EDDIE BAZA CALVO
Governor

RAY TENORIO
Lieutenant Governor

Office of the Governor of Guam

MAY 17 2018

GL# 34-16-1901
Speaker Benjamin J.F. Cruz

The Honorable Benjamin J.F. Cruz
Speaker
I Mina'trentai Kuåttro Na
Liheslaturan Guåhan
Guam Congress Building
163 Chalan Santo Papa
Hagåtña, Guam 96910

MAY 17 2018
Time: 2:46 [ ] AM [ ] PM File No. 34-1957
Received By

Dear Mr. Speaker:

Transmitted herewith is Bill No. 246-34 (COR), **"AN ACT TO *ADD* A NEW §58104(q) TO ARTICLE 1 OF CHAPTER 58, TITLE 12, GUAM CODE ANNOTATED, RELATIVE TO ESTABLISHING A QUALIFYING CERTIFICATE FOR A BUSINESS WITH AT LEAST FIVE MILLION DOLLARS ($5,000,000) IN UNREPATRIATED PROFITS EARNED BY AT LEAST ONE (1) FOREIGN SUBSIDIARY THAT OFFERS A SEVENTY-FIVE PERCENT (75%) REBATE FOR INCOME TAX PAID TO THE GOVERNMENT OF GUAM ON REPATRIATED OR DEEMED REPATRIATED PROFITS,"** which lapsed into law on May 16, 2018, as **Public Law 34-103.**

2018 MAY 17 PM 3:32

Senseramente,

EDDIE BAZA CALVO
Governor of Guam

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I MINA'TRENTAI KUÅTTRO NA LIHESLATURAN GUÅHAN
2018 (SECOND) Regular Session

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

This is to certify that **Substitute Bill No. 246-34 (COR), "AN ACT TO *ADD* A NEW § 58104(q) TO ARTICLE 1 OF CHAPTER 58, TITLE 12, GUAM CODE ANNOTATED, RELATIVE TO ESTABLISHING A QUALIFYING CERTIFICATE FOR A BUSINESS WITH AT LEAST FIVE MILLION DOLLARS ($5,000,000) IN UNREPATRIATED PROFITS EARNED BY AT LEAST ONE (1) FOREIGN SUBSIDIARY THAT OFFERS A SEVENTY-FIVE PERCENT (75%) REBATE FOR INCOME TAX PAID TO THE GOVERNMENT OF GUAM ON REPATRIATED OR DEEMED REPATRIATED PROFITS,"** was on the 1st day of May 2018, duly and regularly passed.

Benjamin J.F. Cruz
Speaker

Attested:

Régine Biscoe Lee
Legislative Secretary

This Act was received by *I Maga'låhen Guåhan* this 3rd day of May, 2018, at 11:50 o'clock A.M.

Assistant Staff Officer
Maga'låhi's Office

APPROVED:

EDWARD J.B. CALVO
I Maga'låhen Guåhan

Date: MAY 16 2018

Public Law No. 34-103

I MINA'TRENTAI KUÅTTRO NA LIHESLATURAN GUÅHAN
2018 (SECOND) Regular Session

Bill No. 246-34 (COR)
As substituted by the Prime Sponsor;
and amended on the Floor.

Introduced by: Michael F.Q. San Nicolas
Régine Biscoe Lee
James V. Espaldon
Thomas C. Ada
FRANK B. AGUON, JR.
William M. Castro
B. J.F. Cruz
Fernando Barcinas Esteves
Tommy Morrison
Louise B. Muña
Telena Cruz Nelson
Dennis G. Rodriguez, Jr.
Joe S. San Agustin
Therese M. Terlaje
Mary Camacho Torres

AN ACT TO *ADD* A NEW § 58104(q) TO ARTICLE 1 OF CHAPTER 58, TITLE 12, GUAM CODE ANNOTATED, RELATIVE TO ESTABLISHING A QUALIFYING CERTIFICATE FOR A BUSINESS WITH AT LEAST FIVE MILLION DOLLARS ($5,000,000) IN UNREPATRIATED PROFITS EARNED BY AT LEAST ONE (1) FOREIGN SUBSIDIARY THAT OFFERS A SEVENTY-FIVE PERCENT (75%) REBATE FOR INCOME TAX PAID TO THE GOVERNMENT OF GUAM ON REPATRIATED OR DEEMED REPATRIATED PROFITS.

BE IT ENACTED BY THE PEOPLE OF GUAM:

Section 1. Legislative Findings and Intent. *I Liheslaturan Guåhan* finds that in 1965, during the Eighth (8th) Guam Legislature, the late Senator George M.

Bamba introduced Bill No. 167, which proposed the establishment of the Guam Economic Development Authority and the Qualifying Certificate Program, and Governor Manuel F.L. Guerrero approved the bill, which was enacted into law as Public Law 8-80 on August 21, 1965.

