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SUPREME COURT
OF GUAM

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IN THE SUPREME COURT OF GUAM

IN RE: REQUEST OF GOVERNOR FELIX P. CAMACHO RELATIVE TO THE INTERPRETATION AND APPLICATION OF SECTION 11 OF THE ORGANIC ACT OF GUAM

Governor Felix P. Camacho,
Petitioner

Douglas B. Moylan, Office of the Attorney General,
Party in Interest

Supreme Court Case No. CRQ03-001

OPINION

Cite as: 2003 Guam 16

Request for Declaratory Judgment pursuant to
section 4104 of Title 7 of the Guam Code Annotated
Argued and submitted on July 9, 2003
Hagåtña, Guam

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BEFORE: F. PHILIP CARBULLIDO, Chief Justice, BENJAMIN J. F. CRUZ, Justice *Pro Tempore*; and RICHARD H. BENSON, Justice *Pro Tempore*.

CARBULLIDO, C.J.:

[1] The Governor of Guam, Felix P. Camacho ("Governor"), filed a Request for Declaratory Judgment pursuant to Title 7 GCA § 4104 requesting that this court determine whether the issuance of bonds authorized by Public Law 27-19 ("P.L. 27-19") would violate Section 11 of the Organic Act of Guam, (codified at 48 U.S.C. § 1423a) ("Section 11"), which limits public indebtedness to 10% of the aggregate tax valuation of the property on Guam. Related to that determination, the Governor asks the court to interpret the phrase "aggregate tax valuation of the property on Guam" as used in Section 11, and to provide guidance on how the government is to ascertain the "aggregate tax valuation" when determining whether the debt limitation has been exceeded. We find that the allowable public indebtedness under Section 11 is to be ascertained with reference to the appraised value of the property on Guam, as reflected on the certified tax roll in effect at the time the debt is incurred. We further find that the 2002 tax roll was the product of a fair and reasonable valuation system, and thus can be used to determine the current debt limit. From these findings, and considering the government's current outstanding public indebtedness, we conclude that the issuance of the bonds authorized by P.L. 27-19 would not violate the debt-limitation clause contained in Section 11 of the Organic Act.

I.

[2] Public Law 27-19, enacted on April 28, 2003, was proposed upon the Legislature's finding that "the current revenues available in the General Fund [are] . . . insufficient to pay certain obligations of the General Fund and that a mechanism is needed to provide necessary cash to the General Fund to pay such obligations . . . ." *See* Guam Pub. L. 27-19, § 1 (Apr. 28, 2003). P.L. 27-

19 authorizes the Governor of Guam to issue new bonds of up to $418,309,857 for that purpose without further legislative approval.[1] Of that amount, $218,309,857 may be used to pay income tax refunds, utility payments to the Guam Power Authority, retirement fund payments, withholding tax payments, general fund vendor payables, and public school repairs.[2] The remaining $200 million may be used to "fund an escrow to pay debt service on all or a portion of the Government of Guam General Obligation Bonds, 1993 Series A at matched maturity." Guam Pub. L. 27-19, § 2 (Apr. 28, 2003). Pursuant to the authority granted by P.L. 27-19, the Governor intends to facilitate the issuance of approximately $393 million in bonds.

[3] Under Title 5 GCA § 22601, government contracts may be entered into only upon execution of the Governor, "after approval of the Attorney General." Title 5 GCA § 22601 (1996). The Attorney General, Douglas B. Moylan ("AG"), in a letter to the Governor and Speaker of the 27th Guam Legislature, Vicente C. Pangelinan, dated May 14, 2003, indicated his refusal to sign any contract for the issuance of the bonds claiming that the issuance of the bonds would violate the debt-limitation provision of Section 11 of the Organic Act of Guam. Req. Decl. J., Exhibit A (AG Letter). The AG's conclusion was based on his opinion that the government's maximum debt limit allowed under Section 11 is to be based on the assessed value of property on Guam, and that, in any event, the current tax list could not be used to determine the debt limit because it is inaccurate due to the fact that the valuation of property on Guam, required to be performed every three years under 11 GCA § 24306, was last conducted in 1993.

[4] Presumably in response to the AG's concerns, on June 25, 2003, the Governor signed into law Public Law 27-21 ("P.L. 27-21"), which amends sections of the real property tax law in two

[1] The law also authorizes the issuance of an additional $50 million of bonds only upon further approval of the Legislature.

[2] Guam Pub .L. 27-19, § 2 (Apr. 28, 2003).

regards. First, Title 11 GCA § 24306 was amended to provide that if the triennial property valuations in Guam are not conducted by the tax assessor as required under that section, "then the *last completed* valuation as supplemented by the annual adjustments provided for in §24307 shall be the property tax valuation used under the Chapter." Guam Pub .L. 27-21 § 1 (June 25, 2003). Second, the law added subsection (l) to Title 11 GCA § 24102, to provide that the "aggregate tax valuation" under Section 11 of the Organic Act was to be "certified as being one hundred percent (100%) of the appraised value of the property on Guam based on the *last completed* valuation conducted pursuant to [Title 11 GCA] § 24306, as supplemented by the annual adjustments provided for in §24307." Guam Pub. L. 27-21, § 2 (June 25, 2003).

[5] On July 1, 2003, the Governor filed the instant Request for Declaratory Judgment in this court. The court thereafter permitted the Attorney General to intervene in the proceeding.

II.

[6] This court has jurisdiction to issue declaratory judgments upon the request of the Governor under Title 7 GCA § 4104. *See* Title 7 GCA § 4104 (as amended by P.L. 24-61, Sept. 17, 1997). Our authority extends to providing "the interpretation of any law, federal or local, lying within the jurisdiction of the courts of Guam to decide" or answering "any question affecting the powers and duties of the Governor and the operation of the Executive Branch . . . ." *Id.* We find that the Governor's Request satisfies the jurisdictional standards set forth in Title 7 GCA §4104. The issues presented require an interpretation of local and federal law, and relate to the Governor's ability to lawfully execute bonds allowed by the Legislature under P.L. 27-19, as necessary to manage the executive branch.

III.

A. Issues

[7] The Governor seeks a declaratory judgment on the following three questions:

> (1) Whether the public indebtedness of Guam, after the contemplated issuance of bonds authorized by [P.L.] 27-19, will be within 10% of the aggregate tax valuation of the property in Guam, the maximum permitted by Section 11 of the Organic Act of Guam; and
>
> (2) Whether "aggregate tax valuation of the property on Guam" as that phrase is used in Section 11 of the Organic Act of Guam means one hundred percent (100%) of the appraised value of the taxable property on Guam; and
>
> (3) Whether even if one or more of the triennial valuations required by 11 G.C.A. § 24306 has not been conducted, the Government may conclusively presume that the "aggregate tax valuation of the property in Guam" as used in Section 11 of the Organic Act of Guam is not less than the aggregate appraised value ascertained by the Director of the Department of Revenue and Taxation ("DRT"), as assessor, pursuant to the last completed valuation conducted pursuant to 11 G.C.A. § 24306 as supplemented by the annual adjustments provided for in 11 GCA § 24307.

Req. Decl. J., p. 4 (July 1, 2003). The answers to these questions require a determination of the following issues: (1) the meaning of the terms "aggregate tax valuation," "property," and "indebtedness" in Section 11 of the Organic Act; (2) the sufficiency of the 2002 tax roll in determining the current debt limit; and (3) Guam's current level of indebtedness based on the interpretation of the relevant terms in Section 11 with reference to the 2002 tax roll.

B. Standard of Review

[8] This case is brought pursuant to our original, rather than appellate, jurisdiction; thus, all issues are determined herein in the first instance. *See In re Request of Governor Carl T.C. Gutierrez*, 2002 Guam 1, ¶ 8. The questions presented for the court's determination require the interpretation of federal and local statues applicable to Guam. The interpretation of these statutes is a legal question within this court's authority to decide. *See Pangelinan v. Gutierrez*, 2000 Guam 11, ¶ 26

("Federal court decisions do not prevent this court from determining the correct interpretation of provisions of the Organic Act, Guam's constitution."), *aff'd by Gutierrez v. Pangelinan*, 276 F.3d 539 (9th Cir. 2002); *Government of Guam v. 221 Slot Machines*, 2002 Guam 22, ¶ 4 ("Issues of statutory interpretation are questions of law that are reviewed de novo.") (citation and internal brackets omitted).

