



*Territory of Guam*  
*Territorio de Guam*

OFFICE OF THE GOVERNOR  
LHSINAN I MAGALAHI  
AGANA, GUAM 96910 U.S.A.

*Recd by PC Lujan*  
*12/30/94*  
*10:45 pm.*

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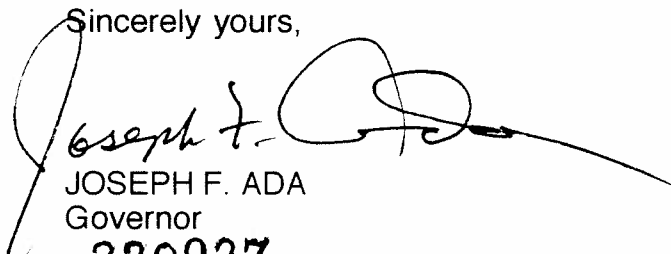
DEC 30 1994

The Honorable Joe T. San Agustin  
Speaker, Twenty-Second Guam Legislature  
155 Hesler Street  
Agana, Guam 96910

Dear Mr. Speaker:

Transmitted herewith is Bill No. 920, which I have signed into law this date as  
Public Law 22-159.

Sincerely yours,

  
JOSEPH F. ADA  
Governor  
220927

Attachment



Commonwealth Now!

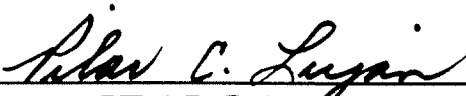
TWENTY-SECOND GUAM LEGISLATURE  
1994 (SECOND) Regular Session

CERTIFICATION OF PASSAGE OF AN ACT TO THE GOVERNOR

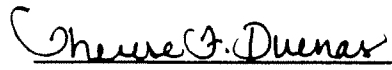
This is to certify that Bill No. 920 (LS), "AN ACT TO AMEND ARTICLE 4 OF CHAPTER 2, TITLE 12, GUAM CODE ANNOTATED, TO REVISE THE TAX ABATEMENT AND REBATE PROGRAM OF THE GUAM ECONOMIC DEVELOPMENT AUTHORITY," was on the 9th day of December, 1994, duly and regularly passed.

  
\_\_\_\_\_  
JOE T. SAN AGUSTIN  
Speaker

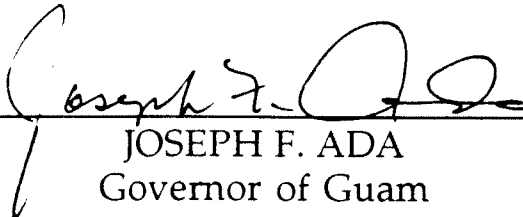
Attested:

  
\_\_\_\_\_  
PILAR C. LUJAN  
Senator and Legislative Secretary

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This Act was received by the Governor this 19th day of December,  
1994, at 4:35 o'clock p.M.

  
\_\_\_\_\_  
Assistant Staff Officer  
Governor's Office

APPROVED:

  
\_\_\_\_\_  
JOSEPH F. ADA  
Governor of Guam

Date: DEC 9 1994

Public Law No. 22-159

TWENTY-SECOND GUAM LEGISLATURE  
1993 (FIRST) Regular Session

Bill No. 920 (LS)

Introduced by:

Committee on Economic,  
Agricultural Development and  
Insurance

V. C. Pangelinan

T. C. Ada

M. D. A. Manibusan

A. C. Blaz

H. D. Dierking

J. T. San Agustin

P. C. Lujan

F. E. Santos

F. P. Camacho

T. V. C. Tanaka

T. S. Nelson

J. P. Aguon

E. P. Arriola

M. Z. Bordallo

C. T. C. Gutierrez

D. Parkinson

E. D. Reyes

D. L. G. Shimizu

AN ACT TO AMEND ARTICLE 4 OF CHAPTER 2, TITLE  
12, GUAM CODE ANNOTATED, TO REVISE THE TAX  
ABATEMENT AND REBATE PROGRAM OF THE  
GUAM ECONOMIC DEVELOPMENT AUTHORITY.

1 **BE IT ENACTED BY THE PEOPLE OF THE TERRITORY OF GUAM:**

2 **Section 1. Legislative findings.** The qualifying certificate program  
3 with its various abatement and rebates, as administered by the Guam  
4 Economic Development Authority (the "Program") has been revised a number

1 of times since it was first established under a statute subsequently approved  
2 by the United States Congress (See **Ramsey v. Chaco**, 549 F2d 1335). In order  
3 for Guam to continue to achieve economic growth and diversification, and to  
4 attract capital investments, financing institutions and programs, including  
5 the Program, must keep pace with changes in the marketplace, in the local  
6 labor supply, in employee training, and in investment practices.

7 It is the Legislature's intent to restructure the Program to provide  
8 flexibility sufficient to address such changes in Guam's market conditions in  
9 order to help stimulate the economy to achieve the island's socio-economic  
10 goals and objectives.

