

CHAPTER 58

Qualifying Certificates

NOTE: This entire Chapter was amended, first by P.L. 22-81 and now by P.L. 22-159, the latter dated 12/29/94. It is understood that P.L. 22-81 was an invalid act because the version signed by the Governor was not the same version passed by the Legislature. The Legislature transmitted the wrong version to the Governor in error. P.L. 22-159 has not been questioned. P.L. 22-159 amended this Chapter as 12 GCA Article 4 in its entirety, and, as amended, is reproduced here.

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§58100. Legislative findings and intent. The Legislature recognizes that the Qualifying Certificate program of the Guam Economic Development Authority

(the *Authority*) was conceived as an economic incentive tool to entice investors into Guam. In use for over two decades, it has had substantial positive impact upon the economic development of the territory, mainly in the tourist industry.

The Legislature finds that, today, new hotel construction, expansion of existing ones, and development of resorts are occurring in response to demands for additional lodging due to the ever-increasing numbers of visitors to Guam and that government assistance in the form of tax rebate and abatement benefits requires periodic assessment of the growth in this section of Guam's business community.

Investment by foreign entrepreneurs continues to be major catalyst for Guam's financial growth. The bulk of their interests, however, lies in large-scale projects that mainly benefit other off-island investors, transients mostly, and which also put undue pressure on the island's infrastructure to expand and meet their needs, depleting rapidly Guam's finite essential resources such as people, land and water. While the territory acknowledges their contributions to the island's welfare in terms of taxes, construction, and employment opportunities on the low end of the pay scale, meaningful participation by people who live and work in Guam, particularly in terms of ownership and joint ventures, has been sorely lacking.

It is the Legislature's intent to restructure the Qualifying Certificate program to assist U. S. citizen and permanent resident entrepreneurs in establishing or expanding industries and services industries and services, including those supportive of hotels and their guests, to diversify the island economy, enrich its growth, and enhance the quality of life in Guam. The Legislature affirms that the program must be expanded to attract investments in order to diversify Guam's economy.

§58100.1. Designation of Qualifying Certificate Program. This Chapter shall be known as the, *Frank D.*

Perez Economic Revitalization and Enhancement Zone Act.

SOURCE: Added by P.L. 25-169:2.

§58101. Qualifying Certificate defined. A *Qualifying Certificate* is a contract valid for a given period of time, executed by the Governor upon recommendation of the Authority, between the government of Guam and the Beneficiary, which has qualified for certain tax rebates or tax abatements or for both in return for meeting certain employment, investment, and other requirements as described in this Chapter and in the Qualifying Certificate.

§58102. Beneficiary defined. The recipient of a Qualifying Certificate shall be known as a *Beneficiary*.

§58103. Benefits of a Qualifying Certificate. A Qualifying Certificate shall entitle the Beneficiary to tax rebates or tax abatements or both in return for meeting the conditions and requirements prescribed by the Authority in this Chapter and in the Qualifying Certificate.

§58104. Eligibility Defined. A Qualifying Certificate shall only be issued to the following entities:

Any trust, partnership, sole proprietorship, Limited Liability Partnership ('LLP'), Limited Liability Company ('LLC'), corporation formed under the laws of Guam, or possessions corporation as defined in §58106 of this Chapter, engaged, or about to engage in any of the following activities:

1. agriculture;
2. aquaculture;
3. mariculture;
4. manufacturing;

5. commercial fishing;
6. services;
7. tourism;
8. improvement of real property for purposes which are specifically determined by the Authority to be beneficial, desirable, and necessary for the economic development of Guam;
9. insurance issuance, either by commercial insurers, reinsurers, or captive insurers which meet the requirements of 22 GCA Chapter 15, Article 3;
10. export trading company, as defined in 11 GCA §26101(d), if the main office of the export trading company is established on Guam;
11. producing water or disposing of wastewater, or both, jointly with the Guam Waterworks Authority;
12. operating on a military base on Guam a Base Operating Service Contract;
13. a small business entity operating on a military base on Guam, a Base Operating Service contract, or as a subcontractor to a BOS Contractor; and
14. a global internet infrastructure services company(ies) providing Internet connectivity and co-location facilities and its/their tenant-sellers in the sales of goods, services and information over the Internet; provided that:
 - (i) the seller is legally established in and operates from Guam;
 - (ii) the sale does not include the local sale of goods, services and information;

(iii) the sale is conducted exclusively through the Internet; and

(iv) the seller does not sell or distribute in any fashion material that is harmful to minors as that term is defined in the Internet Tax Freedom Act, a part of the Omnibus Appropriations Act of 1998, Public Law Number 105-277. For purposes of this Paragraph, a 'minor' is a person under the age of eighteen (18).

SOURCE: Subitem 9 amended by P.L. 23-109(a). Subitem 8 amended by P.L. 23-135:11(a). Amended by P.L. 24-103:2. Entire section amended by P.L. 25-177:2 to refer to Internet operations.

§58105. Promotion of general economic improvement. No Qualifying Certificate shall be issued **unless** the Authority finds that the proposed activities of the Beneficiary shall promote the general economic development of the territory by:

§58105.1. Employment. Creation of employment; plus

§58105.2. Replace imports. Replacement of imports; or

§58105.3. Price reduction. Reduction in consumer prices; or

§58105.4. Affordable housing and needed facilities. Creation of affordable housing or other vitally needed facilities; or

§58105.5. Economic activity. Creation of economic activity of value to the territory; or

§58105.6. Insurance. Establishment of Guam as a financial/insurance center for the Pacific, and increasing the availability and lowering the cost of insurance in Guam.