C. Discussion

[9] The primary issue presented to the court is whether the issuance of one or more series of bonds in the aggregate amount not to exceed $418,309,857, as allowed by P.L. 27-19, would violate Section 11 of the Organic Act.

1. Section 11 Debt-Limitation Provision

[10] Section 11 of the Organic Act contains a statutory limitation upon government borrowing, commonly referred to as a debt-limitation provision. *See* 15 MCQUILLIN, THE LAW OF MUNICIPAL CORPORATIONS § 41.01 (3d Ed. 1949).[3] Section 11 provides in relevant part:

> Taxes and assessments on property, internal revenues, sales, license fees, and royalties for franchises, privileges, and concessions may be imposed for the purposes of the government of Guam as may be uniformly provided by the Legislature of Guam, and when necessary to anticipate taxes and revenues, bonds and other obligations may be issued by the government of Guam: *Provided, however, That no public indebtedness of Guam shall be authorized or allowed in excess of 10 per centum of the aggregate tax valuation of the property in Guam.* Bonds or other obligations of the government of Guam payable solely from revenues derived from any public improvement or undertaking shall not be considered public indebtedness of Guam within the meaning of this section.

48 U.S.C.A. § 1423a (emphasis added).

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[3] Most states and local municipalities have constitutional or statutory limitations on borrowing. *See* 15 MCQUILLIN, *supra*, § 41.01 ("A majority of the states have constitutional or statutory limitations upon borrowing by local governments."); *Guam Telephone Authority v. Rivera*, 416 F. Supp. 283, 285 (D. Guam 1976) ("Section 11 is similar to sections included in the Constitutions of most states.").

[11] The purposes of the debt-limitation provision in Section 11 have never been articulated by this court. However, it is widely recognized that debt-limitation provisions "serve as a limit to taxation and as a protection to taxpayers; to maintain . . . solvency, both governmental and proprietary; and to keep [local] . . . residents from abusing their credit, and to protect them from oppressive taxation." 15 MCQUILLIN, *supra*, § 41.01 (footnotes omitted); *see also* Tracy Nicholas Eddy, *The Referendum Requirement: A Constitutional Limitation on Local Government Debt in Florida*, 38 U. MIAMI L. REV. 677, 679 (1984) ("The primary objectives of the debt restrictions are preventing corruption, discouraging extravagance, and promoting sound fiscal policy for local governments."); *see also City of Hartford v. Kirley*, 493 N.W.2d 45, 51 (Wis. 1992) ("Article XI, sec. 3(2), is intended to prevent the creation of excessive municipal debt and to protect taxpayers from the consequent oppression of burdensome, if not ruinous, taxation."). Furthermore, their purpose is to "prevent the current legislature from binding a future legislature, and to prevent legislators from making future taxpayers pay today's bills." 15 MCQUILLIN, *supra*, § 41.01; *Keller v. City of Scranton*, 49 A. 781, 782 (Pa. 1901) ("The constitutional provision i[s] intended . . . to prevent municipalities from loading the future with obligations to pay for things the present desires, but cannot justly afford, and, in short, to establish the principle that, beyond the defined limits, they must pay as they go."); *see also City of Hartford*, 493 N.W.2d at 51 ("It seeks to impose the burden of debt repayment upon those who create the obligations, not upon future generations.").

2. "Aggregate Tax Valuation of the Property in Guam"

[12] Under Section 11, the public indebtedness of Guam cannot exceed "10 per centum of the *aggregate tax valuation* of the property in Guam." 48 U.S.C.A. § 1423a (emphasis added). The phrase "aggregate tax valuation" is not defined in the Organic Act.

[13] The Governor argues that the phrase "aggregate tax valuation" means the *appraised value*, as distinguished from *assessed value*, of the property on Guam. By contrast, the Attorney General

argues that the term "valuation" in Section 11 is the same as the term "value" in local statutes governing Guam real property taxes, Chapter 24 of Division 2, Title 11 GCA. Under 11 GCA § 24102, the term "value" is defined as "thirty-five per cent (35%) of the appraised value . . . ." Title 11 GCA § 24102(f) (1996). "Appraised value" is defined in the same section as "the amount at which property would be taken in payment of a just debt from a solvent debtor." *Id.*

a. *Barrett-Anderson v. Crisostomo.*

[14] Only one local court has defined the phrase "aggregate tax valuation" found in the Organic Act. *See Barrett-Anderson v. Crisostomo*, CV0651-89 (Super. Ct. Guam Nov. 21, 1989). In *Barrett-Anderson*, GEDA authorized the issue of limited obligation infrastructure improvement bonds and water system revenue bonds. *Id.* at p. 1. The then-legislative counsel issued a memo opining that the issuance of the bonds would violate the debt-limitation provision contained in Section 11 of the Organic Act. *Id.* at p. 2. His opinion was based on his conclusion that the term "aggregate tax valuation of the property in Guam," as used in Section 11, referred to the assessed value of taxable property, and not the appraised or market value of the property. Then Superior Court Judge Janet Healy Weeks disagreed.[4] She concluded, instead, that the phrase "aggregate tax valuation" means the "appraised value of the taxable property on Guam." *Id.* at p. 14. In reaching this conclusion, Justice Weeks started with the principle that the interpretation of a statute should be gleaned from the legislative intent. *Id.* at p. 12. She found that because the concept of "assessed value" as used in relation to the assessment of property taxes was made part of local law after the enactment of Section 11, and because these later-enacted local statutes governing real property tax assessments did not employ the same language as that used in Section 11 or otherwise reference the debt limitation in Section 11, those statutes, which premise tax assessments on 35% of the appraised

[4] Judge Weeks was subsequently appointed Associate Justice of the Guam Supreme Court. She has since retired.

value of taxable property, could not logically be used in interpreting Section 11 of the Organic Act. Moreover, Justice Weeks found that using the assessed value as the base to calculate the debt limit would "set Guam's debt-ceiling at a far lower level then those municipalities that have proportionately greater property tax bases." *Id.* at p. 13. She concluded that "[t]here is no indication that Congress, in enacting the Organic Act, sought to stifle economic growth on Guam by setting the debt ceiling restrictively low." *Id.*

b. Public Law 27-21 § 2.

[15] Public Law 27-21 § 2, enacted on June 25, 2003, added a new subsection (l) to Title 11 GCA § 24102 to define the phrase "aggregate tax valuation" in Section 11 as "one hundred percent (100%) of the appraised value of the property on Guam," thus codifying Justice Weeks' holding in *Barrett-Anderson*. Guam Pub. L. 27-21 § 2 (June 25, 2003). This legislative determination, however, is not controlling on this court's interpretation of the phrase as used in Section 11. The Guam Legislature cannot, through legislation, redefine the provisions of the Organic Act. *See* 15 MCQUILLIN, *supra*, § 41.05 ("[W]ith respect to territories, debt limits may be prescribed by act of Congress."). "[A] constitutional debt-limitation provision is self-executing and the legislature cannot authorize a municipality to incur a greater debt than that fixed by the constitution."[5] 15 MCQUILLIN, *supra*, §41.05. Thus, the Organic Act limits the legislature's power with regard to government indebtedness. *See Breslow v. School District*, 182 A.2d 501, 504-05 (Pa. 1962) (holding that a statute which defined the term "assessed value" in the constitution's debt-limit provision to mean