11 **Section 2.** Article 4, Chapter 2, Title 12, Guam Code Annotated, is  
12 amended to read as follows:

- 13 "Article 4. Qualifying Certificates  
14 §2400. Legislative findings and intent.  
15 §2401. Qualifying Certificate defined.  
16 §2402. Beneficiary defined.  
17 §2403. Benefits of a Qualifying Certificate.  
18 §2404. Eligibility defined.  
19 §2405. Promotion of general economic improvement.  
20 2405.1. Employment.  
21 2405.2. Replace imports.  
22 2405.3. Price reduction.  
23 2405.4. Needed facilities.  
24 2405.5. Economic activity.  
25 2405.6. Reinsurance.  
26 §2406. Qualifying Certificate: issuance of.  
27 §2407. Same: nature of; benefits.  
28 §2408. Same: regulations.  
29 §2409. Authority's findings on applications.  
30 §2410. Conditions of benefits.  
31 §2411. Grounds for suspension, rescission  
32 or revocation.  
33 §2412. Hearing required.  
34 §2413. Retroactive suspension.

|    |         |  |
|----|---------|--|
| 1  | §2414.  | License required.                            |
| 2  | §2415.  | Conflicts of interest.                       |
| 3  | §2416.  | Employment of United States citizens and     |
| 4  |         | permanent residents.                         |
| 5  | §2417.  | Same: work force.                            |
| 6  | §2418.  | Same: wages.                                 |
| 7  | §2419.  | Same: trainees.                              |
| 8  | §2420.  | Participation in training programs.          |
| 9  | §2421.  | Qualifying Certificate: non-transferable.    |
| 10 | §2422.  | Application for Qualifying Certificates.     |
| 11 | §2423.  | Monthly reports.                             |
| 12 | §2424.  | Publication of all applications for          |
| 13 |         | Qualifying Certificates.                     |
| 14 | §2425.  | Notice of hearing on applications.           |
| 15 | §2426.  | Recommendations.                             |
| 16 | §2427.  | Tax abatements.                              |
| 17 | 2427.1. | Property taxes.                              |
| 18 | 2427.2. | Rental of land, building or equipment.       |
| 19 | 2427.3. | Sale of alcoholic beverages.                 |
| 20 | 2427.4. | Sale of petroleum products.                  |
| 21 | 2427.5. | Insurance premiums.                          |
| 22 | §2428.  | Tax rebates.                                 |
| 23 | 2428.1. | Income tax rebate.                           |
| 24 | 2428.2. | Variable rates.                              |
| 25 | 2428.3. | Determination of income.                     |
| 26 | §2429.  | Taxability of abatements and rebates:        |
| 27 |         | Legislative intent.                          |
| 28 | §2430.  | Income tax rebate on dividends.              |
| 29 | §2431.  | Income tax rebates for the shareholders      |
| 30 |         | of a "Subchapter S" corporation.             |
| 31 | §2432.  | Modification of tax benefits.                |
| 32 | §2433.  | Extended term.                               |
| 33 | §2434.  | Acknowledgment of benefits by                |
| 34 |         | Tax Commissioner.                            |
| 35 | §2435.  | Procedure to claim abated and rebated taxes. |
| 36 | §2436.  | Abatement of taxes.                          |
| 37 | §2437.  | Rebate of tax.                               |
| 38 | §2438.  | Rebate fund.                                 |
| 39 | §2439.  | Tax redetermination.                         |
| 40 | §2440.  | Implementation by Tax Commissioner.          |

- 1                    §2441.        Limited to government of Guam taxes.
- 2                    §2442.        Investment of abated or rebated tax in Guam.
- 3                    §2443.        Fees.
- 4                    §2444.        Extraordinary costs.
- 5                    §2445.        Periodic adjustment of fees.
- 6                    §2446.        Rule-making authority.

7            **§2400. Legislative findings and intent.** The Legislature recognizes  
8 that the Qualifying Certificate program of the Guam Economic  
9 Development Authority (the "Authority") was conceived as an economic  
10 incentive tool to entice investors into Guam. In use for over two decades,  
11 it has had substantial positive impact upon the economic development of  
12 the territory, mainly in the tourist industry.

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

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

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

8 **§2401. Qualifying Certificate defined.** A "Qualifying Certificate" is  
9 a contract valid for a given period of time, executed by the Governor upon  
10 recommendation of the Authority, between the government of Guam and  
11 the Beneficiary, which has qualified for certain tax rebates or tax  
12 abatements or for both in return for meeting certain employment,  
13 investment, and other requirements as described in this Article and in the  
14 Qualifying Certificate.

15 **§2402. Beneficiary defined.** The recipient of a Qualifying Certificate  
16 shall be known as a "Beneficiary".

17 **§2403. Benefits of a Qualifying Certificate.** A Qualifying Certificate  
18 shall entitle the Beneficiary to tax rebates or tax abatements or both in  
19 return for meeting the conditions and requirements prescribed by the  
20 Authority in this Article and in the Qualifying Certificate.

21 **§2404. Eligibility defined.** A Qualifying Certificate shall only be  
22 issued to the following entities:

23 Any trust, partnership, sole proprietorship, corporation formed  
24 under the laws of Guam, or "possessions" corporation as defined in  
25 §2406 of this Article, engaged, or about to engage in any of the  
26 following activities:

- 27 1. Agriculture;

- 1                   2. Aquaculture;
- 2                   3. Mariculture;
- 3                   4. Manufacturing;
- 4                   5. Commercial fishing;
- 5                   6. Services;
- 6                   7. Tourism;
- 7                   8. Improvement of real property for purposes which are
- 8 specifically determined by the Authority to be beneficial,
- 9 desirable, and necessary for the economic development of
- 10 Guam;
- 11                  9. Captive insurance business as permitted by Chapter
- 12 VII, Title XXXIX, Government Code;
- 13                  10. "Export trading company" as defined in §19500.21,
- 14 Title XX, Government Code, if the main office of the export
- 15 trading company is established on Guam.

16       **§2405. Promotion of general economic improvement.** No  
17 Qualifying Certificate shall be issued unless the Authority finds that the  
18 proposed activities of the Beneficiary shall promote the general economic  
19 development of the territory by:

- 20       **2405.1. Employment.** Creation of employment; plus
- 21       **2405.2. Replace imports.** Replacement of imports; or
- 22       **2405.3. Price reduction.** Reduction in consumer prices; or
- 23       **2405.4. Needed facilities.** Creation of vitally needed facilities; or
- 24       **2405.5. Economic activity.** Creation of economic activity of value to
- 25 the territory; or
- 26       **2405.6. Reinsurance.** Increasing the availability of insurance
- 27 including reinsurance.

