either directly or indirectly; or
 - (2) the building or buildings from which the commerce, trade, or activity is conducted.
- (c) “Business license” means the permission granted by the National Government or any state government of the Republic, under the authority of law, to engage in a business or to practice a trade or profession.
- (d) “Capitol TFZ Enterprise” means, as the case may be:
 - (1) a business existing on or established after the effective date of this Act and located totally within the boundaries of the Capitol TFZ; or
 - (2) the building or buildings from which the Capitol TFZ Enterprise is conducting its business.
- (e) “Conduct” means to direct in action or course; manage; carry on.
- (f) [Reserved]
- (g) “Establish” means to build, bring into being, create or start.
- (h) “Existing business” means a business in existence on the effective date of this chapter and possessing current business licenses issued by the State of Melekeok and the Republic.
- (i) “Import” means to bring into the Republic from a foreign country for use, sale, processing, or re-export.
- (j) “Manufacture” means the making, preparing or producing of anything.
- (k) “New business” means a business established after the effective date of this chapter.
- (l) “Owner” means a person who owns; possessor; proprietor; a person having a legal right

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or title to real or personal property.

(m) “Person” means both individuals and any cognizable legal entity.

(n) “President” means the President of the Republic of Palau.

(o) “Minister” means the Minister of Finance.

(p) “Republic” means the Republic of Palau as its territory is defined in Section 1 of Article I of the Palau Constitution.

Source

RPPL 8-20 § 12, modified.

§ 2403. Tax free zone created.

There is hereby created a tax free zone (the “Capitol TFZ”) delimited as the area extending two miles in all directions from the center point of the dome on the Olbiil Era Kelulau at the National Capitol Complex.

Source

RPPL 8-20 § 3, modified.

§ 2404. Incentives to persons owning existing business or establishing new businesses within the Capitol TFZ.

(a) Notwithstanding any other provision of law, any person who owns a business within the boundaries of the Capitol TFZ on the effective date of this chapter (such a business hereafter referred to as a “Capitol TFZ Enterprise”), shall be, for a period of two (2) years from the commencement date or dates stated by the Certificate of Qualification issued to the Capitol TFZ Enterprise, exempt from the payment of the taxes specified below in subsection (b).

(b) Notwithstanding any other provision of law, any person who establishes a new business within the boundaries of the Capitol TFZ (such a business hereafter also referred to as a “Capitol TFZ Enterprise”) within three (3) years of the effective date of this Act, shall be, for a period of five (5) years from the commencement date or dates stated by the Certificate of Qualification issued to the Capitol TFZ Enterprise, exempt from the payment of the taxes specified below.

- (1) All gross revenue and net income taxes imposed by the laws of the Republic on income or revenue derived from or generated by business conducted at the Capitol TFZ Enterprise;
- (2) All import taxes imposed by the laws of the Republic on building materials imported by the Capitol TFZ Enterprise, and exclusively used in the construction or renovation of the building or buildings from which the Capitol TFZ Enterprise is or will be conducting its business; and
- (3) All import taxes imposed by the laws of the Republic on capital equipment, fixtures, furnishings, and machinery, imported by the Capitol TFZ Enterprise, and exclusively used at the Capitol TFZ Enterprise; and
- (4) All export taxes imposed by the laws of the Republic on the exportation of any product manufactured at the Capitol TFZ Enterprise.

Source

RPPL 8-20 § 4, modified. Subsection (b) is amended by RPPL 9-20 § 5.

§ 2405. Certificate of Qualification; application fee, criteria for issuance.