[5] While the Organic Act is a federal statute, it is, for all intents and purposes here, the equivalent of a constitution. *See Haeuser v. Dep't of Law*, 97 F.3d 1152, 1156 (9th Cir. 1996) ("The Organic Act serves the function of a constitution for Guam."). This is underscored by the well-established principle in this jurisdiction that the Guam Legislature cannot enact laws which are in derogation of the provisions of the Organic Act. 48 U.S.C.A. 1423a ("The legislative power of Guam shall extend to all rightful subjects of legislation of [local application] *not inconsistent with this chapter* and the law of the United States applicable to Guam.") (emphasis added); *see In re Request of Governor*, 2002 Guam 1, ¶ 36 ("[T]he legislature may not enact a law encroaching upon the Governor's authority and powers which are mandated by the Organic Act.") (citation omitted).

market value was unconstitutional because it contradicted the plain language of the constitution requiring the debt limit to be based on assessed value); *see also City Water Supply Co. v. City of Ottumwa*, 120 F. 309, 314 (S.D. Iowa 1903) (stating that the constitutional debt-limitation provision could not be circumvented by statute upon consent of the voters because if that were so, "then we have no use for the constitution"); *cf. City of Hartford*, 493 N.W.2d at 50 ("Notwithstanding the legislature's recital that TIF bonds do not constitute a debt within the meaning of the constitution, the court must examine the substance of the obligations to ascertain their effect under art. XI, sec. 3. The legislature's characterization of the bonds is not controlling on this court's determination of the constitutional issue."). The problem inherent in allowing the legislature to define the terms of the Organic Act is plain: "all that any Legislature would have to do, in order to circumvent the Constitution is to pass an Act defining or redefining any term or any language used in the Constitution to suit its purpose or objective." *Breslow*, 182 A.2d at 505. Such circumvention through local legislation would nullify the debt-limitation provision which Congress imposed. *Id.* at 504-05 (concluding that the legislature cannot pass statutes which "attempt to circumvent the Constitution and double or triple the borrowing capacity of municipalities").

[16] Finally, we are mindful that our interpretation of Section 11 must be guided by the rules of interpretation and precedent. The court may not "permit a distortion of principles and time-honored precedents merely to satisfy the lust of a greedy and overindulgent, benevolent government . . . ." *Allen v. Van Buren Township of Madison County*, 184 N.E.2d 25, 31 (Ind. 1962).

[17] "In cases involving statutory construction, the plain language of a statute must be the starting point." *See Aguon v. Gutierrez*, 2002 Guam 14, ¶ 6 (citations omitted). "[O]ur duty is to interpret statutes in light of their terms and legislative intent." *Carlson v. Guam Tel. Auth.*, 2002 Guam 15, ¶ 46 n.7; *see also In re Request of Gutierrez*, 2002 Guam 1, ¶ 17 ("When interpreting a statute, the court's task is to determine the intent of the legislature and give the statute meaning without altering

or amending the statute's scope."). "Undefined terms in a statute are generally ascribed their common ordinary meaning." *Carlson*, 2002 Guam 15 at ¶ 34. "Moreover, in determining legislative intent, a statute should be read as a whole," and therefore, we are to "construe each section in conjunction with other sections." *Sumitomo v. Gov't of Guam*, 2001 Guam 23, ¶ 17; *Gutierrez v. Ada*, 528 U.S. 250, 255, 120 S. Ct. 740, 744 (2000) ("[W]ords and people are known by their companions."). "[T]he language of the statute cannot be read in isolation, and must be examined within its context. . . . A statute's context includes looking at other provisions of the same statute and other related statutes." *Aguon*, 2002 Guam 14 at ¶ 9. Finally, "questions of statutory interpretation may be aided by reference to the prevailing interpretation of other statutes that share the same language and either have the same general purpose or deal with the same general subject as the statute under consideration." *Aguon*, 2002 Guam 14 at ¶ 11 (citation omitted).

[18] After reviewing the language of Section 11, we disagree with the AG's contention that *valuation* in Section 11 be interpreted as *value* under Title 11 GCA § 24102(f).[6] First, the two phrases are different; the term *value* is distinct from the term *valuation*. *See Barrett-Anderson*, CV0651-89, pp. 12-13. Second, the definition in the local statute cannot reasonably be viewed as the definition Congress intended for the phrase "tax valuation" in Section 11 because the two statutes were enacted by completely different legislative bodies, and, moreover, as acknowledged by Justice Weeks in *Barrett-Anderson v. Crisostomo*, Section 11 was enacted prior to 11 GCA § 24102(f). *See Barrett-Anderson*, CV0651-89, pp. 12-13; *Slaven v. BP America, Inc.*, 973 F.2d 1468, 1475 (9th Cir. 1992) (determining that actions by a later legislature have little relevance in interpreting a prior legislature's actions). Finally, and most importantly, the plain language of Section 11 does not

[6] As indicated earlier, *value* is defined as "thirty-five (35%) of the appraised value; *appraised value* means the amount at which property would be taken in payment of a just debt from a solvent debtor." 11 GCA § 24102(f) (emphasis added).

support the AG's argument that the assessed value of property should be used to calculate Guam's debt limit.

[19] Reference to the Organic Act of the Virgin Islands underscores this point. The debt-limitation provision in the Organic Act of the Virgin Islands, codified at 48 U.S.C. § 1403, was enacted by the same Congress which enacted Section 11. The Virgin Island's provision was enacted a mere 10 months prior to the enactment of Section 11. Title 48 U.S.C. § 1403 provides that "no public indebtedness of the government of the Virgin Islands shall be incurred in excess of 10 per centum of the *aggregate assessed valuation* of the taxable real property in the islands." 48 U.S.C.A. § 1403 (emphasis added). Congress provided that the governmental debt of the Virgin Islands be determined by the *assessed* valuation of the taxable property. In contrast, the same Congress in enacting the Organic Act of Guam did not provide that the debt limit of the government of Guam be based on the *assessed* values of the property on Guam. 48 U.S.C.A. § 1423a. Rather, the debt limit under Section 11 is to be determined by the *tax valuation* of the property on Guam. *Id.* This difference in the statutory language demonstrates that under the plain language of Section 11, the debt limit is not to be based on the *assessed* valuation of property.

[20] In fact, in other jurisdictions where courts have interpreted their debt-limitation provisions as requiring the limit to be based on assessed values, their constitutional debt limitation provisions specifically provided that assessed values be used. *See e.g. Breslow*, 182 A.2d at 503-05 (invalidating as unconstitutional a local law which redefined the term "assessed value" to mean "market value" for purposes of the debt-limitation provision where the Constitution provided that "[t]he debt of any . . . school district . . .shall never exceed seven (7) per centum upon the *assessed value of the taxable property* . . . .") (citation omitted) (emphasis added); *Allen*, 184 N.E.2d at 29 (holding that because, under the constitutional language, the "value of taxable property" was to be ascertained "by the last *assessment*," the debt limitation was to be based on the assessed value)

(citing Article 13, § 1 of the Indiana Constitution which provided that "[n]o political or municipal corporation in this State shall ever become indebted in any manner or for any purpose to an amount in the aggregate exceeding two percent of the value of the taxable property within such corporation, to be ascertained by the last *assessment* for State and county taxes, previous to the incurring of such indebtedness"); *Phelps v. City of Minneapolis*, 219 N.W. 872, 873-74 (Minn. 1928) (holding that the debt limit was to be based on the assessed, as opposed to actual, value of the taxable property in light of the constitutional language limiting the net indebtedness of the city to 10% "of the last *assessed* value of all taxable property therein") (emphasis added); *City of Chicago v. Fishburn*, 59 N.E. 791, 792-93 (Ill. 1901) (determining that the constitutional provision limiting the debt limit to 5% of the value of taxable property as of the last assessment referred to the *assessed* value and not actual value, especially in light of the common understanding that the term "assessment, in connection with taxation" means "an official valuation of property for the purpose of fixing the proportion of taxes which each one shall pay," and the commonly known fact that "property was not assessed at full value"); *Baisden v. City of Greenville*, 111 So. 2, 4-5 (Ala. 1927) (holding that the constitutional debt-limitation provision which limited the municipality's indebtedness to a fixed percent of "the *assessed* value of the property therein," means "the assessed value of the property as fixed for state taxation") (internal quotations omitted) (emphasis added).