1           **§2406. Qualifying Certificate: issuance of.** A Qualifying Certificate  
2 may be issued by the Governor of Guam upon the recommendation of the  
3 Authority to any applicant that proposes to engage in an eligible business,  
4 or to any applicant stockholder of such corporation holding a Qualifying  
5 Certificate, and said corporation may be either a Guam corporation or a  
6 duly organized "possessions corporation" limited to doing business in  
7 Guam, as such "possessions corporation" is defined under Federal income  
8 tax laws and regulations. Each Qualifying Certificate shall specifically  
9 identify on its face each activity of the Beneficiary which is entitled to the  
10 tax rebates or abatements set out in the Qualifying Certificate.

11           **§2407. Same: nature of; benefits.** A Qualifying Certificate, once  
12 issued, shall be a contract between the government of Guam and the  
13 Beneficiary, and the tax rebates or abatements or both set out in the  
14 Certificate may not be curtailed, limited or impaired without the consent  
15 of both parties by any subsequent act, **except** as provided herein. Once  
16 issued and **unless** suspended, rescinded or revoked, a Qualifying  
17 Certificate shall constitute conclusive evidence of entitlement to the tax  
18 rebates or abatements or both set out on its face.

19           **§2408. Same: regulations.** The Authority shall adopt regulations  
20 containing standards, criteria, and measures of investments for the  
21 Qualifying Certificate applicant and describing the benefits to be derived  
22 by the people of Guam in the issuance of Qualifying Certificates. Such  
23 regulations shall include preference to be extended to applicants which  
24 have a fifty-one percent (51%) or greater proportion of local ownership by  
25 **bona fide** Guam residents, U. S. citizens or permanent residents. The  
26 Authority shall recognize and take into consideration any and all  
27 provisions of law and regulations administered by other government

1 entities that have review or approval authority over the eligible activity.  
2 All of the regulations of the Authority shall be adopted in the manner  
3 prescribed by the Administrative Adjudication Law.

4 **§2409. Authority's findings on applications.** In making its  
5 recommendation to the Governor the Authority shall consider and make  
6 specific findings on the following:

7 (a) The impact of the Beneficiary's proposed activities upon  
8 established businesses and markets in Guam;

9 (b) The financial risks facing the Beneficiary in undertaking the  
10 proposed activities;

11 (c) The location of the proposed activities;

12 (d) The importance of the proposed activities to the economy  
13 of Guam and to the official economic policies of the government of  
14 Guam, if any;

15 **§2410. Conditions of benefits.** In its recommendation of specific tax  
16 benefits, the Authority shall consider the following as possible terms and  
17 conditions to such benefits:

18 (a) **Percentage of investment.** Limiting the tax benefits to a  
19 percentage of the capital investment in Guam to be made by the  
20 Beneficiary;

21 (b) **Variable rate.** Varying the rate of tax benefits over the  
22 term of the Qualifying Certificate;

23 (c) **Limitation on amount.** Limiting the tax benefits to a fixed  
24 dollar amount;

25 (d) **Public investments.** Conditioning the tax benefits on the  
26 Beneficiary's investing in or creating public improvements separate  
27 from its proposed activities;

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

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

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

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

15       §2411. **Grounds for suspension, rescission or revocation.** A  
16 Qualifying Certificate may be suspended, rescinded or revoked by the  
17 Governor of Guam upon the recommendation of the Authority for the  
18 following reasons:

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

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

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

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

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

8           **§2412. Hearing required.** No recommendation for suspension,  
9 rescission or revocation of a Qualifying Certificate shall be made by the  
10 Authority **except** after a hearing thereon pursuant to the provisions of the  
11 Administrative Adjudication Law.

12           **§2413. Retroactive suspension.** The suspension, rescission or  
13 revocation of a Qualifying Certificate may be retroactive to the time of the  
14 act or omission giving rise to the suspension, rescission or revocation or  
15 for any shorter period recommended by the Authority.

16           **§2414. License required.** A Qualifying Certificate shall not be issued  
17 to any applicant who has not first obtained a license to do business in  
18 Guam.

19           **§2415. Conflicts of interest.** No employee or board member of the  
20 Authority or their spouses and no corporation or any other legal entity in  
21 which any employee, board member or counsel of the Authority, or their  
22 spouses has any financial interest is eligible to apply for a Qualifying  
23 Certificate. Neither shall any of the following, during their term of office  
24 and for a period of one (1) year after their resignation, termination, or  
25 completion of their term of office, directly or indirectly, qualify for a  
26 Qualifying Certificate:

27           (a) Members of the Legislature and their spouses;

1 (b) Full-time employees of the executive branch of the  
2 government of Guam, and their spouses, from the level of first  
3 assistant to the agency director or chief executive and up;

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

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

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

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

10 **§2416. Employment of United States citizens and permanent**  
11 **residents.** Every Qualifying Certificate shall include a requirement that  
12 the Beneficiary shall submit a plan for a management training program for  
13 the approval of the Authority. The plan shall establish a management  
14 training program through which the Beneficiary shall have as managers  
15 and officers residents of Guam who are United States citizens or  
16 permanent residents of the United States.

