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I MINA'TRENTAI DOS NA LIHESLATURAN GUÅHAN
THIRTY-SECOND GUAM LEGISLATURE
155 Hesler Place, Hagåtña, Guam 96910

November 13, 2013

The Honorable Edward J.B. Calvo
I Maga'lahen Guåhan
Ufisinan I Maga'lahi
***Hagåtña,* Guam 96910**

OFFICE OF THE GOVERNOR
CENTRAL FILES
RECEIVED BY: J. Dela Rosa
TIME: 11:28 a.m. DATE: 11/15/13

Dear *Maga'lahi* Calvo:

Transmitted herewith are Bill and Substitute Bill Nos. 35-32(COR), 74-32(LS), 75-32(LS), 91-32(COR), 94-32(COR), 98-32(LS), 99-32(LS), 108-32(COR), 112-32(COR), 116-32(COR), 133-32(COR), 134-32(COR), 140-32(COR), 141-32(COR), 143-32(COR), 145-32(LS), 150-32(COR), 153-32(COR), 154-32(COR), 156-32(COR), 157-32(COR), 158-32(COR), 160-32(COR), 161-32(COR), 162-32(LS), 165-32(COR), 170-32(LS), 176-32(COR), 189-32(COR), 193-32(COR), 194-32(COR), 195-32(COR), 196-32(COR), 200-32(COR), 205-32(COR), 210-32(COR), 211-32(COR) and 217-32(LS) which were passed by *I Mina'Trentai Dos Na Liheslaturan Guåhan* on November 12, 2013.

Sincerely,

Tina Rose Muña Barnes
Legislative Secretary

Enclosures (38)

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I MINA'TRENTAI DOS NA LIHESLATURAN GUÅHAN
2013 (FIRST) Regular Session

CERTIFICATION OF PASSAGE OF AN ACT TO *I MAGA'LAHEN GUÅHAN*

This is to certify that **Substitute Bill No. 205-32 (COR), "AN ACT TO ADD A NEW ARTICLE 6 TO CHAPTER 77, DIVISION 2 OF TITLE 12, GUAM CODE ANNOTATED, RELATIVE TO PROMOTING ECONOMIC DEVELOPMENT BY AUTHORIZING THE ISSUANCE OF TAX CREDITS TO ENTITIES WHO ASSIST WITH THE DEVELOPMENT OF GUAM'S AGRICULTURAL AND "GUAM PRODUCT SEAL" PRODUCTS EXPORT INITIATIVE THROUGH CONTRIBUTIONS TO OFFSET SHIPPING COSTS",** was on the 12th day of November 2013, duly and regularly passed.

Judith T. Won Pat, Ed.D.
Speaker

Attested:

Tina Rose Muña Barnes
Legislative Secretary

This Act was received by *I Maga'lahen Guåhan* this 15th day of Nov., 2013, at 11:28 o'clock A.M.

Assistant Staff Officer
Maga'lahi's Office

APPROVED:

EDWARD J.B. CALVO
I Maga'lahen Guåhan

Date: _____

Public Law No. _____

I MINA'TRENTAI DOS NA LIHESLATURAN GUÅHAN
2013 (FIRST) Regular Session

Bill No. 205-32 (COR)
As substituted by the Committee on Health & Human Services, Health Insurance Reform, Economic Development, and Senior Citizens; and amended on the Floor.

Introduced by: Dennis G. Rodriguez, Jr.
Brant T. McCreadie
R. J. Respicio
Tommy Morrison
FRANK B. AGUON, JR.
Michael T. Limtiaco
Chris M. Dueñas
Michael F. Q. San Nicolas
Vicente (ben) C. Pangelinan
T. C. Ada
V. Anthony Ada
B. J.F. Cruz
T. R. Muña Barnes
Aline A. Yamashita, Ph.D.
Judith T. Won Pat, Ed.D.