[21] Viewing Section 11, there is simply no requirement that the debt limit be based on *assessed* values. Had Congress wished to limit Guam's indebtedness to a percentage of assessed values, it could have included that language in Section 11 as they did with the Virgin Islands, and as was done by the framers of the constitutions of several states.

[22] The debt limit under Section 11 is to be based on the "tax valuation" of property. 48 U.S.C.A. § 1423a. We interpret the phrase "tax valuation" to mean the appraised value of property on Guam, and not the assessed value, because all taxes on property must necessarily be based, in the

first instance, upon appraised values of the property. *See* 11 GCA §24102(f) (defining value for purposes of tax levies as "thirty-five percent (35%) of the *appraised value*") (emphasis added); *Hansen v. City of Hoquiam*, 163 P. 391, 392 (Wash. 1917) (recognizing that while a state statute required that property be assessed at a rate not exceeding 50% of actual value, because this assessment rate *was necessarily based on the actual value*, then logically in every assessment the appraised value of the property was ascertained). Moreover, there is nothing in the Organic Act limiting the levy of property taxes to a certain percentage of actual or market value. Thus, it cannot be presumed that Congress meant to restrict the debt limit to a particular assessment rate to be determined by the local legislature. The better reading of the phrase "tax valuation" is the value which Congress contemplated the taxes would be based, which, considering the absence of a limitation regarding assessment rates, could only rationally be the appraised market value of the property.

[23] Further, our interpretation is consistent with the maximum power to tax granted by Congress. Congress granted the local legislature the power to tax property. 48 U.S.C.A. §1423a. Congress also intended that the government of Guam be able to incur "debt" in the constitutional sense. Any bonds or other obligations which are not issued upon the pledge of governmental taxes and revenues are not "debt" in the constitutional sense, and are thus not generally subject to a constitutional debt-limitation provision. *City of Hartford*, 493 N.W.2d at 51 n.13 debt in a constitutional sense "must be an undertaking enforceable by the creditor *against the municipality or its assets*) (citation omitted and emphasis added). Because Section 11 contains a limitation on "indebtedness," Congress clearly granted the government the authority to incur "debt," that is, the power to incur obligations payable out of the general revenues of the government. The power to incur "debt" is clearly tied to the power to tax, because in incurring debt, the government pledges its credit, *i.e.*, its taxing power. *See Id.* at 55-56. Thus, the limitation on incurring debt in Section 11 must be interpreted consistently with the

power to tax. Because Congress did not impose an assessment rate in the Organic Act, Congress clearly granted the legislature the power to impose taxes on the full market value of property. We thus can only interpret the debt limitation in Section 11 consistently with the maximum grant of power to tax allowed by Congress. It follows that the congressionally imposed limitation on government indebtedness under Section 11 is based on the full market value of property, and not anything less. Whether the legislature chooses to levy based upon assessed values which are lower than actual values, or whether the legislature declines to tax the property at a rate necessary to satisfy the underlying obligations, are matters of policy and fiscal management which this court cannot dictate. Nor are we called to pass upon those questions. The issue before us relates to the object upon which the debt limit in Section 11 is based, and basing it on appraised values is entirely consistent with the taxing authority granted to the legislature under the Organic Act.

3. Meaning of "Property."

[24] The next relevant issue pertains to the property upon which the debt limit is to be calculated. Under Section 11, the government's indebtedness shall not exceed 10% of the tax valuation of the "property on Guam." The Governor argues that all property on Guam is to be considered, real and personal, and without regard to whether the property is exempt from taxation. The AG argues that because only real property has been assessed for taxation purposes, only real property is to be considered in determining the allowable indebtedness. The AG further argues that property which is exempted from taxation should not be considered.

[25] Again, with this issue, we look first to the language of Section 11, and draw comparison to the debt-limitation provision contained in the Organic Act of the Virgin Islands. Under 48 U.S.C. § 1403, the Virgin Islands' total indebtedness is a percentage of the value of "real property." 48 U.S.C.A. § 1403. The same Congress in enacting Section 11 limited Guam's debt to a percentage of "property." Because the word "property" in Section 11 is not further modified or clarified, it

could only mean that all property on Guam, whether real or personal, be potentially included in calculating the debt limit. Property clearly includes both real and personal property. *See* 15 MCQUILLIN, *supra*, § 41.08 ("The valuation [of property used to calculate the debt limit] is usually based on the . . . value of personal as well as real property, but in some jurisdictions the . . . value of real estate is the basis."); *see McLeland v. Marshall County*, 201 N.W. 401, 409 (Iowa 1924) (finding that the term "property" in the constitutional debt limitation provision means real and personal property); *Bauch v. City of Cabool*, 148 S.W. 1003, 1006 (Mo. Ct. App. 1912) (holding that stock of merchants are included in determining tax valuation of "property" in the debt-limitation provision).

[26] Further, unlike the Virgin Islands' Organic Act, where the debt limit is based on the "*taxable* . . . property in the islands," the debt limit in Guam's Organic Act is to be based on the "property on Guam." *Compare* 48 U.S.C. § 1403, *with* 48 U.S.C. § 1423a. One conclusion from this comparison is that Congress did not intend to base Guam's debt limit on *taxable* property, or in other words, property currently taxed[7]. This conclusion is conceivable; however, such interpretation disregards

[7] We note that the Governor argues that "taxable property" in the Virgin Islands' Organic Act refers to property which *may* be taxed, as distinguished from property that *is* being taxed. *See* Governor's Opening Brief, p. 30 n.14 (July 7, 2003). The Governor argues that Section 11 should be interpreted the same way, as including in the debt limit all property which is capable of being taxed, *i.e.*, is *taxable*. The Governor's contention that both Organic Acts should be interpreted in a similar manner ignores the fact that the two provisions employ different language. If the Governor's interpretation of the Virgin Islands' Organic Act were accepted, then this would mean that by deleting the phrase "taxable property" in Section 11, then all property on Guam, whether taxable or not (*i.e.*, capable of being taxed or not), can be used to determine the debt limit. This is untenable because if interpreted in that manner, then we could include property on Guam owned by the United States in calculating the debt limit. We do not think the Congress intended that U.S. owned property be included. Overall, we think that the phrase "taxable property" in the Virgin Island's Organic Act is better interpreted to mean property which is actually taxed, as distinguished from property which is merely capable of being taxed. *See Campbell v. Red Bud Consol. Sch. Dist.*, 198 S.E. 225, 229 (Ga. 1938) (concluding that the value of personal property exempted from taxation should not be included in determining the debt limit of 7% of the "assessed value of all *taxable* property). In fact, it appears from the Virgins Islands' Five-Year Plan for Fiscal Recovery that the debt limit is based on property that is actually being taxed. *See* 5 Year Plan for Fiscal Recovery, www.usvi.org (July 23, 2003). In the report it was stated that in 1999, the Virgin Island's debt limit was $731 million, which is ten percent of the "taxable property in the Virgin Islands" valued at $7.31 billion. *See* http://www.usvi.org/oit/5yrplan/section%20viii%20plan%20of%20finance_pages1-25.htm (July 23, 2003). In that same year, the government collected $55,382,513 in real property tax. *See* http://www.usvi.org/oit/5yrplan/part%20i%20-

both the language of Section 11 and the policies underlying debt limitation provisions.