SOURCE: §58105.6 amended by P.L. 23-109:2(b). §58105.4 amended by P.L. 23-135:11(b).

§58106. Qualifying Certificate: issuance of. A Qualifying Certificate may be issued by the Governor of Guam upon the recommendation of the Authority to any applicant that proposes to engage in an eligible business, or to any applicant stockholder of such corporation holding a Qualifying Certificate, and said corporation may be either a Guam corporation or a duly organized "possessions corporation" limited to doing business in Guam, as such "possessions corporation" is defined under Federal income tax laws and regulations. Each Qualifying Certificate shall specifically identify on its face each activity of the Beneficiary which is entitled to the tax rebates or abatements set out in the Qualifying Certificate.

§58107. Same: nature of; benefits. A Qualifying Certificate, once issued, shall be a contract between the government of Guam and the Beneficiary, and the tax rebates or abatements or both set out in the Certificate may not be curtailed, limited or impaired without the consent of both parties by any subsequent act, **except** as provided herein. Once issued and **unless** suspended, rescinded or revoked, a Qualifying Certificate shall constitute conclusive evidence of entitlement to the tax rebates or abatements or both set out on its face.

§58108. Same: regulations. The Authority shall adopt regulations containing standards, criteria, and measures of investments for the Qualifying Certificate applicant and describing the benefits to be derived by the people of Guam in the issuance of Qualifying Certificates. Such regulations shall include preference to be extended to applicants which have a fifty-one percent (51%) or greater proportion of local ownership by **bona fide** Guam residents, U. S. citizens or permanent residents. The Authority shall recognize and take into consideration any and all provisions of law and regulations administered by other government entities that have review or approval authority over the eligible activity. All of the regulations of

the Authority shall be adopted in the manner prescribed by the Administrative Adjudication Law.

§58109. Authority's findings on applications. In making its recommendation to the Governor the Authority shall consider and make specific findings on the following:

- (a) The impact of the Beneficiary's proposed activities upon established businesses and markets in Guam;
- (b) The financial risks facing the Beneficiary in undertaking the proposed activities;
- (c) The location of the proposed activities;
- (d) The importance of the proposed activities to the economy of Guam and to the official economic policies of the government of Guam, if any;

§58110. Conditions of benefits. In its recommendation of specific tax benefits, the Authority shall consider the following as possible terms and conditions to such benefits:

- (a) **Percentage of investment.** Limiting the tax benefits to a percentage of the capital investment in Guam to be made by the Beneficiary;
- (b) **Variable rate.** Varying the rate of tax benefits over the term of the Qualifying Certificate;
- (c) **Limitation on amount.** Limiting the tax benefits to a fixed dollar amount;
- (d) **Public investments.** Conditioning the tax benefits on the Beneficiary's investing in or creating public improvements separate from its proposed activities;

(e) **Local shareholders.** Requiring the Beneficiary to offer ten percent (10%) or more of its corporate equity to qualified residents of Guam on terms and conditions to be established by the Authority;

(f) **Profit-sharing, etc.** Requiring the Beneficiary to establish profit-sharing and stock ownership programs and other similar benefits for its employees;

(g) **Training.** Requiring the Beneficiary to (i) establish in-house training programs or (ii) make contributions to an independent training or scholarship fund; or

(h) **Local purchaser.** Requiring the Beneficiary to procure services or products supplied by Guam-licensed vendors if the total cost of the same does not exceed one hundred ten percent (110%) of the cost of the same services or products available from off-island vendors.

§58111. Grounds for suspension, rescission or revocation. A Qualifying Certificate may be suspended, rescinded or revoked by the Governor of Guam upon the recommendation of the Authority for the following reasons:

(a) **Fraud.** Fraud or misrepresentation of any material allegation in the application for such Certificate;

(b) **Noncompliance with Certificate.** Failure to comply with any condition or obligation set out in the Certificate after having been notified by the Authority in writing of such failure to comply and after having been given by the Authority a reasonable period of time within which to correct such failure;

(c) **Bankruptcy.** The filing by or against the Beneficiary of a petition for bankruptcy;

(d) **Dissolution or death.** A finding by the Attorney General that a corporate Beneficiary has been dissolved, that a partnership Beneficiary has been dissolved, or that an individual Beneficiary has died;

(e) **Noncompliance with laws and rules.** Failure to comply with any provision of this Chapter or with the applicable rules and regulations of the Authority.

§58112. Hearing required. No recommendation for suspension, rescission or revocation of a Qualifying Certificate shall be made by the Authority **except** after a hearing thereon pursuant to the provisions of the Administrative Adjudication Law.

§58113. Retroactive suspension. The suspension, rescission or revocation of a Qualifying Certificate may be retroactive to the time of the act or omission giving rise to the suspension, rescission or revocation or for any shorter period recommended by the Authority.

§58114. License required. A Qualifying Certificate shall not be issued to any applicant who has not first obtained a license to do business in Guam.