- (a) Any person desiring to take advantage of the tax exemptions set forth in this chapter may submit an application to the Minister for the issuance of a Certificate of Qualification, accompanied by an application fee in the amount of U.S. one hundred dollars (\$100).
- (b) The Minister shall promptly review the application and, if the application complies with the criteria set forth in section 2406 below, and the Minister determines that all information set forth in the application is true and accurate, the Minister shall promptly issue a Certificate of Qualification:
 - (1) stating the name of the Capitol TFZ Enterprise and the person owning it;
 - (2) stating the location of the Capitol TFZ Enterprise;
 - (3) stating that the owner of the Capitol TFZ Enterprise is entitled to the benefit of the tax exemptions provided in this Act; and
 - (4) stating the respective date or dates on which the respective tax exemptions shall commence and expire (for new businesses the date the import tax exemption

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commences and expires may predate the date the gross revenue, net income, or export tax exemptions will commence and expire), provided that the commencement date or dates shall in no event predate the application or be later than three (3) years after the effective date of this chapter.

(c) A person who owns more than one existing business or who establishes more than one new business with the Capitol TFZ shall obtain a separate Certificate of Qualification for each Capitol TFZ Enterprise.

(d) A Certificate of Qualification shall not be transferrable.

Source

RPPL 8-20 § 5, modified.

§ 2406. Criteria for the issuance of a Certificate of Qualification.

The criteria for the issuance of a Certificate of Qualification are as follows:

(a) For an existing business, the applicant shall be a business in existence on the effective date of this chapter and possessing current business licences issued by the State of Melekeok and the Republic; and for new businesses, the applicant shall be a business that is established after the effective date of this chapter.

(b) The applicant business's physical presence shall be located completely and only within the boundaries of the TFZ.

(c) For an existing business, the applicant shall agree to remain open for a period of at least one (1) year after the date of issuance of the Certificate of Qualification; and for a new business, the applicant shall agree to open to the general public and begin conducting business within three (3) years of the effective date of this chapter, and after the date of opening, to remain open for business to the general public for a period of at least two (2) years.

Source

RPPL 8-20 § 6, modified.

§ 2407. Effect of a Certificate of Qualification.

Notwithstanding the tax exemptions granted by the provisions of this chapter, the owner of the

Capitol TFZ Enterprise shall:

(a) with respect to gross revenue or net income taxes imposed by the laws of the Republic, keep and maintain the business records that all other taxpayers in the Republic are required by law and regulation to keep and maintain, and complete and file on a timely basis tax returns that all other taxpayers in the Republic are required by law and regulation to keep and maintain, provided that in lieu of remitting a payment covering the full amount of tax liability evidenced by the return, the owner of the Capitol TFZ Enterprise shall attach a copy of the Certificate of Qualification establishing his or her exemption from the payment of such tax liability; and

(b) with respect to import or export taxes imposed by the laws of the Republic, complete and present all entry and exit documents and forms that all other taxpayers in the Republic are required by law and regulation to complete and present, provided that in lieu of remitting a payment covering the full amount of the import or export tax liability that would otherwise be payable, the owner of the Capitol TFZ Enterprise shall attach a copy of the Certificate of Qualification establishing his or her exemption from the payment of such import and export taxes, and a sworn statement that the items being imported or exported are, appropriately as the case may be, to be used exclusively in the construction or renovation of the Capitol TFZ Enterprise, or are to be exclusively used at the Capitol TFZ Enterprise, or were manufactured at the Capitol TFZ Enterprise.

Source

RPPL 8-20 § 7, modified.

§ 2408. Liability for other taxes; compliance laws of the Republic.

Except for the tax exemptions granted by this chapter, the owner of the Capitol TFZ Enterprise shall be liable for all other taxes imposed by the laws of the Republic, and nothing herein shall be construed to allow a person to engage in business without complying with all applicable laws of the Republic and of the State of Melekeok, particularly but without limitation, to engage in a business prohibited by the laws of the Republic or of the State of Melekeok.

Source

RPPL 8-20 § 8, modified.

§ 2409. Business licenses; delegation of authority to state of Melekeok.

(a) In lieu of any other National Government business licenses required by the laws of the

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Republic, a Certificate of Qualification issued pursuant hereto shall serve as the Capitol TFZ Enterprise's National Government business license until the end of the calendar year during which the Certificate of Qualification was issued. Thereafter, in lieu of any other National Government business licenses required by the laws of the Republic, the Capitol TFZ Enterprise annually shall pay a fee of one hundred dollars (\$100) and obtain from the Minister, or his designee, a renewal of the Certificate of Qualification, provided that the dates the various tax exemptions commence and expire will remain the same as those stated in the original Certificate of Qualification.