[27] Section 11 provides that the debt limit be based on the "*tax* valuation" of property in Guam. Congress must have meant something when it used the word "tax" in the first part of the clause. By using the term tax valuation, it is clear that the debt limit is to be based on the value of property being taxed. By specifying that the tax valuation is to be used, there would be no need to then say that the debt limit is to be based on the taxable property. If so, the clause would read: "aggregate tax valuation of the taxable property on Guam." Because "tax" is used in the first part of the clause, it would be superfluous to then say that the debt limit is to be based on the taxable property. Moreover, it is imprudent to base the debt limit on non-taxed property because such property is not revenue generating. "Debt" in the constitutional sense is secured by taxes and revenues from the general fund. The object of the limit is to place a cap on debt which is to be satisfied from the general revenues of the government. Property which is not taxed does not contribute to the general revenue of the government, and thus should not be used to determine the debt limit. *See State ex rel. Village of Oak Hill v. Brown*, 180 N.E. 707, 709 (Ohio 1932) (finding that *because bonds were secured by taxable property*, and because the indebtedness was therefore calculated based upon taxable property, the 1930 list, which included non-taxable property, could not be used in determining the city's debt limit) (emphasis added)[8].[9] If the government decides to tax currently

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%20section%20i_exhibit%20i-30,%20pages%20i-30%20and%20i-31.htm(July 23, 2003). Because real property tax is levied at 1.25% of 60% of the actual value of real property, a simple calculation reveals that a tax on $7.31 billion would yield approximately the same amount as the tax actually collected for that year. *See* http://www.usvi.org/oit/5yrplan/part%20i%20-%20section%20i_general%20fund_pages%20i-1%20through%20i-40.htm (July 23, 2003). Thus, it appears that the $7.31 billion which the government based its debt limit on included the value of property which was *actually* taxed, and not exempt property. *Id.* (noting that 46% of all real property in the Virgin Islands is exempt from real property taxes by virtue of both the *local law* and the Virgin Island's Organic Act).

[8] See also *Employees' Retirement System v. Ho*, 352 P.2d 861, 886-87 (1960), where the dissenting justices provided a good explanation of the rationale for tying the debt limit to the property values, stating:

> It has been argued that the use of a percentage of assessed value as a measure of the State debt limit is without significance, since the real property tax is a county

exempt property in the future, then its debt limit may be increased accordingly at that later point in time.

[28] Accordingly, under Section 11, property which is not taxed at the present time, including personal property and exempt real property, is not included in determining the debt limit.

4. Calculating the Debt limit: Sufficiency of 2002 Tax Rolls

[29] Having determined that under Section 11, the debt limit is to be based on the appraised value of all taxed property on Guam, the next logical question is where or how to ascertain the appraised value of property. The language of Section 11 does not answer the question.

[30] Unlike the debt-limitation provisions in other jurisdictions, Section 11 does not specify the particular interval of time when the debt limit computation is to be determined. *Cf. Allen*, 184 N.E.2d at 27 ("No political or municipal corporation in this State shall ever become indebted in any manner or for any purpose to an amount in the aggregate exceeding two percent of the value of the

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> revenue. However, as explained by the Chairman of the Committee on Taxation and Finance during debate . . . upon consideration of the debt limit provisions, June 19, 1950: the people that buy the bonds are interested in the ratio of your debts to your assessed value because while all of the tax revenues of the State or the counties naturally are available for the payment of the debt, it's been customary for bondholders to look to the real property tax as their real collateral.
>
> It is noteworthy that the power to impose a real property tax is reserved to the State by Article VII, section 3, so that this customary collateral may be looked to when the general faith and credit of the State are pledged as is done in the case of general obligation bonds, even though there be no real possibility that resort to the real property tax may be necessary.

Employees' Retirement System, 352 P.2d at 886-87.

[9] This interpretation is not inconsistent with our previous determination that the appraised value of property be used to determine the government's debt limit. It is one thing to base the debt limit on a valuation consistent with the legislature's maximum authority to tax property, because it is the taxes on property which secures the debt. So long as the legislature can tax property at its full appraised valuation, there is adequate security underlying the debt. This is especially so in light of the fact that the legislature may increase the tax rate (*i.e.*, the levy), to satisfy the government's debt. It is a different thing altogether to say that the government can incur debt based on property it has chosen not to tax at all. Such exempt property cannot possibly generate revenue, thus does not secure the debt, and therefore should not be included in the determining the debt limit at the present time.

taxable property within such corporation, *to be ascertained by the last assessment for State and county taxes, previous to the incurring of such indebtedness* . . . .") (quoting Article 13, § 1 of the Indiana Constitution) (partial emphasis added). Notwithstanding such omission in Section 11, we conclude that the value of property must necessarily be based on the tax roll in effect at the time the debt is incurred. Debt limits are generally calculated based on the value of property listed at the time the governmental debt is incurred. *State v. Spring City*, 260 P.2d at 527, 529 (Utah 1953) ("It is true that the validity of an indebtedness should be determined as of the time when it is incurred. . . . If, therefore, the bonds in question were valid when issued, they do not become invalid because of the fact that the defendant Spring City ended the year 1948 with a deficit."). Thus, it is at that time that the debt limit should be determined.

[31] Under Guam law, the tax assessor is required to make a new tax list each year. Title 11 GCA § 24305 (1996) ("Annually, on or before the first day of September, the assessor shall ascertain all the taxable property in Guam and shall assess it to the persons owning or claiming it on the first Monday in March of that year at the value as determined in accordance with §24306."); Title 11 GCA § 24320 (1996) ("The assessor shall prepare an assessment roll in which shall be listed all property which it is the duty of the assessor, to assess."). The annual tax roll is to be certified by the Secretary of the Board of Equalization by October 31st of each year. *See* Title 11 GCA § 24518 (1996). These annual lists contain the property valuations for property on Guam. *See* Decl. of Artemio B. Ilagan, ¶¶ 19-23 (July 7, 2003). Exempt property is also noted on the annual roll. *See* Decl. of Artemio B. Ilagan, ¶¶ 19-23 (July 7, 2003). Thus, the most recent tax roll, which contains the most recent tax valuations, should be used to determine the government's debt limit.

[32] Therefore, in determining the government's current debt limit, we use the appraised valuations of property as certified in the 2002 tax roll. In so doing, we reject the AG's contention that the 2002 tax list cannot be relied upon because it was computed in violation of 11 GCA § 24306,

which provides that property on Guam be revalued every three years. As emphasized by the AG, the last triennial valuation required under 11 GCA § 24306 was conducted in 1993, and became effective in 1995. The AG argues that because a valuation has not been conducted since then, and because there is evidence that the property values on Guam have severely depreciated since that time, the 2002 tax list cannot be relied upon in determining the government's current debt limit. We disagree.

[33] Title 11 GCA § 24306 as it existed prior to amendment by P.L. 27-21, (hereinafter "11 GCA § 24306 (1996)"), provided in relevant part:

> Commencing with the first Monday in March of 1978 and continuing every three (3) years thereafter the assessor shall reascertain the value of all property in Guam and such valuation shall be used as the basis for assessment during the annual adjustments for property which has been either improved or suffered loss, as provided by §24307.

11 GCA § 24306 (1996). Under 11 GCA § 24307, the tax valuations for the years intervening the triennial valuations are to be based on the last triennial valuation as updated pursuant to section 24307. Specifically, section 24307 requires the tax assessor to ascertain the value of all property which has become taxable since the last valuation, such as new improvements to real property, or has changed in value due to a change in use, destruction, or other loss. Title 11 GCA § 24307 (1996).

[34] On June 25, 2003, P.L. 27-21 was enacted, which amended 11 GCA § 24306 to provide that if the tax assessor fails to conduct the triennial valuations of property in Guam as required under that section, then the "*last completed* valuation as supplemented by the annual adjustments provided for in §24307 shall be the property tax valuation used under this Chapter." Guam Pub. L. 27-21, § 1 (June 25, 2003). Essentially, P.L. 27-21 identifies the manner in which the annual assessments are to be generated if the required triennial valuation is not conducted.

[35] Notwithstanding the recent amendment to section 24306, for purposes of determining the debt limit we are constrained to determining the sufficiency of the 2002 list with regard to the law at the time the list was certified. The amendment to section 24306 pursuant to P.L. 27-21 is not relevant here because it was not in effect at the time the 2002 tax roll was certified. The procedure for establishing annual tax valuations announced in section 24306 *as amended* cannot work to retroactively affect the valuations contained in the 2002 tax roll.

[36] At the outset, we agree with the AG that the fact that the Organic Act does not include a requirement that tax valuations be conducted at a particular frequency indicates that the Congress gave the legislature the authority to determine the frequency of valuations for assessment purposes. The legislature's intent as to when tax valuations were to be conducted was evident at the time the 2002 tax roll was certified. Specifically, the legislature required, by statute, that property valuations be conducted every three years. 11 GCA § 24306 (1996).