§58115. Conflicts of interest. No employee or board member of the Authority or their spouses and no corporation or any other legal entity in which any employee, board member or counsel of the Authority, or their spouses has any financial interest is eligible to apply for a Qualifying Certificate. Neither shall any of the following, during their term of office and for a period of one (1) year after their resignation, termination, or completion of their term of office, directly or indirectly, qualify for a Qualifying Certificate:

- (a) Members of the Legislature and their spouses;
- (b) Full-time employees of the executive branch of

the government of Guam, and their spouses, from the level of first assistant to the agency director or chief executive and up;

(c) The Governor of Guam, the Lieutenant Governor and their spouses;

(d) Employees of the Governor's Office and their spouses;

(e) Judges of the various courts of Guam and their spouses.

Any Qualifying Certificate issued in violation of this Section shall be void **ab initio**.

§58116. Employment of United States citizens and permanent residents. Every Qualifying Certificate shall include a requirement that the Beneficiary shall submit a plan for a management training program for the approval of the Authority. The plan shall establish a management training program through which the Beneficiary shall have as managers and officers residents of Guam who are United States citizens or permanent residents of the United States.

§58117. Same: work force. (a) **Minimum size.** A Beneficiary shall at all times employ a total work force of not less than the minimum full-time equivalent number established by the Authority and as set out in the Qualifying Certificate. However, at **all** times, the work force of a Beneficiary shall meet the following **minimum** requirements:

(1) **Initial minimum requirement.** At least seventy-five (75%) of the Beneficiary's non-managerial employees shall be United States citizens or permanent residents of the United States; and

(2) **Subsequent minimum requirement.** After

the expiration of three-fourths (3/4ths) of the period of the Qualifying Certificate or ten (10) years, whichever is **sooner**, the Beneficiary shall satisfy the seventy-five (75%) employment requirement for both management and non-management employees.

(b) Management and non-management employees.

The Authority shall be the sole judge of whether a Beneficiary's employee is management or non-management but it may seek advice from the University of Guam, the Guam Community College, the Department of Labor, or such other government agencies as are helpful in advising on carrying out the provisions of this Section. The Authority shall establish by regulation the requirements for practical and equitable training programs as guidance for the Beneficiary and the reasonable minimum number of persons to be employed on a continuing basis for each Beneficiary in accordance with the specific and normal requirements of the business involved. The Authority shall annually report to the Legislature the titles and compensation of all trainees, including those placed in management levels, who are employed by the Beneficiaries of Qualifying Certificates.

§58118. Same: wages. No resident employee of a Beneficiary shall be paid at less than the prevailing wage rate nor shall such employee be laid off work nor have his or her workweek reduced to less than forty (40) hours in order to create employment for employees who are not United States citizens or permanent residents of the United States. For the purpose of this Section, "prevailing wage rate" shall mean such rate as is established from time to time by the Department of Labor. The Department of Labor is empowered to investigate any complaint filed under this Section and to settle the same by issuance of an appropriate order after notice and hearing pursuant to the provisions of the Administrative Adjudication Law. Any willful violation of this Section, or of any order issued hereunder, may be cause for a Beneficiary of a Qualifying Certificate to forfeit the benefits thereof.

§58119. Same: trainees. For purposes of the employee percentages of §58117 of this Chapter, a Beneficiary may include among its employees "trainees" as that term is defined by the Authority's regulations. For good cause shown, the Authority may grant specific and limited exemptions to the percentage employment requirements of §58117 but only if a training program has been implemented by the Beneficiary as required by §58117.

§58120. Participation in training programs. Every Qualifying Certificate which covers the operation of a hotel or restaurant shall require its Beneficiary to participate in (i) the Hotel/Restaurant Industry Apprenticeship Training Program administered by the Guam Community College or other subsequent and similar programs approved by the Authority and (ii) the Management and Supervisory Training Program administered by the University of Guam's College of Business and Public Administration or other subsequent and similar programs approved by the Authority. Failure to actively participate in such training programs shall be grounds to revoke or suspend the Beneficiary's Qualifying Certificate.

§58121. Qualifying Certificate: non-transferable. A Qualifying Certificate or the benefits thereunder may not be transferred, assigned or conveyed to another person, firm, partnership, or corporation **without** the written permission of the Authority. For the purpose of this Section, a transfer of benefits shall have occurred at any time that there is a transfer of a majority of the voting stock of the Beneficiary resulting in a change in the identify of the shareholders who control the Beneficiary. Similarly, a transfer of benefits shall occur whenever a Beneficiary shall lease, assign, or transfer a substantial part of its activities outside of the ordinary course of its business.

§58122. Application for Qualifying Certificates. Applications for Qualifying Certificates shall be filed on forms prescribed and furnished by the Authority and shall require such disclosures as the Authority shall deem

appropriate.

§58123. Monthly reports. The Beneficiary of a Qualifying Certificate must furnish monthly written reports to the Authority beginning thirty (30) days after the date of the issuance of the Qualifying Certificate. Said reports must include, but are not limited to, financial, employment and payroll data. All such monthly reports shall be treated as confidential by the Authority.

§58124. Publication of all applications for Qualifying Certificates. The Authority shall cause to be published, at the applicant's expense, in a Guam newspaper of general circulation, a brief résumé of an application for a Qualifying Certificate, said publication to be made no later than seven (7) days following submission of an application. The résumé shall be in a form prescribed by the Authority, and it shall include the name and address of the applicant, a brief statement of the proposed investment, a brief summary of the tax rebates and abatements applied for, and the names and addresses of all the owners, partners, or shareholders of the Applicant. Following the filing of the application in due form, payment of the prescribed fees and publication of the résumé, a public hearing shall be held pursuant to the rule-making provisions of the Administrative Adjudication Law.