AN ACT TO *ADD* A NEW ARTICLE 6 TO CHAPTER 77, DIVISION 2 OF TITLE 12, GUAM CODE ANNOTATED, RELATIVE TO PROMOTING ECONOMIC DEVELOPMENT BY AUTHORIZING THE ISSUANCE OF TAX CREDITS TO ENTITIES WHO ASSIST WITH THE DEVELOPMENT OF GUAM'S AGRICULTURAL AND "GUAM PRODUCT SEAL" PRODUCTS EXPORT INITIATIVE THROUGH CONTRIBUTIONS TO OFFSET SHIPPING COSTS.

BE IT ENACTED BY THE PEOPLE OF GUAM:

Section 1. A new Article 6 is hereby *added* to Chapter 77 of Division 2, Title 12, Guam Code Annotated, to read:

"ARTICLE 6
GUAM EXPORT TAX CREDIT FOR AGRICULTURAL AND "GUAM PRODUCT SEAL" PRODUCTS

§ 77600. Legislative Findings and Intent.
§ 77601. Definitions.
§ 77602. Tax Credits.
§ 77603. Maximum Amount of Tax Credits Authorized.
§ 77604. Calculation of Tax Credit and Participatory Incentive.
§ 77605. Approval of Contributions and Tax Credits.
§ 77606. Miscellaneous.
§ 77607. Equitable Distribution and Timely Issuance.

§ 77600. Legislative Findings and Intent. Guam has many impediments when it comes to international business such as customs, quarantine, immigration and shipping because of its status as an unincorporated territory of the United States, and because of our remoteness. That notwithstanding, in the early 1900s, Guam once had an agricultural industry that was developed to the extent that it supported and satisfied the requirements of Guam society with a large variety of produce. Further, production was sufficient to the extent that this local, homegrown, Guam based industry also supported opportunities in exporting. With the advent of modernization, restrictions on shipping, competition with imported processed foods, and other social economic factors, these two economic activities lost momentum and over time contributed little to nothing to Guam's economy. It is the intent of *I Liheslaturan Guåhan* that significant stimulus is required, and should be dedicated, to re-develop Guam's agricultural export market, as well as the economic development of markets for local Guam Product Seal exports.

It is the consensus of *I Liheslaturan Guåhan* that the issuance of tax credits to entities who assist with the development of Guam's export initiative through contributions that offset shipping costs is a vital incentive for the creation and sustainability of this new and developing economic sector. By allowing tax credits for export transshipment, Guam producers will be able to offset one of the largest costs prohibiting the pursuit of profitable exportation, expansion into new markets, and the ability to provide competitive pricing. The tax credits will surely promote export activity by mitigating one of the key cost components of doing business abroad, thus providing a competitive edge on product pricing regionally, as well as in the global marketplace.

Currently, there is little to no tax revenue generated from the sale of or shipping of commodities for export. The tax credits will provide the added incentive for the renaissance of Guam's agricultural sector and Guam Product Seal products by refocusing collaborative efforts and providing new market opportunities, and a new, broader-based, economic stimulus.

With increased opportunities abroad, Guam exports will prove to be more attractive and lucrative which, in turn, will increase manufacturing activity, create more jobs and preserve cultural socioeconomic activities.

With the award and success of the State Trade and Export Promotions grant in 2011 and 2012, the Guam Economic Development Authority has conducted extensive research in the area of exporting and has set the groundwork to develop this initiative; and has identified that this tax credit is crucial to the success of this new developing industry. It is the intent of *I Liheslaturan Guåhan* that further economic development efforts are taken to promote Guam's local businesses through the export of its Guam Product Seal and agricultural products.

§ 77601. Definitions.

As used in this Article:

(a) *Contributions shall* mean and can be made either as the sponsorship of shipping costs, applying preferred shipping rates, or the discount provided by transshipment companies solely for shipping charges related to the exportation of agricultural products and/or produce, and certified Guam Product Seal products.

(b) *Export shall* mean, for the purposes of this Article, the business activity where an item or service produced on Guam is purchased by foreign dollars.

(c) *Shipping costs shall* mean the normal, posted and actual cost of shipping freight, as would normally occur when conducted without sponsorship, preferred shipping rates and/or discounts. This *does not* include fees and taxes that are *not* retained by the company or third party charges.