17 **§2417. Same: work force.** (a) **Minimum size.** A Beneficiary shall at  
18 all times employ a total work force of not less than the minimum full-time  
19 equivalent number established by the Authority and as set out in the  
20 Qualifying Certificate. However, at all times, the work force of a  
21 Beneficiary shall meet the following **minimum** requirements:

22 (1) **Initial minimum requirement.** At least seventy-five  
23 (75%) of the Beneficiary's non-managerial employees shall be  
24 United States citizens or permanent residents of the United  
25 States; and

26 (2) **Subsequent minimum requirement.** After the  
27 expiration of three-fourths (3/4ths) of the period of the

1           Qualifying Certificate or ten (10) years, whichever is **sooner**,  
2           the Beneficiary shall satisfy the seventy-five (75%) employment  
3           requirement for both management and non-management  
4           employees.

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

20          **§2418. Same: wages.** No resident employee of a Beneficiary shall  
21          be paid at less than the prevailing wage rate nor shall such employee be  
22          laid off work nor have his or her workweek reduced to less than forty (40)  
23          hours in order to create employment for employees who are not United  
24          States citizens or permanent residents of the United States. For the  
25          purpose of this Section, "prevailing wage rate" shall mean such rate as is  
26          established from time to time by the Department of Labor. The  
27          Department of Labor is empowered to investigate any complaint filed

1 under this Section and to settle the same by issuance of an appropriate  
2 order after notice and hearing pursuant to the provisions of the  
3 Administrative Adjudication Law. Any willful violation of this Section, or  
4 of any order issued hereunder, may be cause for a Beneficiary of a  
5 Qualifying Certificate to forfeit the benefits thereof.

6       **§2419. Same: trainees.** For purposes of the employee percentages  
7 of §2417 of this Article, a Beneficiary may include among its employees  
8 "trainees" as that term is defined by the Authority's regulations. For good  
9 cause shown, the Authority may grant specific and limited exemptions to  
10 the percentage employment requirements of §2417 but only if a training  
11 program has been implemented by the Beneficiary as required by §2417.

12       **§2420. Participation in training programs.** Every Qualifying  
13 Certificate which covers the operation of a hotel or restaurant shall  
14 require its Beneficiary to participate in (i) the Hotel/Restaurant Industry  
15 Apprenticeship Training Program administered by the Guam Community  
16 College or other subsequent and similar programs approved by the  
17 Authority and (ii) the Management and Supervisory Training Program  
18 administered by the University of Guam's College of Business and Public  
19 Administration or other subsequent and similar programs approved by the  
20 Authority. Failure to actively participate in such training programs shall  
21 be grounds to revoke or suspend the Beneficiary's Qualifying Certificate.

22       **§2421. Qualifying Certificate: non-transferable.** A Qualifying  
23 Certificate or the benefits thereunder may not be transferred, assigned or  
24 conveyed to another person, firm, partnership, or corporation **without** the  
25 written permission of the Authority. For the purpose of this Section, a  
26 transfer of benefits shall have occurred at any time that there is a transfer  
27 of a majority of the voting stock of the Beneficiary resulting in a change in

1 the identify of the shareholders who control the Beneficiary. Similarly, a  
2 transfer of benefits shall occur whenever a Beneficiary shall lease, assign,  
3 or transfer a substantial part of its activities outside of the ordinary course  
4 of its business.

5 **§2422. Application for Qualifying Certificates.** Applications for  
6 Qualifying Certificates shall be filed on forms prescribed and furnished by  
7 the Authority and shall require such disclosures as the Authority shall deem  
8 appropriate.

9 **§2423. Monthly reports.** The Beneficiary of a Qualifying Certificate  
10 must furnish monthly written reports to the Authority beginning thirty (30)  
11 days after the date of the issuance of the Qualifying Certificate. Said  
12 reports must include, but are not limited to, financial, employment and  
13 payroll data. All such monthly reports shall be treated as confidential by  
14 the Authority.

15 **§2424. Publication of all applications for Qualifying**  
16 **Certificates.** The Authority shall cause to be published, at the applicant's  
17 expense, in a Guam newspaper of general circulation, a brief resumé of an  
18 application for a Qualifying Certificate, said publication to be made no  
19 later than seven (7) days following submission of an application. The  
20 resumé shall be in a form prescribed by the Authority, and it shall include  
21 the name and address of the applicant, a brief statement of the proposed  
22 investment, a brief summary of the tax rebates and abatements applied  
23 for, and the names and addresses of all the owners, partners, or  
24 shareholders of the Applicant. Following the filing of the application in  
25 due form, payment of the prescribed fees and publication of the resumé, a  
26 public hearing shall be held pursuant to the rule-making provisions of the  
27 Administrative Adjudication Law.

1           **§2425. Notice of hearing on applications.** A notice of the public  
2 hearing required by §2424 of this Article shall be published at the  
3 applicant's expense in a Guam newspaper of general circulation in a form  
4 prescribed by the Authority at least five (5) days but no more than ten (10)  
5 days before the scheduled public hearing date. The Authority shall take all  
6 reasonable precautions in connection with such public hearings to avoid  
7 disclosure of proprietary secrets of the applicant. The Authority may  
8 schedule additional public hearings as necessary. The Authority meeting  
9 for approval or disapproval of a Qualifying Certificate shall **not** be held on  
10 the same day as a public hearing on the same Qualifying Certificate  
11 application.

12           **§2426. Recommendations.** All recommendations of the Authority for  
13 issuance, modification, renovation and suspension of Qualifying Certificates  
14 shall be forwarded to the Governor of Guam, together with a memorandum  
15 of the Authority's findings in support of its recommendations. Any  
16 recommendation of the Authority not approved by the Governor within sixty  
17 (60) calendar days from his receipt thereof shall be deemed disapproved on  
18 the sixty-first (61st) day following such receipt.