§58125. Notice of hearing on applications. A notice of the public hearing required by §58124 of this Chapter shall be published at the applicant's expense in a Guam newspaper of general circulation in a form prescribed by the Authority at least five (5) days but no more than ten (10) days before the scheduled public hearing date. The Authority shall take all reasonable precautions in connection with such public hearings to avoid disclosure of proprietary secrets of the applicant. The Authority may schedule additional public hearings as necessary. The Authority meeting for approval or disapproval of a Qualifying Certificate shall **not** be held on the same day as a public hearing on the same Qualifying Certificate application.

§58126. Recommendations. All recommendations of the Authority for issuance, modification, renovation and suspension of Qualifying Certificates shall be forwarded to the Governor of Guam, together with a memorandum of the Authority's findings in support of its recommendations. Any recommendation of the Authority not approved by the Governor within sixty (60) calendar days from his receipt thereof shall be deemed disapproved on the sixty-first (61st) day following such receipt.

§58127. Tax abatements. Subject to the provisions of this Chapter, the Governor is authorized to issue a Qualifying Certificate abating the following taxes on the following terms:

§58127.1. Property taxes. All taxes now levied by virtue of Chapter 24, Title 11, Guam Code Annotated, known as the Real Property Tax Law, shall be abated for a period up to ten (10) years from the effective date of the Qualifying Certificate therefor, and as long as said Certificate is in force and effect; **provided**, that the real property on which the tax is assessed is only utilized by the Beneficiary for activities identified in the Qualifying Certificate.

§58127.2. Rental of land, building or equipment. All taxes now levied on income derived from the lease of land, buildings, machinery or equipment by virtue of Article 2, Chapter 26, Title 11, Guam Code Annotated, known as gross receipts taxes, shall be abated for a period up to ten (10) years, from the effective date of a Qualifying Certificate therefor, and as long as said Certificate is in force and effect; **provided**, that said income is derived from the lease of land, building, machinery or equipment to a Beneficiary of a Qualifying Certificate.

§58127.3. Sale of alcoholic beverages. All taxes now levied by virtue of Article 2, Chapter 26, Title 11, Guam Code Annotated, known as gross receipts taxes, shall be abated for a period up to ten (10) years from the effective date of a Qualifying Certificate therefor, and as

long as said Certificate is in force and effect; **provided**, that the gross receipts on which such tax shall be abated have been derived from the sale of alcoholic beverages manufactured in Guam by the manufacturer thereof and that such manufacturer is the Beneficiary of a Qualifying Certificate.

§58127.4. Sale of petroleum products. All taxes levied or paid by virtue of Article 2, Chapter 26, Title 11, Guam Code Annotated, known as gross receipts taxes, shall be abated or rebated for a period up to ten (10) years from the effective date of the Qualifying Certificate therefor, for those gross receipts derived from the sale of petroleum products manufactured in Guam and sold to agencies or instrumentalities of the United States of America, or agencies or instrumentalities of the government of Guam, by the manufacturer thereof; **provided**, that a Qualifying Certificate for such a tax rebate or abatement is granted pursuant to the provisions of this subsection; and **provided, further**, that at any such time that a manufacturer possessing such a Qualifying Certificate no longer continues to qualify for the Certificate, the taxes shall no longer be abated or rebated.

§58127.5. Insurance premiums. All taxes now levied by virtue of Article 2, Chapter 26, Title 11, Guam Code Annotated, known as gross receipts taxes, shall be abated for a period of up to twenty (20) years from the effective date of the Qualifying Certificates therefor, for those gross receipts derived from underwriting insurance risks either in or out of Guam, including gross receipts derived from investing funds generated from insurance underwriting in Guam by an insurance company that has qualified and continues to qualify for a Qualifying Certificate. Such insurance Qualifying Certificates may be renewed for additional periods for twenty (20) years at the conclusion of the first or later periods so long as the Beneficiary remains in good standing under the laws of Guam and under the rules and regulations of the Authority.

SOURCE: Amended by P.L. 23-109(c).

§58127.6. Development of affordable housing. All taxes levied by virtue of Article 2, Chapter 26, Title 11, Guam Code Annotated, known as gross receipts taxes, shall be abated for a period up to twenty (20) years from the effective date of the Qualifying Certificate therefor, for those gross receipts derived from the construction of affordable housing; provided, that a Qualifying Certificate for such a tax abatement is granted pursuant to the provisions of this subsection. The Beneficiary may be a developer, contractor or subcontractor or a combination of two (2) or more thereof so long as all the receipts the subject of the abatement are derived from the construction of no less than twenty-five (25) affordable housing units, as "affordable housing" is defined by the Authority.

SOURCE: Added by P.L. 23-135:12(a).

§58128. Tax rebates. Subject to the provisions of this Chapter, the Governor is authorized to issue a Qualifying Certificate which establishes the following tax rebate:

§58128.1. Income tax rebate. A rebate of up to seventy-five percent (75%) of all income tax paid to the government of Guam by a Beneficiary on income received from those activities identified in the Qualifying Certificate may be issued for a period not to exceed twenty (20) consecutive years from the effective date of a Qualifying Certificate therefor.

§58128.2. Variable rates. The percentage of rebate may be made variable by the Authority so as to permit higher or lower percentages in earlier or later years of the period. In determining the periods up to twenty (20) years and the percentages up to seventy-five (75%) the Authority shall take into consideration the financial risks involved in the undertaking as well as the impact on the socio-economic development of Guam by the proposed investment.