[37] However, we do not find that the failure to undertake the triennial valuation required by 11 GCA § 24306 (1996) rendered the 2002 tax roll, and the valuations contained therein, invalid for purposes of ascertaining the debt limit. The reason is evident in the statutory language. Title 11 GCA § 24306 (1996) specifically provides that the triennial valuations "shall be used as the basis for *assessment* . . . ." 11 GCA § 24306 (1996). Thus, while the fact that the required triennial valuations were not conducted may affect the validity or accuracy of individual *tax assessments*, an issue we do not decide here, these triennial valuations are simply not required for purposes of determining the debt limit. With regard to the debt limit, we have already stated that the calculation is to be based on the most recent tax valuation as certified by the responsible government officer at the time the debt is incurred.

[38] We further emphasize that it is unnecessary to address the AG's contention that the 2002 tax list cannot be used for taxation purposes because of the alleged decline in values of property on Guam. Such an inquiry concerning the accuracy of the tax list is more relevant in a case brought for the purposes of challenging the propriety of tax assessments, and in any event, necessarily requires the benefit of the fact-finding process and the mechanisms available in such proceedings. For purposes here, where the question is whether the 2002 tax list can be relied upon in calculating the debt limit, all that is required is a determination of whether the 2002 tax list was developed in accordance with the sufficient procedures provided under the law. To the extent that sufficient procedures existed to ensure a fair and reasonable valuation, we are satisfied that the current tax list may be used to calculate the debt limit.[10]

[39] A particular method of property tax valuation must be sustained unless the assessor's actions are "discriminatory or so unreasonable that property is substantially overvalued and thus injustice and illegality result . . . ." *Uniroyal, Inc. v. Board of Tax Review*, 438 A.2d 782, 789 n.8 (Conn. 1981). The test for unreasonableness must be judged in the first instance by reference to the limits on the taxing power set forth under applicable law.

[40] The only limit to the legislature's taxing power in the Organic Act is the requirement in Section 11 that taxes be *uniform*. 48 U.S.C.A. § 1423a. ("Taxes and assessments on property . . . may be imposed for the purposes of the government of Guam *as may be uniformly provided* by the Legislature of Guam."). The fact that the 2002 tax roll was based on a 1993 appraisal does not appear to violate the requirement of uniformity in the Organic Act, nor does it render the valuations in the 2002 list unacceptably discriminatory or unreasonable. In fact, other courts have found tax valuations spanning this length of time to be acceptable. *See Uniroyal, Inc.*, 438 A.2d at 787

[10] This is not to foreclose the AG from challenging, in accordance with Guam law, the preparation of the 2002 tax roll list.

(confirming the legislature's authority to determine that tax assessment valuations be conducted every ten years) ("The remedy of revaluation was established by the legislature and it was the judgment of the legislature that the remedy need only be available once each decade."); *cf. Allen*, 184 N.E.2d at 27 (quoting an Indiana statute, Chapter 316 of the Acts of 1959, as providing for the "reassessment, for taxation purposes, of all real estate and improvements made thereon in 1961 and *every eight years thereafter*").

[41] Moreover, there are mechanisms which exist in the statutory scheme to ensure the fairness of the valuations in the 2002 list. Under 11 GCA § 24307, the assessor is required to update the tax roll annually with information regarding new properties and the destruction of old properties. 11 GCA § 24307 (requiring the tax assessor, during the years between the triennial assessment, to "ascertain the value of all property . . . which shall have become taxable since the last valuation, including new improvements or additions to old improvements . . . and in the case of destruction or injury . . . the value of which shall have been included in the former valuation of the property, the assessor shall determine the value of such loss and reduce the valuation accordingly."). Furthermore, property owners who claim a reduction in valuation based on the change in use of their property, or because of destruction or injury to the property, are required to file a report with the tax assessor by March 1st of the year in which the reduction is sought. Title 11 GCA § 24310 (1996). Similarly, with regard to reduction in appraisal values due to market forces, the law provides a mechanism to challenge an annual assessment. *See* Title 11 GCA § 24509 (1996) ("[A]ny person assessed, or his agent, may file with the Board [of Equalization] on or before September 15 [until October 15], a written application for equalization of his assessment or correction of the roll."), *and* Title 11 § 24511 (1996) ("The Board, *upon a showing of unreasonableness*, may increase or reduce any assessment . . . throughout Guam.") (emphasis added). Thus, the law provides mechanisms to protect taxpayers from being taxed on an inaccurate assessment. A failure to file a report with the

tax assessor claiming a devaluation based on change in use or destruction or injury to property results in the waiver of "of any right to such reduction in the valuation." 11 GCA § 24310. Similarly, a failure to file an application for equalization on or before October 15 for the alteration of the roll of any year bars a claim for alteration of the roll for that year. Title 11 GCA § 24510 (1996). Thus, the law forces property owners to challenge the last tax list and the valuations contained therein. Presumably, taxpayers act in accordance with their rights and with the interest in not being subjected to higher taxes.[11] Because the tax lists are composed of property valuations which reflect values based on the last assessment in light of taxpayer challenges to property values, the valuations contained in the 2002 tax roll possess an indicia of reliability.

[42] From our record, it appears that adequate procedures existed for arriving at the valuations in the 2002 tax roll. Furthermore, property owners have not been unduly deprived of their statutory rights to challenge assessments. Thus, we find that the 2002 tax roll was the product of a fair and reasonable valuation system. Accordingly, the 2002 tax list may be relied upon to determine the current debt limit under Section 11.

[43] Although this is not a contested suit in the traditional sense, we adopt the standard for such cases that the burden to show that a tax valuation system and the methodology employed therein is unreasonable rests with the person challenging them. *See* Title 11 GCA § 24511 (1996) (providing

[11] In fact, there have been many appeals made to the Board of Equalization. We do note that there are over approximately 300 pending assessment appeals currently before the Board, several of which represent appeals by condominium or multi-family residences. *See* Decl. of Artemio B. Ilagan, ¶ 18 (July 7, 2003). These represent the appeals outstanding since 2000. This is indeed problematic to us. However, we do not find this detrimental to the analysis herein because of the representation that the Governor has appointed members to the Board who are awaiting confirmation. We can only presume that the Board members, when appointed, will act expeditiously in carrying out their duties as set forth under the law. We also find that most of the outstanding appeals were filed in 2001 and 2002, thus the backlog is for recent years. To the extent there becomes a backlog for a significant number of years, then we may have a clearer case that the valuation system is failing. Moreover, until those appeals are concluded, the presumption is that the assessments are correct. *See FMC Corp. (Peroxygen Chems. Div.) v. Unmack*, 677 N.Y.S.2d 269, 272 (N.Y. 1998) ("Our analysis begins with the recognition that a property valuation by the tax assessor is presumptively valid . . ."). Additionally, the numbers of appeals are not high in relation to the total number of land and building parcels on Guam, which, according to the record, exceeded 50,000.

that the Board of Equalization may increase or reduce an assessment "upon a showing of unreasonableness"); *Uniroyal, Inc.*, 438 A.2d at 789 n.8. Here, the AG has not shown that the statutory procedures governing the establishment of the 2002 tax roll are inadequate for purposes of arriving at the current valuation. Accordingly, and in light of the fact that the 2002 tax list has not been invalidated by a court of competent jurisdiction in the appropriate case, we conclude that the 2002 list may be considered in calculating the government's current debt limit.

[44] According to the documents in the record, the appraised values of the real property on Guam and structures thereon as certified on the 2002 tax roll is $11.333 billion. *See* Decl. of Artemio B. Ilagan, ¶ 22 (July 7, 2003). Approximately $183.7 million of the total represents exempt property. Decl. of Artemio B. Ilagan, ¶ 23 (July 7, 2003). Thus, the appraised value of non-exempt property is $11.1493 billion. In accordance with the 2002 list, the government's debt limit, calculated at 10% of the appraised value, is $1.11493 billion.