(d) *Discounted shipping cost shall* mean the normal, posted and actual cost of shipping freight, minus the sponsored, preferred shipping rate, or discounted price charged for qualified freight as provided pursuant to this Article.

(e) The applicable *tax credit value shall* mean the difference between the shipping cost and the discounted shipping cost actually charged for the export of qualified products.

(f) *Transshipment shall* mean the shipment of goods to another destination via air or ocean, and *shall* include, when applicable, to change the means of transport during the journey (for example from road transport to air transport), known as trans-loading,

and/or to combine or consolidate small shipments into a large shipment (consolidation).

(g) *Agricultural produce and/or products shall* mean, but *not* be limited to, plant produce and products (packaged, canned and/or otherwise preserved as necessary), as well as live seedlings, plants and trees manufactured or grown on Guam. The meaning *shall* also include meat products (packaged, canned and/or otherwise preserved as necessary), as well as living livestock, and aquaculture products (packaged, canned and/or preserved as necessary), and living aquatic species.

(h) *Guam Product Seal products shall* mean those domestic products made on Guam, as provided pursuant to Chapter 50, Article 2, of this Title.

(i) The *Authority* or *GEDA shall* mean the Guam Economic Development Authority.

(j) *Contributors shall* mean Guam sole proprietorships, partnerships, limited liability companies, and corporations licensed to do business on Guam that make qualifying contributions as set forth in §77601(a).

(k) *Business privilege tax shall* mean the business privilege tax imposed by §26201 of Article 2, Chapter 26 of Title 11, Guam Code Annotated.

§ 77602. Tax Credits.

(a) Guam sole proprietorships, partnerships, limited liability companies and corporations conducting business in the areas of air cargo, ocean shipping or transshipment, which shall be duly licensed to conduct business on Guam, *shall* be entitled to tax credits against

any income tax liabilities, and a portion of the business privilege taxes levied against the contributor for those revenue portions of the business activity related *solely* to exporting qualified freight (§77601 (g) and (h)) from Guam. All tax credits referred to in this Article *shall* mean tax credits applied against income tax and business privilege tax liabilities incurred for the tax year the contribution was made, and as further provided pursuant to this Section.

(b) Effective Date and Applicability of Tax Credits. The provisions of this Act *shall* take effect on the first day of the succeeding month after enactment into law. Offsets on taxable amounts *shall* be effective beginning in Tax Year 2013, and annually thereafter.

(c) Qualifying Exports. The issuance of tax credits for contributions made pursuant to this Article *shall only* be applicable to the categories of products defined pursuant to §77601(g) and (h).

§ 77603. Maximum Tax Credits and Participatory Incentive. The tax credits authorized *shall* include utilization for income tax and/or business privilege tax liabilities, as further provided:

(a) Income Tax Credit. The aggregate maximum amount of tax credits authorized for utilization for income tax liability offsets *shall not exceed* Five Hundred Thousand Dollars ($500,000) per year, which *shall* be limited to Fifty Thousand Dollars ($50,000) per exporting vendor of products, as defined by §77601(g) and (h) of this Article, per year. The utilization of tax credits in excess of this amount, for future tax years, *must* be reviewed by the Authority's Compliance Division, and approved by the Department of Revenue and Taxation.

(1) As an incentive to promote participation utilizing income tax credit offsets, the additional amount of twenty percent (20%) *shall* be added to the base tax credit value, which *shall* then be the amount of the tax credit to be issued.

(2) The added twenty percent (20%) incentive *shall not* apply to the calculation and issuance of business privilege tax credits.

(b) Business Privilege Tax Credit. The maximum amount of tax credits authorized for utilization for tax-offsets for each contributor *shall not* exceed Two Hundred Fifty Thousand Dollars ($250,000) per tax year. As an added incentive to promote participation at the onset, an additional amount of up to, but *not to exceed*, One Hundred Thousand Dollars ($100,000) *shall* be added, annually, to the tax credit value cap. The application of the added incentive *shall* expire December 31, 2015, and, thereafter, the maximum amount of the tax credit authorized to be issued *shall not exceed* Two Hundred Fifty Thousand Dollars ($250,000) per tax year. The additional incentive *shall* be applied on an increasing, proportionately graduated basis commensurate with the amount of the contribution.