§58128.3. Determination of income. For the purposes of this Section, the term "income tax paid" shall

mean income taxes paid on income received on or after the effective date of the applicable Qualifying Certificate. The Director of Revenue and Taxation of the government of Guam shall have authority to determine any prorations of rebates necessary because of taxable years occurring within the life of the applicable Qualifying Certificate which consist of less than a full twelve (12) months.

§58128.4. (a) One Hundred Percent Rebate on Certain Insurance Income. A rebate of one hundred percent (100%) of all income tax paid to the government of Guam by a Beneficiary on all income received from insurance underwriting either inside or outside of Guam, including all income derived from investing funds derived from operating an insurance underwriting business on Guam, may be issued for a period not to exceed twenty (20) consecutive years from the effective date of a Qualifying Certificate therefor; *provided*, that as to Guam risks and policy holders the Beneficiary does not issue a policy directly to the policy holder but only issues the same through a licensed Guam insurance broker. Such insurance Qualifying Certificates may be renewed for additional periods of twenty (20) years at the conclusion of the first or later periods so long as the Beneficiary remains in good standing under the laws of Guam and under the rules and regulations of the Authority.

(b) Rebates on Dividends to Shareholders of Qualified Insurance Underwriters. A rebate of one hundred percent (100%) of the income tax withheld from the shareholders of an insurance underwriting business on the dividends from such business may be issued for a period not to exceed twenty (20) consecutive years from the effective date of the Qualifying Certificate therefor; *provided*, that: (i) the insurance underwriting business paying the dividends is the Beneficiary of a Qualifying Certificate; (ii) the dividends are paid from the insurance or investment earnings of such business as identified in its Qualifying Certificate, which dividends were received, on a cash basis, during the original or an extended period of the Qualifying Certificate; and (iii) the dividends were subject

to a withholding tax thereon pursuant to those provisions of the Territorial Income Tax Law requiring the withholding as income tax thereon of a fixed percentage of any dividends paid to non-residents of Guam. If the shareholder is a resident of Guam then such shareholder may be granted a Qualifying Certificate on dividends pursuant to §58130 of this Chapter. Such Qualifying Certificates for non-resident insurance shareholders may be renewed for additional periods of twenty (20) years at the conclusion of the first or later periods so long as the Beneficiary remains a shareholder of an insurance underwriting business that is the holder of its own Qualifying Certificate and is in good standing under the laws of Guam and under the rules and regulations of the Authority.

SOURCE: Added by P.L. 23-109:3. Amended by P.L. 24-266:5.

§58128.5. One hundred percent rebate on income from constructing affordable housing. A rebate of one hundred percent (100%) of all income tax paid to the government of Guam by a Beneficiary on income received from the construction of affordable housing in Guam may be issued for a period not to exceed twenty (20) consecutive years from the effective date of a Qualifying Certificate therefor. The Beneficiary may be a developer, contractor or subcontractor or a combination of two (2) or more thereof so long as all the income the subject of the rebate is derived from the construction of no less than twenty-five (25) affordable housing units, as *affordable housing* is defined by the Authority.

SOURCE: Added by P.L. 23-135:12(b).

§58128.6(a). One Hundred Percent Rebate on Certain Trust Income. A rebate of one hundred percent (100%) of all income tax paid to the government of Guam by a Guam-based trust on all its earnings from either inside or outside of Guam, including all income derived from investing funds on Guam or elsewhere, may be issued for a period not to exceed twenty (20) consecutive years from the effective date of a SpecialQualifying

Certificate therefor.

For purposes of this §58128.6, a '*Guam-based trust*' means:

(i) an arrangement created by will or by an inter vivos declaration whereby a trustee or trustees take title to property to protect or conserve the same for a beneficiary or beneficiaries of the trust under probate or chancery court rules;

(ii) Guam is the principal place of administration of the trust, and for trusts with United States fiduciaries, a choice of laws election can be made for primary jurisdiction to be under the Federal District Court of the elected state;

(iii) a minimum of Ten Thousand Dollars (\$10,000.00) in U.S. currency remains in deposit at a local financial institution for the duration of the trust; and

(iv) the trust property is not employed, directly or as shareholder, in a business for the settlor or the beneficiary, and for the purposes of this Subsection, '*business*' has the same meaning as '*engaging in or carrying on a business*' as in the Business License Law in 11 GCA §70103(c) and includes only businesses which are required to be licensed, or are excepted from obtaining a license pursuant to the policy and provisions of 11 GCA §§70102 and 70130. A Guam-based trust shall be defined as a person under Treasury Regulation §301.7701-7(a) and notwithstanding the definition contained in Treasury Regulation §301.7701-7(c)(3)(ii), a Guam-based trust shall be considered a United States Domestic Trust under the provisions of §301.7701(c)(4)(ii)(D). Such Special Qualifying Certificates for Guam-based trusts may be renewed for additional periods of twenty (20) years at the conclusion of the first or later periods so long as the trust remains in good standing under the

laws of Guam and under the rules and regulations of the Authority.

SOURCE: Amended by P.L. 25-150:19 to reflect concerns expressed by the federal government.