19           **§2427. Tax abatements.** Subject to the provisions of this Article, the  
20 Governor is authorized to issue a Qualifying Certificate abating the  
21 following taxes on the following terms:

22           **2427.1. Property taxes.** All taxes now levied by virtue of Chapter 24,  
23 Title 11, Guam Code Annotated, known as the Real Property Tax Law, shall  
24 be abated for a period up to ten (10) years from the effective date of the  
25 Qualifying Certificate therefor, and as long as said Certificate is in force and  
26 effect; **provided**, that the real property on which the tax is assessed is only

1 utilized by the Beneficiary for activities identified in the Qualifying  
2 Certificate.

3       **2427.2. Rental of land, building or equipment.** All taxes now levied on  
4 income derived from the lease of land, buildings, machinery or equipment by  
5 virtue of Article 2, Chapter 26, Title 11, Guam Code Annotated, known as  
6 gross receipts taxes, shall be abated for a period up to ten (10) years, from the  
7 effective date of a Qualifying Certificate therefor, and as long as said  
8 Certificate is in force and effect; **provided**, that said income is derived from  
9 the lease of land, building, machinery or equipment to a Beneficiary of a  
10 Qualifying Certificate.

11       **2427.3. Sale of alcoholic beverages.** All taxes now levied by virtue of  
12 Article 2, Chapter 26, Title 11, Guam Code Annotated, known as gross  
13 receipts taxes, shall be abated for a period up to ten (10) years from the  
14 effective date of a Qualifying Certificate therefor, and as long as said  
15 Certificate is in force and effect; **provided**, that the gross receipts on which  
16 such tax shall be abated have been derived from the sale of alcoholic  
17 beverages manufactured in Guam by the manufacturer thereof and that such  
18 manufacturer is the Beneficiary of a Qualifying Certificate.

19       **2427.4. Sale of petroleum products.** All taxes levied or paid by virtue of  
20 Article 2, Chapter 26, Title 11, Guam Code Annotated, known as gross  
21 receipts taxes, shall be abated or rebated for a period up to ten (10) years from  
22 the effective date of the Qualifying Certificate therefor, for those gross  
23 receipts derived from the sale of petroleum products manufactured in Guam  
24 and sold to agencies or instrumentalities of the United States of America, or  
25 agencies or instrumentalities of the government of Guam, by the  
26 manufacturer thereof; **provided**, that a Qualifying Certificate for such a tax  
27 rebate or abatement is granted pursuant to the provisions of this subsection;

1 and **provided, further,** that at any such time that a manufacturer possessing  
2 such a Qualifying Certificate no longer continues to qualify for the  
3 Certificate, the taxes shall no longer be abated or rebated.

4 **2427.5. Insurance premiums.** All taxes now levied by virtue of §43714,  
5 Chapter VII, Title XXXIX, Government Code, shall be abated for a period of  
6 up to ten (10) years from the effective date of the Qualifying Certificate  
7 therefor and as long as said premiums are collected by a captive insurance  
8 company licensed under said Chapter VII that has qualified and continues to  
9 qualify for a Qualifying Certificate.

10 **§2428. Tax rebates.** Subject to the provisions of this Article, the  
11 Governor is authorized to issue a Qualifying Certificate which establishes the  
12 following tax rebate:

13 **2428.1. Income tax rebate.** A rebate of up to seventy-five percent (75%)  
14 of all income tax paid to the government of Guam by a Beneficiary on income  
15 received from those activities identified in the Qualifying Certificate may be  
16 issued for a period not to exceed twenty (20) consecutive years from the  
17 effective date of a Qualifying Certificate therefor.

18 **2428.2. Variable rates.** The percentage of rebate may be made variable  
19 by the Authority so as to permit higher or lower percentages in earlier or later  
20 years of the period. In determining the periods up to twenty (20) years and  
21 the percentages up to seventy-five (75%) the Authority shall take into  
22 consideration the financial risks involved in the undertaking as well as the  
23 impact on the socio-economic development of Guam by the proposed  
24 investment.

25 **2428.3. Determination of income.** For the purposes of this Section, the  
26 term "income tax paid" shall mean income taxes paid on income received on  
27 or after the effective date of the applicable Qualifying Certificate. The

1 Director of Revenue and Taxation of the government of Guam shall have  
2 authority to determine any prorations of rebates necessary because of taxable  
3 years occurring within the life of the applicable Qualifying Certificate which  
4 consist of less than a full twelve (12) months.

5 **§2429. Taxability of abatements and rebates: Legislative intent.** It is  
6 the intent of the Legislature that the abatement or rebate of taxes to  
7 Beneficiaries pursuant to §§2427, 2428, 2429, 2430 and 2431 of this Article shall  
8 be abatements or rebates on the taxes owed on the eligible activities identified  
9 in the Qualifying Certificates issued therefor and that no portion of such  
10 abatements or rebates shall be later subject to taxation as additional income  
11 to the Beneficiary.

12 **§2430. Income tax rebate on dividends.** A rebate of up to seventy-five  
13 percent (75%) of the income tax paid by the shareholders of a corporation on  
14 the dividends of that corporation may be granted for a period not to exceed  
15 five (5) consecutive years; **provided**, however, that the corporation paying the  
16 dividends is the Beneficiary of a Qualifying Certificate and that the dividends  
17 are being paid from the corporation's earnings on activities identified in the  
18 Qualifying Certificate which were received, on a cash basis, during the five  
19 (5) year period.

20 **§2431. Income tax rebates for the shareholders of a "Subchapter S"**  
21 **corporation.** A rebate of up to seventy-five percent (75%) of all income tax  
22 paid by the shareholders of a corporation which has elected to be taxed as a  
23 "Subchapter S" corporation, as defined at §1361, Title 26, United States Code,  
24 or any successor provision, on the income of the corporation which was  
25 received from those activities identified in the Qualifying Certificate, may be  
26 granted for a period not to exceed twenty (20) years following the effective  
27 date of the Qualifying Certificate therefor.

