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FILED
DISTRICT COURT OF GUAM
JAN 30 2013 *R*
JEANNE G. QUINATA
CLERK OF COURT

UNITED STATES DISTRICT COURT
DISTRICT OF GUAM

RIA MIALIZA O. PAESTE, et al., Plaintiffs, v. GOVERNMENT OF GUAM, et al., Defendants.	No. CV 11-00008 CBM PERMANENT INJUNCTION AND FINAL JUDGMENT
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On August 21, 2012, the Court held a hearing on Plaintiffs' motion for summary judgment. (Doc. No. 153.) Following argument by the parties, the Court granted Plaintiffs' motion as to both claims, granted Plaintiffs' request for declaratory relief, and then issued a minute order to that effect. (Doc. No.171.) The Court issued in a separate document findings of fact and conclusions of law in support of its ruling and in support of the permanent injunction and final judgment set forth below.

1 **I. TERMS OF THE PERMANENT INJUNCTION**

2 **A. Timely Payment of Refunds**

3 For purposes herein, a “claim for refund” refers to a valid tax return or other
4 claim for refund recognized by the Internal Revenue Code in effect on Guam. The
5 Government of Guam is required to comply with this Court’s Order regarding the
6 timely payment of refunds beginning one month from the entry of this Order, and
7 the time limits imposed apply not only to claims for refund filed in the future, but
8 also to claims for refund that have already been filed as of the date of the entry of
9 this Order.

10 1. For any GTIT claim for refund designated “E” status (or otherwise
11 determined to contain an error which must be corrected before a refund can be
12 paid) that is later amended, supplemented, or otherwise corrected such that a
13 refund is determined to be owed, the Government of Guam shall pay the refund no
14 later than six months after the claim for refund is designated “A” status or
15 otherwise determined to have a refund owed, or six months from the due date for
16 filing the claim for refund, whichever is later in time.

17 2. For any GTIT claim for refund designated “S” status (or otherwise subject
18 to audit, investigation, or some other such practice that is expressly authorized by
19 the provisions of the Internal Revenue Code in effect on Guam) that is later
20 designated as “A” status or otherwise determined to have a refund owed, the
21 Government of Guam shall pay the corresponding refund no later than six months
22 after the claim for refund is designated “A” status or otherwise determined to have
23 a refund owed, or six months from the due date for filing the claim for refund,
24 whichever is later in time.

25 3. For any GTIT claim for refund designated “A” status or otherwise
26 determined to have a refund owed that have not previously been designated as “E”
27 or “S” status, the Government of Guam shall pay the corresponding refund no
28

1 later than six months after the filing of the claim for refund or six months from the
2 due date for filing the claim for refund, whichever is later in time.

3 4. No part of this Order shall be construed to interfere with the Government of
4 Guam's right to conduct offsets, garnishments, audits, or any other such processes
5 or procedures that are expressly authorized by the provisions of the Internal
6 Revenue Code in effect on Guam.

7 **B. Reporting Requirements**

8 5. For a period of five years, beginning one month from the date of this Order,
9 Defendants shall serve on Class Counsel a written report, on a quarterly basis, that
10 states, separately for each tax year:

11 a. The number and dollar value of GTIT refunds paid during the quarter
12 leading up to the date the report is served.

13 b. The number and dollar value of GTIT refunds paid during the quarter
14 leading up to the date the report is served, which were paid more than six
15 months after the corresponding claims for refund were filed.¹

16 c. For each of the following categories, the number of claims for
17 refunds that have not yet been paid and the total dollar amount owed:

18 i. Claims for GTIT refunds the DRT has designated as "A status"
19 (or otherwise processed and concluded that refunds were owed).

20 ii. Claims for GTIT refunds the DRT has designated as "E status"
21 or "S status" (or some other designation indicating a problem that
22 needs to be resolved before a refund can be paid).

23 iii. Claims for GTIT refunds that were filed at least six months
24 ago.

25
26 ¹ For the purposes of this paragraph, the date on which a claim for GTIT refund was filed shall
27 be the later of (i) the filing due date for the claim, (ii) the actual filing date of the claim, and (iii)
28 the date on which the refund was converted to "A status" if it was initially marked "E status" or
"S status" (or some other designation indicating a problem that needed to be resolved before the
refund could be paid).

1 These reports will be due on March 31, June 30, September 30, and December 31
2 of each year unless these dates fall on a weekend or court holiday, in which case
3 the reports will be due the following court workday. The first report shall be filed
4 no later than April 1, 2013, as March 31, 2013 falls on a Saturday.

5 6. The written reports shall contain the signature of at least one Defendant
6 who attests that the report is compiled based on the information obtained from
7 electronically stored DRT records.

8 **C. Suspension and Discontinuation of Expedited Refund Payments**

9 7. The Government of Guam and Defendants Calvo, Mangloña, and Camacho
10 shall immediately suspend and discontinue the operation of the GTIT expedited
11 refund program, i.e., prioritizing the payment of refunds to some taxpayers based
12 on hardship, need, or any other reason. The Department of Revenue and Taxation
13 shall prioritize the processing of claims for GTIT refunds and the payment of
14 GTIT refunds according to the filing date of the claim for refunds.

15 8. If, within five years of entry of this order, Defendants move for
16 modification of this injunction to initiate a new practice of prioritizing certain
17 GTIT refunds based on taxpayer need, Defendants shall first present Class
18 Counsel with written notice, 30 days in advance, of their intent to do so. Any such
19 motion must include a detailed description of the laws, regulations, and/or rules
20 that will underlie the practice. The proposed practice must comport with the
21 Organic Act of Guam, the United States Constitution, and all other applicable
22 laws. Class counsel shall have the right to object to and take discovery related to
23 any proposal before a decision on its legality will be made.

24 **D. Enforcement**

25 9. If, after six months following the entry of this Order, Defendants have
26 failed to fully comply with the terms of this injunction, Plaintiffs may file a
27 motion with the Court requesting appointment of a receiver pursuant to Fed. R.
28 Civ. P. 66, sequestration of government funds, initiation of contempt proceedings,

1 or any other order necessary to ensure compliance with the terms of this
2 injunction.

3 **E. Miscellaneous**

4 10. This Order shall be deemed to have been served upon Defendants at the
5 time of its execution by the Court. The injunction shall bind Defendants and all
6 other persons and entities listed in Rule 65(d)(2) of the Federal Rules of Civil
7 Procedure, including Defendants' successors in office. *See* Fed. R. Civ. P. 25(d);
8 *Salt River Project Agr. Imp. & Power Dist. v. Lee*, 672 F.3d 1176, 1180 (9th Cir.
9 2012). Defendants shall, within five (5) days of the date of this Order, email a
10 copy of this Order to DRT and DOA personnel involved in the processing and
11 payment of Guam income tax refunds.

12 11. Plaintiffs shall file their motion for attorney's fees and costs no later than 14
13 days after the entry of this Order. *See* generally Fed. R. Civ. P. 54.


14 12. The Court shall retain jurisdiction over this matter for all proceedings
15 involving the interpretation, enforcement, or modification of this Permanent
16 Injunction.

17 **II. CONCLUSION**

18 The Clerk of Court is directed to enter judgment in this matter in favor of
19 Plaintiffs and against Defendants.

20
21 **IT IS SO ORDERED.**

22
23 DATED: January 30, 2013

By 

CONSUELO B. MARSHALL
UNITED STATES DISTRICT JUDGE