(b) Each State in the Capitol TFZ is hereby authorized to enact a state law providing for a business license fee for a Capitol TFZ Enterprise of no more than five hundred dollars (\$500) per year.

Source

RPPL 8-20 § 9, modified.

§ 2410. Regulations.

Pursuant to the provisions of Chapter 1, Title 6 of the Palau National Code, the "Administrative Procedure Act," subject to the direction and approval of the President, and after consultation with the Melekeok State Government, the Minister may promulgate such rules and regulations as are consistent with, and as the Minister deems necessary to carry out the provisions of this chapter.

Source

RPPL 8-20 § 10, modified.

§ 2411. Termination of Certificate of Qualification; recapture of taxes.

(a) For a Certificate of Qualification issued to an existing business, in the event the Capitol TFZ Enterprise does not remain open for a period of at least one (1) year after the date of issuance of the Certificate of Qualification; and for a Certificate of Qualification issued to a new business, in the event the Capitol TFZ Enterprise does not open to the general public and begin conducting business within three (3) years of the effective date of this Act, and after the date of opening, remain open for business to the general public for a period of at least two (2) years; or

(b) If the owner of the Capitol TFZ Enterprise improperly utilizes the import tax exemptions extended by this Act in any manner, including without limitation by:

(1) using import tax free building materials for any other purpose than in the construction or renovation of the building or buildings from which the Capitol TFZ Enterprise is conducting its business; or by

(2) using import tax free capital equipment, fixtures, furnishings, and machinery, at any place other than the Capitol TFZ Enterprise, in any such event, the Certificate of Qualification for the Capitol TFZ Enterprise shall automatically be deemed void *ab initio* and the owner of the Capitol TFZ Enterprise shall be liable for and shall reimburse the Republic for any gross revenue, net income, import or export taxes that he or she would otherwise have been required to pay were it not for the tax exemptions extended by this chapter.

Source

RPPL 8-20 § 11, modified.

**Chapter 25
Senior Citizen Discount**

§ 2501. Senior Citizen Discount.

§ 2502. Regulations.

§ 2501. Senior citizen discount.

(a) Any senior citizen over the age of sixty (60) who is registered with the Bureau of Aging and Gender shall receive a ten percent (10%) discount on goods over five dollars (\$5) purchased at a retail store and a twenty five percent (25%) discount on goods, food, or services over five dollars (\$5) at any restaurant or hotel in the Republic. The discount will be taken off the pre-tax total of the senior citizen's bill, upon presentation of proper identification by the senior citizen.

(b) The following restrictions shall apply to the discounts stated in subsection (a) of this chapter :

(1) In stores or hotels, the goods, food or services must be purchased by the senior citizen to qualify for the discount. In restaurants, including restaurants located within a hotel, the bill need not be paid by the senior citizen for the discount to apply but only the senior citizen's meal is eligible for a discount.

(2) Tobacco products, including cigarettes, will not be eligible for this discount.

(3) Alcohol beverages, will not be eligible for this discount.

(c) The retail store, restaurant, or hotel applying the senior citizen discount in subsection (a) of this chapter may claim the cost of the discounts granted under subsection (a) as a deduction from the gross income for the same taxable year that the discount is granted.

Source

RPPL 8-49 § 2, modified.

Notes

RPPL 8-49 Sections 1 to 4 shall take effect 180 days from its approval date of September 20, 2012.

RPPL 8-49 Section 1 reads: Legislative Findings. The Olbiil Era Kelulau finds that Palau's senior citizens struggle with the restrictions of a limited, fixed budget in the face of rising prices of food and other necessities. After a lifetime of service to their communities, families and the Republic, senior citizens deserve respect and a quality of life which enables

them to live comfortably. For this reason, the Olbiil Era Kelulau finds that senior citizens who are registered with the Bureau of Aging and Gender should be entitled to a discount at all retail stores, restaurants and hotels in the Republic. Additionally, this discount will encourage senior citizens to maintain an active social life and stay involved in the larger community, improving both their emotional and physical health as they age.