1           **§2432. Modification of tax benefits.** In the event that a Beneficiary  
2 proposes to substantially expand or add to its activities and desires to obtain  
3 a modification of its original Qualifying Certificate to include its proposed  
4 additional activities, then upon findings and recommendations of the  
5 Authority, the Governor may modify the original Qualifying Certificate,  
6 **subject** to the following conditions:

7           (a) **Findings.** The Authority specifically finds that the  
8 additional proposed activities of the Beneficiary satisfy the  
9 requirements of §§2403 and 2406 of this Article and that the Authority  
10 makes recommendations required by §2409 of this Article;

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

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

19           **§2433. Extended term.** In lieu of the percentage of tax abatements and  
20 rebates authorized in this Article, the Authority may recommend and the  
21 Governor may grant fifty percent (50%) of said abatements and rebates for a  
22 period of double the term authorized by this Article.

23           **§2434. Acknowledgment of benefits by Tax Commissioner.** When the  
24 Authority forwards its recommendations to the Governor on the issuance of a  
25 Qualifying Certificate, it shall transmit a copy of such recommendations to  
26 the Tax Commissioner of Guam for his information. The Tax Commissioner  
27 shall forthwith acknowledge in writing to the Governor and to the Authority

1 that the proposed tax benefits are understood and accepted by the  
2 Department of Revenue and Taxation.

3       **§2435. Procedure to claim abated and rebated taxes.** The Authority  
4 shall monitor the activities of the Beneficiary and its compliance with all of  
5 the terms and conditions of the Qualifying Certificate, this Article and the  
6 regulations of the Authority and it shall, if justified, issue annually its  
7 certificate of compliance by the Beneficiary. No rebate or abatement of any  
8 tax shall occur unless the Beneficiary shall have received a certificate of  
9 compliance for the applicable tax year.

10       **§2436. Abatement of tax.** When the return for the abated tax is  
11 accompanied by a corresponding certificate of compliance for the previous  
12 year or part thereof then the actual payment of the tax in question to the  
13 government of Guam shall not be required, and upon review of the tax  
14 return, the Tax Commissioner of Guam shall, within one hundred twenty  
15 (120) days from receipt of said tax return, furnish the taxpayer a certification  
16 confirming the nature and amount of the tax abated.

17       **§2437. Rebate of tax.** In the case of an income tax rebate, where the  
18 taxpayer's tax return is accompanied by a certificate of compliance, the  
19 amount of a tax due prior to rebate shall be deposited with the government of  
20 Guam at the time of filing the income tax return. The Tax Commissioner of  
21 Guam shall immediately thereafter cause the return to be reviewed and if the  
22 rebate is found in order shall cause the amount of the rebate to be withdrawn  
23 from the deposit and returned to the taxpayer within one hundred eighty  
24 (180) days from the date of the deposit, without interest. The balance of the  
25 deposit shall be credited against the taxpayer's income tax obligation to the  
26 government of Guam.

1           **§2438 Rebate fund.** Deposits for income tax made with the  
2 government of Guam pursuant to this Article shall be covered and deposited  
3 into a separate, special account in the Treasury of the territory of Guam, to be  
4 designated the "Income Tax Rebate Fund".

5           **§2439. Tax redeterminations.** In the case of any Beneficiary that, in  
6 accordance with the applicable laws of Guam, shall have applied for and  
7 been granted a redetermination of tax liability or taxes payable or in the case  
8 of a redetermination of tax liability made by the Department of Revenue and  
9 Taxation, the amount of abated or rebated taxes determined for such  
10 Beneficiary for the taxable years affected shall be accordingly adjusted by the  
11 Director of Revenue and Taxation and said Beneficiary shall be required to  
12 pay the balance due for said taxable years, if any, together with interest at the  
13 rate currently assessed by the government of Guam per annum from the date  
14 the Beneficiary realized the abatement or rebate benefit; **provided**, that said  
15 balance due may be offset or credited against any tax refund due to the  
16 Beneficiary.

17           **§2440. Implementation by Tax Commissioner.** The Tax Commissioner  
18 of Guam is hereby authorized to issue such rules and regulations as he may  
19 deem necessary to implement the procedures outlined in this Article.

20           **§2441. Limited to government of Guam taxes.** All abatements and  
21 rebates herein established and authorized shall apply only to the taxes due  
22 the government of Guam.

23           **§2442. Investment of abated or rebated tax in Guam.** Each Qualifying  
24 Certificate shall require a Beneficiary to invest within Guam no less than fifty  
25 percent (50%) of any taxes rebated or abated under §§2427 or 2428 of this  
26 Article for a period of five (5) years following the rebate or abatement. A  
27 Beneficiary shall report all such investments to the Authority.