I Liheslaturan Guåhan finds that, as explained in *Ramsey v. Chaco,* 549 F.2d 1335 (9th Cir. 1977), "Prior to amendment in 1968, however, the Organic Act also provided that all laws enacted by the Guam Legislature ultimately would be reported to Congress, and unless Congress acted to annul the law within one year, it was deemed to have congressional approval...The original law granting tax rebates was passed by the Guam Legislature and submitted to Congress while this pre-1968 version was still in effect, and Congress failed to annul the law within the one-year period. In 1968, Section 19 of the Organic Act was amended to eliminate the provision of implied congressional approval in the absence of annulment by it within one year. Thereafter, in 1969, the present rebate act was passed, changing only the percentage of taxes rebated." The court concluded, "that Congress' failure to annul the original rebate bill within one year constituted an implied approval under former Section 19 of the Organic Act. Despite its possible conflict with the Organic Act, the original rebate law was implicitly ratified by Congress' inaction, and the Guam Legislature's later alteration of the specific rebate percentages did not give rise to a possible independent violation of the Organic Act and therefore did not require congressional approval."

I Liheslaturan Guåhan finds that many of the hotels that have been built on Guam have benefited from the Qualifying Certificate Program, developing an industry that attracts an average of over one million (1,000,000) tourists per year.

I Liheslaturan Guåhan finds that the United States employs a worldwide tax system, where United States-based companies and individuals are taxed on worldwide income, even when that income is earned outside of the United States.

United States-based multinational companies are able to defer the foreign income tax liabilities that would be payable under the United States' worldwide tax system by reinvesting overseas earnings on an indefinite basis. A June 13, 2017 Bloomberg report estimates that the fifty (50) largest cash-holding companies in the S&P 500 have approximately Nine Hundred Twenty-five Billion Dollars ($925,000,000,000) in profits held overseas.

I Liheslaturan Guåhan finds that the Tax Cuts and Jobs Act, introduced on November 2, 2017, was enacted on December 22, 2017, as United States Public Law 115-97. Among the provisions of the Tax Cuts and Jobs Act is a one (1)-time tax rate on repatriated profits with rates of fifteen and five-tenths percent (15.5%) on cash assets and eight percent (8%) on other assets.

I Liheslaturan Guåhan finds that if multinational corporations based in the United States are able to repatriate profits through Guam, such repatriation would produce windfall tax revenue to the government of Guam and may encourage local investment, likely resulting in some direct job creation.

I Liheslaturan Guåhan finds that the Qualifying Certificate Program, if expanded to allow beneficiaries specifically for the purpose of repatriating foreign earnings, provides an opportunity for the government of Guam to encourage multinational corporations that seek to repatriate profits to locate their business on Guam, thereby becoming Guam taxpayers.

I Liheslaturan Guåhan further finds that under the Tax Cuts and Jobs Act versions passed by Congress, deemed repatriation on Nine Hundred Twenty-five Billion Dollars ($925,000,000,000) in profits would yield a minimum of Seventy-four Billion Dollars ($74,000,000,000) to a maximum of One Hundred Forty-three Billion Three Hundred Seventy-five Million Dollars ($143,375,000,000). Thus, if a Qualifying Certificate rebating seventy-five percent (75%) of such repatriated revenue were enacted on Guam, and all such income were repatriated within Guam,

it would yield from Eighteen Billion Five Hundred Million Dollars ($18,500,000,000) to Thirty-five Billion Eight Hundred Forty-three Million Seven Hundred Fifty Thousand Dollars ($35,843,750,000).

It is, therefore, the intent of *I Liheslaturan Guåhan* to establish a Qualifying Certificate for a business with at least Five Million Dollars ($5,000,000) in unrepatriated profits earned by at least one (1) foreign subsidiary, which offers a seventy-five percent (75%) rebate for income tax paid to the government of Guam on repatriated profits, by adding a new § 58104(q) to Article 1 of Chapter 58, Title 12, Guam Code Annotated.

Section 2. Eligibility Defined. A new § 58104(q) is hereby *added* to Article 1 of Chapter 58, Title 12, Guam Code Annotated, to read:

"(q) a business with at least Five Million Dollars ($5,000,000) of unrepatriated profits earned by at least one (1) foreign subsidiary of such business. Such business' only benefit for a Qualifying Certificate issued under this Subsection *shall* be a rebate of income tax, as provided in § 58128.1 of this Article, which *shall* apply *solely* to profits repatriated or deemed repatriated from any foreign subsidiaries of such beneficiary. A business covered under this Subsection *shall not* be eligible for benefits under §§ 58127, 58127.1, 58127.2, 58127.3, 58127.4, 58127.5, or 58127.6 of this Article, unless such business is qualified for, applies for, and is granted a separate Qualifying Certificate under a different Subsection of this Section.

(1) Third (3rd)-party agents licensed to do business on Guam are hereby authorized to facilitate transactions with the government of Guam on behalf of or as representatives of repatriating entities, subject to legal authorization thereto, relative to any repatriation pursuant to this Subsection for total fees not to exceed one percent (1%) of any

amounts repatriated with such fees paid by the repatriating entity, net of applicable taxes.

(2) Any entity handling primary financial transactions relative to any repatriation pursuant to this Subsection *shall* be licensed to do business on Guam.

(3) A one percent (1%) surcharge *shall* be further assessed on repatriated amounts net of applicable taxes, for remittance to the state or territorial treasury of corporate domicile of the repatriating entity, or such state or territorial corporate domicile held prior to any repatriation under this Subsection if such corporate domicile was established on Guam for the purposes of this Subsection."