(b). Rebates on Payments to Beneficiaries of Guam-Based Trusts. A rebate of one hundred percent (100%) of the income tax withheld from the beneficiaries of a Guam-based trust on the payments or distributions made to such beneficiaries from such a Guam-based trust may be issued for a period *not to exceed* twenty (20) consecutive years from the effective date of the Special Qualifying Certificate; *provided*, that: (i) the Guam-based trust making the payments or distributions is the holder of a Special Qualifying Certificate; (ii) the payments or distributions are made from the property of such Guam-based trust, which payments or distributions were received, on a cash basis, during the original or an extended period of the Special Qualifying Certificate; *and* (iii) the payments or distributions were subject to a withholding tax thereon pursuant to those provisions of the Territorial Income Tax Law requiring the withholding as income tax thereon of a fixed percentage of any fixed or determinable annual or periodical gains, profits or income received by non-residents of Guam. Such Special Qualifying Certificates of Guam-based trusts may be renewed for additional periods of twenty (20) years at the conclusion of the first or later periods, so long as the Guam-based trust that is the holder of a Special Qualifying Certificate and is in good standing under the laws of Guam and under the rules and regulations of the Authority.

(c) A Guam-based Trust desiring to apply for a Special Qualifying Certificate shall make application by filing a copy of the trust instrument and a completed application in the form as required by the corporation (GEDA). The corporation, upon ascertaining that the material furnished by the applicant is in proper order, and that the fees established in the Corporations's Rules and Regulations having been paid, shall thereupon promptly

forward its recommendation for issuance of the Special Qualifying Certificate to *I Maga'lahaen Guahan* who shall approve the application.

(d) A true copy of the Special Qualifying Certificate shall be attached to each tax return of the Guam-based Trust, and the amount of tax due prior to the rebate shall be deposited with the government at the time of filing of each income tax return.

(e) Taxes deposited by the Guam-based Trust shall *not* be placed in the General Fund or commingled with other funds, but shall be deposited by the Director of the Revenue and Taxation in a special purpose trust accounts in one (1) or more FDIC insured banks with offices within Guam, and shall be withdrawn from such accounts only for the purpose of making rebates as provided herein.

(f) The provisions of 12 GCA Chapter 58 shall *not* apply to any Guam-based Trust applying for a Special Qualifying Certificate, specifically §§58112, 58116, 58119, 58123, 58124 and 58125.

(g) It is the intent of *I Liheslaturan Guahan* that no portion of the rebates of income tax made under this Section shall be subject to income taxation.

SOURCE: Added by P.L. 24-266:6. Subsections (a) and (b) amended by P.L. 25-8:1,2. Subsections (c) - (g) added by P.L. 25-8: 3-7, all relative to the establishment of trust companies on Guam and their tax status.

§58129. Taxability of abatements and rebates:
Legislative intent. It is the intent of the Legislature that the abatement or rebate of taxes to Beneficiaries pursuant to §§58127, §58128, §58129, §58130 and §58131 of this Chapter shall be abatements or rebates on the taxes owed on the eligible activities identified in the Qualifying Certificates issued therefor and that no portion of such abatements or rebates shall be later subject to taxation as additional income to the Beneficiary.

§58130. Income tax rebate on dividends. A rebate of up to seventy-five percent (75%) of the income tax paid by the shareholders of a corporation on the dividends of that corporation may be granted for a period not to exceed five (5) consecutive years; **provided**, however, that the corporation paying the dividends is the Beneficiary of a Qualifying Certificate and that the dividends are being paid from the corporation's earnings on activities identified in the Qualifying Certificate which were received, on a cash basis, during the five (5) year period.

§58131. Income Tax Rebates for Shareholders of a 'Subchapter S_ Corporation and Members of a Limited Liability Partnership and Limited Liability Company.
(a) A rebate of up to seventy-five percent (75%) of all income tax paid by the shareholders of a corporation which has elected to be taxed as a 'Subchapter S_ corporation, as defined at §1361, Title 26, United States Code, or any successor provision, on the income of the corporation which was received from those activities identified in the Qualifying Certificate, may be granted for a period not to exceed twenty (20) years following the effective date of the Qualifying Certificate therefor.

(b) Members of a Limited Liability Partnership and Limited Liability Company. A rebate of up to seventy-five percent (75%) of all income tax paid by members of a Limited Liability Partnership or a Limited Liability Company formed under the laws of Guam, on the income of the Limited Liability Partnership or a Limited Liability Company which was received from those activities identified in the Qualifying Certificate, may be granted for a period not to exceed twenty (20) years following the effective date of the Qualifying Certificate therefor.

SOURCE: Repealed and reenacted by P.L. 24-103:3.

§58132. Modification of tax benefits. In the event that a Beneficiary proposes to substantially expand or add to its activities and desires to obtain a modification of its original Qualifying Certificate to include its proposed

additional activities, then upon findings and recommendations of the Authority, the Governor may modify the original Qualifying Certificate, **subject** to the following conditions:

(a) **Findings.** The Authority specifically finds that the additional proposed activities of the Beneficiary satisfy the requirements of §§58103 and §58106 of this Chapter and that the Authority makes recommendations required by §58109 of this Chapter;

(b) **Cancellation of original Certificate.** The original Qualifying Certificate shall be surrendered and cancelled;

(c) **Changes in benefits.** The tax benefits applicable to the additional activities may be at rates or for a term different from those tax benefits applicable to the activities described in the original Qualifying Certificate, and the new Qualifying Certificate may include terms, conditions, rebates or abatements different from those in the original Qualifying Certificate.