1           **§2443. Fees.** On the effective date of this Article, and until modified  
 2 pursuant to §2445 of this Article, the following fees shall be assessed against  
 3 each applicant or Beneficiary of a Qualifying Certificate:

|    | <b>FILING FEES:</b>       | <b>ANNUAL<br/>SURVEILLANCE FEES:</b> |
|----|---------------------------|--------------------------------------|
| 4  |                           |                                      |
| 5  |                           |                                      |
| 6  | Agriculture, aquaculture, |                                      |
| 7  | and mariculture:          | \$150,                               |
| 8  | Home manufacturing:       | \$100,                               |
| 9  | Manufacturing:            | \$750,                               |
| 10 | Commercial fishing:       | \$250,                               |
| 11 | Services:                 | \$750,                               |
| 12 | Leasehold services:       | \$750,                               |
| 13 | Tourism                   | \$1,000,                             |
| 14 | Captive insurance         |                                      |
| 15 | companies:                | \$750,                               |
| 16 | Export trading companies: | \$750,                               |
| 17 | Motels per motel:         |                                      |
| 18 | Under construction:       | \$750,                               |
| 19 | In operation:             | \$750,                               |
| 20 | Hotels per hotel:         |                                      |
| 21 | Under construction:       | \$1,500,                             |
| 22 | In operation:             | \$1,500,                             |
|    |                           | \$500,                               |
|    |                           | \$100,                               |
|    |                           | \$2,000,                             |
|    |                           | \$1,000                              |
|    |                           | \$2,000,                             |
|    |                           | 0.75% of annual lease payments,      |
|    |                           | \$3,000,                             |
|    |                           | \$1,000,                             |
|    |                           | \$1,000                              |
|    |                           | \$2,000                              |
|    |                           | \$25 per room,                       |
|    |                           | \$3,000,                             |
|    |                           | \$45 per room.                       |

23           **§2444. Extraordinary costs.** In addition to the filing and surveillance  
 24 fees, the Authority may also assess against an applicant or Beneficiary any  
 25 extraordinary costs and expenses incurred to process the application or  
 26 monitor the Beneficiary's performance of the terms and conditions of the  
 27 Qualifying Certificate. Such cost and expenses shall not include the salaries

1 of any employees of the Authority but may include but are not limited to the  
2 services of outside consultants, or off-island trips necessitated by the  
3 application or the surveillance.

4 **§2445. Periodic adjustment of fees.** The Authority is authorized to  
5 adjust the fees listed in §2443 of this Article on an annual basis, at the  
6 beginning of each calendar year, upon demonstration to the Authority by the  
7 Administrator that the cost of performing the services covered by the fees is  
8 greater than the amount of the fees. Fee changes shall be made according to  
9 the provisions of the Administrative Adjudication Law.

10 **§2446. Rule-making authority.** In accordance with the Administrative  
11 Adjudication Law the Authority shall adopt rules and regulations consistent  
12 with this Article which provide for, but are not limited to the following:  
13 Eligibility, minimum investment levels for different industries, the  
14 applications process, the terms and conditions of the various Qualifying  
15 Certificates, the monitoring procedure, and the revocation of Qualifying  
16 Certificates."

17 **Section 2. Severability.** If any provision of this Act or the application  
18 thereof to any person or circumstances is held invalid, such invalidity shall  
19 **not** affect the other provisions or applications of the Act which can be given  
20 effect **without** the invalid provision or application, and to this end the  
21 provisions of the Act are declared to be severable.

6

12/9/94

Bill No. 920

Resolution No. \_\_\_\_\_

(Date)

Question: \_\_\_\_\_

| Senators               | Aye | No | Declined to Vote | Required to vote | Excused from voting | ABSENT/OUT DURING ROLL CALL |
|------------------------|-----|----|------------------|------------------|---------------------|-----------------------------|
| Ada, Thomas C.         | ✓   |    |                  |                  |                     |                             |
| AGUON, John P.         | ✓   |    |                  |                  |                     |                             |
| ARRIOLA, Elizabeth P.  | ✓   |    |                  |                  |                     |                             |
| BAMBA, George J.       | ✓   |    |                  |                  |                     |                             |
| BLAZ, Anthony C.       | ✓   |    |                  |                  |                     |                             |
| BORDALLO, Madeleine Z. |     |    |                  |                  |                     | ✓                           |
| BROOKS, Doris F.       | ✓   |    |                  |                  |                     |                             |
| CAMACHO, Felix P.      | ✓   |    |                  |                  |                     |                             |
| DIERKING, Hermina D.   | ✓   |    |                  |                  |                     |                             |
| GUTIERREZ, Carl T. C.  | ✓   |    |                  |                  |                     |                             |
| LUJAN, Pilar C.        | ✓   |    |                  |                  |                     |                             |
| MANIBUSAN, M. D. A.    | ✓   |    |                  |                  |                     |                             |
| NELSON, Ted S.         | ✓   |    |                  |                  |                     |                             |
| PANGELINAN, Vicente C. | ✓   |    |                  |                  |                     |                             |
| PARKINSON, Don         |     | ✓  |                  |                  |                     |                             |
| REYES, Edward D.       | ✓   |    |                  |                  |                     |                             |
| SAN AGUSTIN, Joe T.    | ✓   |    |                  |                  |                     |                             |
| SANTOS, Francis E.     | ✓   |    |                  |                  |                     |                             |
| SHIMIZU, David L. G.   | ✓   |    |                  |                  |                     |                             |
| TANAKA, Thomas V. C.   | ✓   |    |                  |                  |                     |                             |
| UNPINGCO, Antonio R.   | ✓   |    |                  |                  |                     |                             |

TOTAL

|    |   |  |  |  |   |
|----|---|--|--|--|---|
| 19 | 1 |  |  |  | 1 |
|----|---|--|--|--|---|

Office of



The People

Senator Vicente C. Pangelinan  
Twenty-Second Guam Legislature

Chairman, Committee on Economic-Agricultural Development and Insurance  
130 Aspinall Avenue • Suite 101 • Agana Guam • 96910 Phone (671) 472-3552-4 Fax (671) 472-3556

9 March 1994

Speaker Joe T. San Agustin  
Twenty-Second Guam Legislature  
155 Hesler Street  
Agana, Guam 96910

Dear Mr. Speaker,

The Committee on Economic Agricultural Development & Insurance to which was referred Bill 920 wishes to report the same back to the Legislature with the recommendation TO DO PASS, to accept its Committee Report on Bill 593, identical to Bill 920, and to waive public hearing on Bill 920 as authorized under §2103, Title 2 Guam Code Annotated, as the two bills are identical. The voting record is as follows:

TO PASS

8

NOT TO PASS

0

ABSTAIN

0

TO PLACE IN INACTIVE FILE

0

A copy of such Committee Report on Bill 593 has been duly filed in the Legislature's Legal Office. Your attention to this matter is appreciated.