§ 2502. Regulations.

The Minister of Finance, with the Ministry of Community and Cultural Affairs, shall, within ninety (90) days of enactment of this chapter and in accordance with 6 PNC Chapter 1, the Administrative Procedure Act, promulgate rules and regulations to implement this chapter, including but not limited to:

- (a) establishing a system for claiming the tax deductions established by this chapter; and
- (b) establishing a system and method of identification to be used to claim the Senior Citizen Discount established by this chapter.

Source

RPPL 8-49 § 4, modified.

**Chapter 26
Tobacco Excise Tax**

- § 2601. Tobacco excise tax.
- § 2602. No excise tax exemptions.
- § 2603. Penalties.
- § 2604. Excise tax refund for exported products.
- § 2605. Restriction on duty-free tobacco.
- § 2606. Regulations.

§ 2601. Tobacco excise tax.

(a) There shall be an excise tax levied on all tobacco products as follows:

(1) Cigarettes shall be taxed at the rate of three dollars and fifty cents (\$3.50) per 0.017 kilograms. Any pack of cigarettes weighing less than 0.017 kilograms shall be taxed at the rate of three dollars and fifty cents (\$3.50) per pack. As of January 1, 2015, cigarettes shall be taxed at the rate of five dollars (\$5.00) per 0.017 kilograms, and packs of cigarettes weighing less than 0.017 kilograms shall be taxed at the rate of five dollars (\$5.00) per pack.

(2) All other tobacco products shall be taxed at the rate of three dollars and fifty cents (\$3.50) per 0.017 kilograms. As of January 1, 2015, all other tobacco products shall be taxed at the rate of five dollars (\$5.00) per 0.017 kilograms. Tobacco products includes any products consisting of or containing the processed leaves of plants from the genus *Nicotiana* or species *tabacum* used for smoking, chewing or as snuff, and including all products which contain tobacco in any form in a amount that is more than an incidental ingredient or component and that is intended for human consumption and may include all parts and materials, such as filters, rods and similar matter.

By March 1, 2017, the Bureau of Revenue, Customs and Taxation, in conjunction with the Minister of Finance, shall submit to the President and both Houses of the Olbiil Era Kelulau a report on the revenue generated by the tobacco excise tax including information on the volume of imported and other tobacco, and future projections of the amount of revenue expected to be generated by the tobacco excise tax for the purpose of providing data for assessing the effect of future excise rates on revenue and tobacco consumption.

(b) any person who imports cigarettes or tobacco products into the Republic of Palau shall pay the applicable excise tax under subsection (a) at the point that the products enter the Republic.

(c) all cigarettes and tobacco products not taxed under subsection (b) shall be subject to the applicable excise tax under subsection (a) at the point when any licensed wholesaler or any other acquirer takes into possession, purchases, or acquires any cigarettes or other tobacco products.

(d) A person arriving in the Republic by common carrier may import into Palau free of taxation under subsection (a) one of the following: one opened pack of cigarettes; one cigar not exceeding fifteen (15) grams; or up to fifteen (15) grams of loose smoking tobacco, chewing tobacco, or pipe tobacco, in an opened package.

Source

RPPL 9-15 § 26, modified.

Notes

Pursuant to RPPL 9-15 § 32 Sections 2601 to 2606 shall take effect on January 1, 2014.

§ 2602 No excise tax exemptions.

No person or entity is exempt from the tobacco excise tax. Any tax exemption enacted prior to the effective date of this section shall not be construed to create an exemption to the tobacco excise tax.

Source

RPPL 9-15 § 27.

§ 2603. Penalties.

(a) Any tobacco products on which the applicable excise taxes have not been paid shall be confiscated by the Bureau of Revenue, Customs and Taxation until such time as the applicable tax and any fines, in addition to storage fees, are paid. If the applicable tax, fines, and storage fees are not paid within fourteen (14) days, the Bureau shall dispose of the confiscated items in a manner to be determined by regulation. The Bureau shall not be liable for any damage to confiscated items.