§58133. Extended term. In lieu of the percentage of tax abatements and rebates authorized in this Chapter, the Authority may recommend and the Governor may grant fifty percent (50%) of said abatements and rebates for a period of double the term authorized by this Chapter.

§58134. Acknowledgment of benefits by Tax Commissioner. When the Authority forwards its recommendations to the Governor on the issuance of a Qualifying Certificate, it shall transmit a copy of such recommendations to the Tax Commissioner of Guam for his information. The Tax Commissioner shall forthwith acknowledge in writing to the Governor and to the Authority that the proposed tax benefits are understood and accepted by the Department of Revenue and Taxation.

§58135. Procedure to claim abated and rebated taxes. The Authority shall monitor the activities of the Beneficiary and its compliance with all of the terms and conditions of the Qualifying Certificate, this Chapter and the regulations of the Authority and it shall, if justified, issue annually its certificate of compliance by the Beneficiary. No rebate or abatement of any tax shall occur unless the Beneficiary shall have received a certificate of compliance for the applicable tax year.

§58136. Abatement of tax. When the return for the abated tax is accompanied by a corresponding certificate of compliance for the previous year or part thereof then the actual payment of the tax in question to the government of Guam shall not be required, and upon review of the tax return, the Tax Commissioner of Guam shall, within one hundred twenty (120) days from receipt of said tax return, furnish the taxpayer a certification confirming the nature and amount of the tax abated.

§58137. Rebate of tax. In the case of an income tax rebate, where the taxpayer's tax return is accompanied by a certificate of compliance, the amount of a tax due prior to rebate shall be deposited with the government of Guam at the time of filing the income tax return. The Tax Commissioner of Guam shall immediately thereafter cause the return to be reviewed and if the rebate is found in order shall cause the amount of the rebate to be withdrawn from the deposit and returned to the taxpayer within one hundred eighty (180) days from the date of the deposit, without interest. The balance of the deposit shall be credited against the taxpayer's income tax obligation to the government of Guam.

§58138. Rebate fund. Deposits for income tax made with the government of Guam pursuant to this Chapter shall be covered and deposited into a separate, special account in the Treasury of the territory of Guam, to be designated the *Income Tax Rebate Fund*.

§58139. Tax redeterminations. In the case of any

Beneficiary that, in accordance with the applicable laws of Guam, shall have applied for and been granted a redetermination of tax liability or taxes payable or in the case of a redetermination of tax liability made by the Department of Revenue and Taxation, the amount of abated or rebated taxes determined for such Beneficiary for the taxable years affected shall be accordingly adjusted by the Director of Revenue and Taxation and said Beneficiary shall be required to pay the balance due for said taxable years, if any, together with interest at the rate currently assessed by the government of Guam per annum from the date the Beneficiary realized the abatement or rebate benefit; **provided**, that said balance due may be offset or credited against any tax refund due to the Beneficiary.

§58140. Implementation by Tax Commissioner.

The Tax Commissioner of Guam is hereby authorized to issue such rules and regulations as he may deem necessary to implement the procedures outlined in this Chapter.

§58141. Limited to government of Guam taxes. All abatements and rebates herein established and authorized shall apply only to the taxes due the government of Guam.

§58142. Investment of abated or rebated tax in Guam. Each Qualifying Certificate, except for a Qualifying Certificate issued to an insurer pursuant to the provisions of §§58127 and 58128 of this Article, shall require a Beneficiary to invest within Guam no less than fifty percent (50%) of any taxes rebated or abated under §§58127 and 58128 of this Article for a period of five (5) years following the rebate or abatement. A Beneficiary shall report all such investments to the Authority.

SOURCE: Amended by P.L. 23-109:2(d).

§58143. Fees. On the effective date of this Chapter, and until modified pursuant to §58145 of this Chapter, the following fees shall be assessed against each applicant or

Beneficiary of a Qualifying Certificate:

ANNUAL		
FEES:	FILING FEES:	SURVEILLANCE
Agriculture, aquaculture, and mariculture:	\$ 150,	\$ 500,
Home manufacturing:	\$ 100,	\$ 100,
Manufacturing:	\$ 750,	\$2,000,
Commercial fishing:	\$ 250,	\$1,000
Services:	\$ 750,	\$2,000,
Leasehold services:	\$ 750,	0.75% of annual lease payments,
Tourism	\$1,000,	\$3,000,
Insurers	\$750.00,	\$1,000.00.
Export trading companies:	\$ 750,	\$1,000
Motels per motel:		
Under construction:	\$ 750,	\$2,000
In operation:	\$ 750,	\$25 per room,
Hotels per hotel:		
Under construction:	\$1,500,	\$3,000,
In operation:	\$1,500,	\$45 per room.
Construction of affordable housing	\$750.00	\$1,000.00.

SOURCE: Amended by P.L. 23-109:2(e). Amended by P.L. 23-135:11(c).

§58144. Extraordinary costs. In addition to the filing and surveillance fees, the Authority may also assess against an applicant or Beneficiary any extraordinary costs and expenses incurred to process the application or monitor the Beneficiary's performance of the terms and conditions of the Qualifying Certificate. Such cost and expenses shall not include the salaries of any employees of the Authority but may include but are not limited to the services of outside consultants, or off-island trips necessitated by the application or the surveillance.

§58145. Periodic adjustment of fees. The Authority is authorized to adjust the fees listed in §58143 of this Chapter on an annual basis, at the beginning of each calendar year, upon demonstration to the Authority by the Administrator that the cost of performing the services

covered by the fees is greater than the amount of the fees. Fee changes shall be made according to the provisions of the Administrative Adjudication Law.