(1) The added One Hundred Thousand Dollars ($100,000) incentive *shall not* apply to the calculation and issuance of income tax credits.

§ 77604. Calculation of Tax Credit. The tax credit value in §77601(e) *shall* be the basis from which the tax credit to be issued is calculated for a qualified contribution. The applied credit amount will be a dollar for dollar match of the contribution to the corresponding tax credit.

(a) The Authority, in conjunction with the Department of Revenue and Taxation, *shall* annually determine the maximum amount of business privilege tax credits which may be authorized for utilization for tax liability offsets, as provided pursuant to this Article.

(b) The Authority *shall* submit annually, to *I Maga'lahen Guåhan* and the Speaker of *I Liheslaturan Guåhan,* the determination by the Authority and the Department as to the aggregate sum of available business privilege tax credits determined to be available as BPT offsets for contributions.

§ 77605. Approval of Contributions and Tax Credits. The GEDA Business Development Division, or its designee, *shall* be responsible for providing to the Department of Revenue and Taxation an approved list of agricultural producers and eligible Guam Product Seal holders. The Department of Revenue and Taxation *shall* review requested tax credits, and *shall* subsequently authorize the tax credits for requests found to be compliant with this Article.

§ 77606. Miscellaneous.

(a) The tax credits authorized by this Article *shall* be subject to the following conditions:

(1) Approved tax credits can be applied in amounts, which *shall not exceed* Two Hundred Fifty Thousand Dollars ($250,000) in a single tax year, *except* during the initial incentivized period up to December 31, 2015.

(2) To be eligible for the tax credits authorized by this Article, contributors must be licensed to do business on Guam.

(3) Agricultural producers and Guam Product Seal holders must register at the Guam Economic Development Authority, and must be in full compliance with the programs.

(4) Any credit against the business privilege tax, as authorized herein, *shall only* apply to the unpledged portion of the business privilege tax (currently one percentage point of the current four percent business privilege tax rate). The credit *shall not* apply to the first three percentage points of the business privilege tax, so as *not* to violate the government's covenants to bondholders of the Government of Guam Business Privilege Tax Bonds, Series 2011A, Series 2012B and Series 2013C authorized through P.L. 31-76, P.L. 31-196 and P.L. 31-276.

(b) This Article *shall not* be applicable to any product, *except* as *solely* identified pursuant to Subsections (g) and (h) of §77601 of this Article. Any imported product shipped to and landed on Guam *shall not* qualify as a Guam product for subsequent export which qualifies for a tax offset. This exclusion *shall* be applicable to all entities licensed to do business on Guam, and *shall* preclude them from trying to qualify any imported product as a Guam product pursuant to this Article, which is *solely* intended for legitimate Guam products; and further, *shall* also prohibit, at a minimum, the registering and/or re-registering, packaging and/or repackaging, labeling and/or relabeling, branding, and/or by any other means trying to identify any imported product as a Guam product, so as to circumvent the spirit and intent of this Article.

§ 77607. Equitable Distribution and Timely Issuance. The Authority, in consultation with the Department of Revenue and Taxation, *shall* develop an equitable and timely process pursuant to which:

(a) the availability and equitable distribution of the tax credits are provided for, and ensures maximum participatory access for all Guam product exporters seeking contributors; and

(b) the issuance of the tax credits authorized is expedited to the extent practicable."

Section 2. Sunset Provision. This Act *shall* remain in effect for a term of ten (10) years, at the expiration of which period, this Act *shall* automatically be deemed repealed. Upon expiration, any outstanding tax credit balances due contributors *shall* remain valid and enforceable for utilization to offset tax liabilities for an additional period until exhausted.

Section 3. Severability. *If* any provision of this Act or its application to any person or circumstances is found to be invalid contrary to law, such invalidity *shall not* affect other provisions or applications of this Act which can be given effect without the invalid provisions or applications, and to this end the provisions of this Act are severable.

Section 4. Effective Date. This Act *shall* become effective upon enactment.