(b) A person who fails to pay the applicable tobacco excise tax on an amount of tobacco equal or less than 0.2 kilograms shall be penalized as follows:

- (1) for a first violation, the person shall be liable for the applicable amount of tax.
- (2) for a second violation, the person shall be subject to a civil fine of not more than one hundred dollars (\$100) and shall be liable for the applicable amount of tax.
- (3) for a third violation, the person shall be subject to a civil fine of not more than five hundred dollars (\$500) and shall be liable for the applicable amount of tax.
- (4) for a fourth or subsequent violation, the person shall be subject to a civil fine of not more than one thousand dollars (\$1000) and shall be liable for the applicable amount of tax.

(c) A person who fails to pay the applicable tobacco excise tax on more than 0.2 kilograms of cigarettes or other tobacco products shall be penalized as follows:

- (1) for a first violation, the person shall be subject to a civil fine of not less than five hundred dollars (\$500) and not more than ten thousand dollars (\$10,000) and shall be liable for twice the applicable amount of tax.
- (2) for a second violation, the person shall be subject to a civil fine of not less than one thousand dollars (\$1000) and not more than twenty thousand dollars (\$20,000) and shall be liable for twice the applicable amount of tax.
- (3) for a third or subsequent violation, the person shall be subject to a civil fine of not less than one thousand five hundred dollars (\$1500) and not more than fifty thousand dollars (\$50,000) and shall be liable for twice the applicable amount of tax.

(d) A person who knowingly sells or offers for sale tobacco products on which the applicable excise tax has not been paid shall be subject to a civil fine of not less than one hundred dollars (\$100). For a second or subsequent violation, the person shall be subject to a civil fine of not less than five hundred dollars (\$500).

(e) Any government employee who aids, abets, or assists an individual to evade paying the tobacco excise tax commits a violation and shall be subject to a fine of up to five thousand dollars (\$5,000) and imprisonment for a period of up to two (2) years. Any government employee who accepts consideration in exchange for aiding, abetting, or assisting an individual evade paying the tobacco excise tax commits a felony and shall be subject to a fine of up to ten thousand dollars (\$10,000) and imprisonment for a period of up to five (5) years.

(f) The penalties in this Section are provided in addition to any other penalties in the Code and shall not be interpreted to supersede those other penalties.

Source

RPPL 9-15 § 28, modified.

§ 2604. Excise tax refund for exported products.

A manufacturer of locally produced tobacco products shall be entitled to a refund of excise taxes actually paid for locally produced tobacco exported out of Palau. For the purposes of this section, locally produced products shall be deemed exported if delivered to the buyer at a point or points within the Republic in a manner whereby such products may not reenter the Republic without customs examination and control.

Source

RPPL 9-15 § 29.

§ 2605. Restriction on duty-free tobacco.

Cigarettes and other tobacco products purchased at duty-free retail concession within or outside the Republic shall not be exempt from the applicable tobacco excise tax. Any person importing into the Republic cigarettes or other tobacco products purchased at a duty-free retail concession shall declare those products upon arrival in the Republic and shall be liable for the applicable amount of tax. Any person who fails to comply with this Section commits a violation and shall be liable pursuant to the penalties provided under 28 PNC § 610.

Source

RPPL 9-15 § 30.

§ 2606. Regulations.

The Bureau of Revenue, Customs and Taxation shall promulgate regulations implementing the tobacco excise tax, including by:

- (a) Prescribing the form of evidence, such as issuance of revenue stamps, or the use of a bonded warehouse, to ensure that the applicable excise tax is paid on all tobacco products including both imported and locally produced tobacco products.

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- (b) Prescribing procedures for the payment of the tobacco excise tax.
- (c) Prescribing procedures for the licensing of domestic producers of all tobacco products.
- (d) Prescribing procedures for the administration of fines, including by informing an individual of the right to appeal a fine to the Supreme Court.

Source
RPPL 9-15 § 31.