5. "Indebtedness"

[45] The final issue before the court is whether the issuance of the bonds authorized under P.L. 27-19 would violate the Organic Act in light of our interpretation of Section 11. In calculating the debt limit pursuant to a constitutional debt-limitation statute, the court must: (1) determine the "aggregate tax value of property in Guam;" (2) calculate the amount which is 10% of that amount; (3) determine the outstanding "public indebtedness;" and (4) determine whether the indebtedness contemplated under P.L. 27-19, when added to the outstanding "public indebtedness," would exceed the 10% figure. *See Miller v. City of Glenwood*, 176 N.W. 373, 376 (Iowa 1920) ("An observance of . . . [the constitutional debt-limit] provision involves: First, an inspection of the tax list to ascertain the amount of taxable property in value in the city; and, second, avoidance of debt beyond the limit of 5 per cent. of such value."). Having discussed the first two issues relevant to the calculation, the remaining issues relate to the outstanding public indebtedness, and the indebtedness which may be

created upon the issuance of the bonds.

[46] Section 11 imposes a limit on "public indebtedness." 48 U.S.C.A. § 1423a. Thus, in determining the amount of current governmental debt, we must interpret the term "indebtedness."

[47] Courts agree that the terms "debt" and "indebtedness" in the constitutional sense are not technical terms; but rather, should be viewed "in their broad, general meaning, of all contractual obligations to pay in the future for considerations received in the present." *Keller*, 49 A. at 782; *see also City of Hartford*, 493 N.W.2d at 51 ("[T]here is nothing technical about the meaning of debt in its constitutional sense."); *Knowlton v. Ripley County Mem'l Hosp.*, 743 S.W.2d 132, 136 (Mo. Ct. App. 1988) ("A debt is understood to mean an unconditional promise to pay a fixed sum at some specified time, and is quite different from a contract to be performed in the future, depending upon a condition precedent, which may never be performed, and which cannot ripen into a debt until performed.") (citation omitted). Similarly, debt, in a constitutional sense, has been characterized as an obligation in which the debtor is obliged to pay and the creditor has a right to receive and enforce payment. *City of Hartford*, 493 N.W.2d at 51 n.12; *State ex rel. Capitol Addition Bldg. Comm'n v. Connelly*, 46 P.2d 1097, 1100 (N.M. 1935) ("The idea of a 'debt' in the constitutional sense is that an obligation has arisen out of contract, express or implied, which entitles the creditor unconditionally to receive from the debtor a sum of money, which the debtor is under a legal, equitable, or moral duty to pay without regard to any future contingency.") (citation omitted). Furthermore, debt only arises out of an obligation to pay money from funds to be provided in the future, as distinguished from funds presently on hand. *See City of Hartford*, 493 N.W.2d at 51; *see also Hodges v. Crowley*, 57 N.E. 889, 892 (Ill. 1900) (finding that debt in the constitutional sense is something payable in the future because an obligation payable out of present funds is characterized as "one thing simply given and accepted in exchange for another") (citation omitted). Another recognized proposition is that constitutional debt limitations "comprehend[ ] a debt pledging for its

repayment the general faith and credit of the state or municipality . . . and contemplating the levy of a general property tax as the source of funds with which to retire the same." *State ex rel. Capitol Addition Bldg. Comm'n*, 46 P.2d at 1101. Finally, to constitute debt, the obligation "must be an absolute undertaking; if the municipality may avoid its obligation or if there remain conditions precedent to it, there is no indebtedness." *City of Hartford*, 493 N.W.2d at 51 n.13 (citation omitted). Thus, "executory and contingent contracts which are to be performed *in futuro* do not constitute an indebtedness against the municipal or quasi municipal corporation, in the sense of the constitutional inhibition, until such contracts have been performed."[12] *Knowlton*, 743 S.W.2d at 137 (recognizing that installment lease with the option for annual renewal were not debts) (citation omitted).

[48] As shown above, courts scrutinize the term "debt" in constitutional debt-limitation provisions with regard to both the nature of the obligation itself and the source of payment securing the obligation. From these principles, courts have recognized various types of obligations which are not included in the definition of "debt." Section 11 specifically excludes certain obligations from the debt calculation. Section 11 provides that "[b]onds or other obligations of the government of Guam payable solely from revenues derived from any public improvement or undertaking shall not be considered public indebtedness of Guam within the meaning of this subsection." 48 U.S.C.A. 1423a. We do not believe that the exclusion in Section 11 precludes us from otherwise interpreting the term "indebtedness" as used in Section 11. The most that can be said is that Congress intended that there be no question that certain obligations are not to be included in determining the amount of public indebtedness for debt-limitation purposes. Accordingly, we will interpret "indebtedness" in Section 11 with reference to the definition of "debt," which necessarily encompasses exclusions, recognized by other courts.

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[12] Because contingent obligations are not "debt" in the constitutional sense, the so-called "unfunded liability" obligations of the Retirement Fund are not "debt." This liability is contingent in nature.

[49] Whether certain governmental obligations constitute debts in the constitutional sense, and are thus to be included in the debt limit calculation, is a highly litigated issue. For purposes here, we will contain the analysis to the outstanding obligations evidenced in the record. The following is a list of outstanding obligations of the government of Guam as of December 31, 2002, set forth in the Declaration of Edward Untalan, the Finance and Economic Director of the Guam Economic Development and Commerce Authority:

Obligation	Amount
1. Note to Farmers Home Administration ("Superior Court Note") secured by the Judicial Building Center and court fees	$ 6,678,135
2. Government of Guam General Obligation Bonds, 1993 Series A secured by the Full Faith and Credit of the Government of Guam	$ 135,235,000
3. Government of Guam General Obligation Bonds, 1995 Series A secured by the Full Faith and Credit of the Government of Guam	$ 50,020,000
4. Government of Guam $10 million loan as per P.L. 26-84 secured by the pledge of Federal Government Section 30 monies and the Full Faith and Credit of the Government of Guam	$ 10,000,000
5. Government of Guam Limited Obligation Infrastructure Improvement Bonds, 1997 Series A, secured by Hotel Taxes	$ 64,195,000
6. Government of Guam Limited Obligation Highway Refunding Bonds, 2001 Series A, secured by Liquid Fuel Taxes, Vehicle Registration and License Fees, etc.	$ 47,875,000
7. GEDA Tobacco Settlement Asset-Backed Bonds, Series 2001A, secured by Tobacco Settlement Receipts	$10,702,980.10
8. GEDA Tobacco Settlement Asset-Backed Bonds, Series 2001B, secured by Tobacco Settlement Receipts	$13,494,478.85
9. Government of Guam Limited Obligation (Series 30) Bonds, Series 2001A, secured by the pledge of Federal Government Section 30 monies and the Full Faith and Credit of the Government of Guam	$ 70,675,000
10. Revenue Bonds secured by the revenues generated by a government agency or instrumentality[13]	$ 774,360,656

See Decl. of Edward Untalan, Exhibit A (July 7, 2003).

[50] The total amount of these debts rounded upwards to the nearest dollar amounts to $1,183,236,250. Of that amount, the Revenue Bonds (Item 10) are not considered "debt" because they are fully payable and secured only by the revenue generated from public improvements or

[13] This Item represents 13 separate bond issuances with outstanding amounts due. All of these bonds are payable directly from the revenues of the government entity.

undertakings. *See* 48 U.S.C.A. § 1423a ("Bonds or other obligations of the government of Guam payable solely from revenues derived from any public improvement or undertaking shall not be considered public indebtedness of Guam within the meaning of this subsection.").