§58146. Rule-making authority. In accordance with the Administrative Adjudication Law the Authority shall adopt rules and regulations consistent with this Chapter which provide for, but are not limited to the following: Eligibility, minimum investment levels for different industries, the applications process, the terms and conditions of the various Qualifying Certificates, the monitoring procedure, and the revocation of Qualifying Certificates.

§58147. Business Privilege and Use Tax Exemptions.
(a) The Guam Economic Development Authority shall adopt reasonable rules and regulations in accordance with the Administrative Adjudication Law for the granting of Qualifying Certificates in order to ensure that Certificates are issued only with respect to the revenues generated from recycling materials identified by the recycling and transshipment companies, respectively. Additionally, GEDA shall require that the Beneficiary of a Certificate comply with the same requirements of a Beneficiary of a QC as set out in 12 GCA §§58116 through 58119

(b) Use Tax. The owner of a recycling or shipping business, the proceeds from which have been exempted under this Section from the tax imposed under Article 2 of the Business Privilege Tax Law, shall be *exempt* from the Guam Use Tax Law, with respect to the revenues generated to recycle and/or transship recyclable materials.

SOURCE: Added by P.L. 25-127:3.

NOTE: P.L. 25-127:2, uncodified, added the following definitions which are applicable to §§58147-58147.2:

Definitions. For the purposes of this Act, *except* as otherwise specifically provided, the following words and phrases, together with all of the common derivatives thereof, shall have the meaning ascribed to them as follows:

(a) “*GEPA*” shall mean the Guam Environmental Protection Agency.

(b) “*Incineration*” shall mean the act of using controlled flame combustion within an enclosed device, the primary purpose of which is to thermally break down solid waste.

(c) “*QC*” means the Qualifying Certificate issued by the Guam Economic Development Authority (“*GEDA*”).

(d) “*Recycling*” means the process by which recovered resources are transformed into new products in such a manner that products lose their identity, as defined in §51102.(18) of Chapter 51 of Title 10 of the Guam Code Annotated.

(e) “*Recycling company*” means any business licensed by the Department of Revenue and Taxation, and has been issued a permit, as required in §51104 of Chapter 51 of Title 10 of the Guam Code Annotated, from the Guam Environmental Protection Agency (“*GEPA*”) to conduct business on Guam in which eighty percent (80%) of its operations is specifically committed to recycling.

(f) “*Recyclable materials*” means materials which still have useful physical or chemical properties *after* serving a specific purpose for the same or other purpose. Recyclable materials are as follows:

(1) batteries;

(2) cars and trucks;

(3) construction and demolition debris (“*C&D*”);

(4) enameled white goods (i.e. refrigerators, water heaters, air conditioners, washers,

dryers, stoves);

(5) foam padding;

(6) glass and plastic bottles;

(7) home appliances (other appliances that are *not* considered enameled white goods);

(8) lead;

(9) metals (ferrous/non-ferrous);

(10) organic material (i.e. tree trimmings, palm fronds, grass, food waste, soiled cardboard)

(11) paper products;

(12) tires (passenger/commercial);

(13) wood pallets and scrap wood; *and*

(14) x-ray film

(g) "*Transshipment*" shall mean to transfer for further transportation from one (1) ship or conveyance to another.

§58147.1. Corporate Income Tax Rebate. (a) One hundred percent (100%) Corporate Income Tax rebate on the proceeds from revenues generated for recycling, or for the transshipment of recycling materials off-Island to be disposed of at a recycling center, shall be *exempt* from the tax imposed under Article 2 of the Business Privilege Tax Law; provided that:

(1) the revenues generated from recycling are certified by a Certified Public Accountant; *and*

(2) the shipping company shows proof that the transshipment of recycling materials are recyclable, as

defined in §2(e) of this Act. Such rebate shall *not* exceed a consecutive period of ten (10) years from the effective date of the QC.

(3) In order to qualify for the tax rebate, a person(s), developer, contractor, company or corporation must divert from the waste stream a minimum of two thousand (2,000) cubic feet or forty thousand (40,000) pounds of recyclable materials per year.

(b) Interest Earned from Rebate. All interest earned from the rebated amount for recycling, or for the transshipment of recyclable materials, shall be allocated to the Guam Environmental Protection Agency ('GEPA') to assist in the administrative cost for the implementation of this Act.

SOURCE: Added by P.L. 25-127:4.

§58147.2. Waiver of Docking and Stevedoring Fees. A waiver of docking and stevedoring fees will be granted to shipping companies in the transshipment of recyclable materials for a consecutive period *not to exceed* ten (10) years from the effective date of the QC, provided, that:

(a) the shipping companies engaged in the transshipment of recyclable materials are the holders of a permit issued by GEPA;

(b) a CPA certifies the characteristics of recyclable materials, as listed in §2(e) of this Act, and identifies the volume.

Notwithstanding anything herein to the contrary, the Port Authority of Guam shall *not* be required to provide free stevedoring services to shipping companies. Any shipping company, *however*, may provide for stevedoring services at the Port Authority at its cost and expense.

SOURCE: Added by P.L. 25-127:5.

P.L. 25-127:6 states:

Section 6. Method of Incineration; Not Applicable. For the purposes of this Act, the aforementioned Sections shall *not* be applicable to the method of incineration as a means of recycling.