[51] Similarly, the Superior Court Note (Item 1), which is secured by court fees and a mortgage on the judicial center building, is similarly not "debt" because the obligation is secured by a pledge of the fees payable to the court which are revenues from a public undertaking. *Id.* Additionally, the fact that the building is used to secure the note does not render the note a debt because there is no pledge of the general revenue for its payment. *See Lerch v. Md. Port Auth.*, 214 A.2d 761, 772 (Md. 1965). In *Lerch v. Maryland Port Authority*, the court recognized the majority view that "the acquisition of property by a municipality under an agreement whereby the cost thereof is to be paid out of the revenue from the property itself does not give rise to a debt . . . within the meaning of a constitutional or statutory limitation of indebtedness, although the property so acquired is encumbered by a mortgage or lien to secure the payment of the cost thereof, where the encumbrance does not attach to any other property of the municipality . . . ." *Id.* (citation omitted). Although the court there considered a debt-limitation provision significantly different from ours, we agree with the rationale that the pledge of a structure to secure the payment of bonds or other obligation issued to finance its construction is not "debt" because "the municipality can walk away from the obligation none the poorer. From the point of view of assets and revenues available for expenditure it is in the same position after entering into these obligations as it was before." *Id.* at 774 (citation omitted) (distinguishing obligations secured by previously existing property from obligations secured by property which is to be constructed with the bond proceeds, the latter of which is not "debt"); *City of Hartford*, 493 N.W.2d at 52 ("According to the pre-existing asset doctrine, an obligation is not debt in the constitutional sense if it is neither 1) a general obligation of the municipality entitling the creditor to look to the municipality's revenue for repayment nor 2) secured by any asset owned by

the municipality *prior to its incurring the obligation*.") (emphasis added).

[52] Furthermore, the bonds secured by the tobacco settlement money (Items 7 and 8) are not considered "debts" because they are secured by a "special fund' which is not funded by revenue derived from taxation, and the obligation does not now, or cannot in the future, burden the general fund. *Bd. of State Harbor Comm'rs v. Dean*, 258 P.2d 590, 592 (Cal. Dist. Ct. App. 1953). "[A] limitation upon municipal indebtedness is not violated by an obligation which is payable out of a special fund, if the municipality is not liable to pay the same out of its general funds should the special fund prove to be insufficient, *and the transaction by which the indebtedness is incurred cannot in any event deplete the resources of the municipality*." *Id.* (emphasis added) (citation omitted).

[53] We do find, however, that the bonds secured by other taxes such as hotel tax and fuel tax (Items 5 and 6), which are part of the general fund, constitute "debts" for purposes of the debt-limitation provision. These bonds are not secured by "the revenues derived from a public improvement or undertaking" and thus do fall within the obligations excluded from "indebtedness" in Section 11. Furthermore, these bonds do not fall within the special fund doctrine. We agree with the jurisdictions which hold that "an obligation to be funded from general tax revenues, whether they be *ad valorem* or excise taxes, is a 'debt' within the meaning of the debt-limitation provision." *State ex rel. Lesmeister v. Olson*, 354 N.W.2d 690, 697 (N.D. 1984). By accepting the argument that "a pledge of any specific tax revenues would be sufficient to invoke the 'special fund' doctrine, the constitutional debt limitation would be largely nullified, since the legislature could exempt almost any obligation from its strictures merely by identifying a specific tax from which the obligation could be paid." *Id.* at 698 (citation omitted). "Under this contention the Legislature . . . could divide the public revenue into numerous subdivisions, calling one the 'road fund,' another the 'school fund,' . . . and others almost without limit. Debts could then be contracted in unlimited amounts and

payable in the far distant future, and still be immune from attack as violating constitutional provisions limiting indebtedness . . . . A mere statement of the proposition carries with it, it seems to us, its own refutation." *Id.* (citation omitted).[14]

[54] All other items listed above pledge the full faith and credit of the government, and are thus "debts" in the constitutional sense and are to be added to the overall government indebtedness. *State ex rel. Capitol Addition Bldg. Comm'n*, 46 P.2d at 1101 (debt is an obligation "pledging for its repayment the general faith and credit of the state or municipality . . . and contemplating the levy of a general property tax as the source of funds with which to retire the same.").

[55] The Governor also admits that in addition to the bond obligations listed above, there is currently an estimated deficit of $10,642,709. The Governor argues that these amounts are not debts under Section 11 because they are obligations made in anticipation of revenues for the fiscal year. We agree. Obligations which are part of current expenses, and are expected to be paid from current revenues, are not debt. *See City of Waycross v. Tomberlin*, 91 S.E. 560, 561 (Ga. 1917); *Wilkes County v. Mayor and Council of Washington*, 145 S.E. 47, 53 (Ga. 1928) ("Before a liability for a legitimate current expense can be incurred by a municipality without creating a debt . . . there must, at the time of incurring the liability, be a sufficient sum in the treasury which can be lawfully used to pay the liability incurred, or there must be authority and ability to raise a sufficient sum to discharge the liability by taxation during the current year . . . .") (citation omitted). The current obligations identified are not "debts" because they are not payable in the future from taxes to be collected beyond the fiscal year.

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[14] We note that the court in *Olson* discussed the meaning of "debt" under a significantly different debt-limitation provision, however, again, we find that court's logic to be compelling for application with regard to the limit contained in Section 11.

[56] In his Opening Brief, the AG identifies several other obligations, not treated above, which he believes should be included in the calculation of the current outstanding debt. These include:

1. Utility Payments to GPA	$ 30,400,000
2. Payments to the Retirement Fund	$ 25,300,000
3. Vendor Payables	$ 5,300,000
4. Withholding Tax Payments from 2002	$ 15,400,000
5. Past Due Income Tax Refunds	$139,200,000
6. Past Due Obligations for the current year	$ 80,000,000
7. Receivables through May 30, 2003 due to the Gov't of Guam Retirement Fund	$130,500,000
8. Department of Education Debt	$ 21,000,000

[57] We do not find that any of these items are "debt" under Section 11. These items appear to have been incurred with the purpose of payment out of revenues for the years that they were incurred. Thus, at the time they were incurred they were current obligations, and they have not changed in form merely because they were not paid as contemplated during the fiscal years in which they became due.

[58] Accordingly, in light of the foregoing, the total amount of "public indebtedness" is $378,000,000. As stated earlier, according to the 2002 tax list, the appraised value of the real property on Guam and structures thereon is $11.333 billion. *See* Decl. of Artemio B. Ilagan, ¶ 22 (July 7, 2003). Approximately $183.7 million of the total represents exempt property. Decl. of Artemio B. Ilagan, ¶ 23 (July 7, 2003). Thus, the appraised value of non-exempt property is $11.1493 billion, rendering the government's debt limit, calculated at 10% of the appraised value, to be $1.11493 billion.

[59] The final remaining issue is whether the issuance of the bonds as authorized by P.L. 27-19 will cause the government to exceed the debt limit. We find that it would not. Even assuming the total amount of bonds authorized (totaling $418,309,857) are issued, and assuming that all bonds issued under P.L. 27-19 are considered "new" debt to be added to the government's current

indebtedness of $378,000,000, the debt limit of $1.11493 billion would not be exceeded.[15]

IV.

[60] Section 11 of the Organic Act limits the public indebtedness of Guam to 10% of the "aggregate tax valuation of the property on Guam." This debt limit is to be calculated on the appraised value of the real or personal property currently subject to taxation. The appraised values of such property should be taken from the tax roll in effect at the time the debt is incurred. We find that the 2002 tax list is appropriate for use in calculating the government's current debt limit notwithstanding that the last valuation of the property on Guam was conducted in 1993. Based on the valuations provided in the 2002 tax list, and considering the current outstanding debt of the government of Guam, the issuance of bonds authorized under P.L. 27-19 would not violate Section 11 of the Organic Act.

Richard H. Benson
RICHARD H. BENSON
Justice *Pro Tempore*

Benjamin J.F. Cruz
BENJAMIN J.F. CRUZ
Justice *Pro Tempore*

F. Philip Carbullido
F. PHILIP CARBULLIDO
Chief Justice

[15] It is worthy of mention that the bonds under P.L. 27-19 which may be used to fund an escrow to pay debt service on the 1993 Series A bonds are not "debt." *See Keeney v. Kanawha County Court*, 175 S.E. 60, 61 (W. Va. 1934). "[T]here is . . . overwhelming authority to the effect that the issuance of refunding bonds is not the creation of a new debt, but is simply a change in the form of the old and in the evidence representing it." *Id.*