Sincerely,

  
vicente c. pangelinan  
Chairman

Office of



The People

# Senator Vicente C. Pangelinan

## Twenty-Second Guam Legislature

Chairman, Committee on Economic-Agricultural Development and Insurance  
130 Aspinall Avenue • Suite 101 • Agana Guam • 96910 Phone (671) 472-3552-4 Fax (671) 472-3556

### COMMITTEE VOTING SHEET

SUBJECT: Committee recommendation to waive public hearing on Bill 920 and to accept Committee Report on bill 593 as the two bills are identical.

| Members          | Initial      | To Pass      | Not to Pass  | Abstain      | To Place In Inactive File |
|------------------|--------------|--------------|--------------|--------------|---------------------------|
| V.C. Pangelinan  | <u>VP</u>    | <u>✓</u>     | <u>_____</u> | <u>_____</u> | <u>_____</u>              |
| T.C. Ada         | <u>TA</u>    | <u>✓</u>     | <u>_____</u> | <u>_____</u> | <u>_____</u>              |
| A.C. Blaz        | <u>_____</u> | <u>_____</u> | <u>_____</u> | <u>_____</u> | <u>_____</u>              |
| F.P. Camacho     | <u>FC</u>    | <u>✓</u>     | <u>_____</u> | <u>_____</u> | <u>_____</u>              |
| H.D. Dierking    | <u>HD</u>    | <u>✓</u>     | <u>_____</u> | <u>_____</u> | <u>_____</u>              |
| P.C. Lujan       | <u>PL</u>    | <u>✓</u>     | <u>_____</u> | <u>_____</u> | <u>_____</u>              |
| M.D.A. Manibusan | <u>_____</u> | <u>_____</u> | <u>_____</u> | <u>_____</u> | <u>_____</u>              |
| T. Nelson        | <u>TN</u>    | <u>✓</u>     | <u>_____</u> | <u>_____</u> | <u>_____</u>              |
| E.D. Reyes       | <u>_____</u> | <u>_____</u> | <u>_____</u> | <u>_____</u> | <u>_____</u>              |
| J.T. San Agustin | <u>_____</u> | <u>_____</u> | <u>_____</u> | <u>_____</u> | <u>_____</u>              |
| F. E. Santos     | <u>FS</u>    | <u>✓</u>     | <u>_____</u> | <u>_____</u> | <u>_____</u>              |
| T.V.C. Tanaka    | <u>TVC</u>   | <u>✓</u>     | <u>_____</u> | <u>_____</u> | <u>_____</u>              |

32

TWENTY-SECOND GUAM LEGISLATURE  
1993 (FIRST) Regular Session

Bill No. 920 (LS)

Introduced by:

Committee on Economic,  
Agricultural Development and  
Insurance

V. C. Pangelinan

T. C. Ada

M. D. A. Manibusan

A. C. Blaz

H. D. Dierking

J. T. San Agustin

P. C. Lujan

F. E. Santos

F. P. Camacho

T. V. C. Tanaka

T. S. Nelson

J. P. Aguon

E. P. Arriola

M. Z. Bordallo

C. T. C. Gutierrez

D. Parkinson

E. D. Reyes

D. L. G. Shimizu

AN ACT TO AMEND ARTICLE 4 OF CHAPTER 2, TITLE  
12, GUAM CODE ANNOTATED, TO REVISE THE TAX  
ABATEMENT AND REBATE PROGRAM OF THE  
GUAM ECONOMIC DEVELOPMENT AUTHORITY.

1           **BE IT ENACTED BY THE PEOPLE OF THE TERRITORY OF GUAM:**  
2           **Section 1. Legislative findings.** The qualifying certificate program  
3 with its various abatement and rebates, as administered by the Guam  
4 Economic Development Authority (the "Program") has been revised a number

1 of times since it was first established under a statute subsequently approved  
2 by the United States Congress (See Ramsey v. Chaco, 549 F2d 1335). In order  
3 for Guam to continue to achieve economic growth and diversification, and to  
4 attract capital investments, financing institutions and programs, including  
5 the Program, must keep pace with changes in the marketplace, in the local  
6 labor supply, in employee training, and in investment practices.

7 It is the Legislature's intent to restructure the Program to provide  
8 flexibility sufficient to address such changes in Guam's market conditions in  
9 order to help stimulate the economy to achieve the island's socio-economic  
10 goals and objectives.

11 Section 2. Article 4, Chapter 2, Title 12, Guam Code Annotated, is  
12 amended to read as follows:

- 13 "Article 4. Qualifying Certificates  
14 §2400. Legislative findings and intent.  
15 §2401. Qualifying Certificate defined.  
16 §2402. Beneficiary defined.  
17 §2403. Benefits of a Qualifying Certificate.  
18 §2404. Eligibility defined.  
19 §2405. Promotion of general economic improvement.  
20 2405.1. Employment.  
21 2405.2. Replace imports.  
22 2405.3. Price reduction.  
23 2405.4. Needed facilities.  
24 2405.5. Economic activity.  
25 2405.6. Reinsurance.  
26 §2406. Qualifying Certificate: issuance of.  
27 §2407. Same: nature of; benefits.  
28 §2408. Same: regulations.  
29 §2409. Authority's findings on applications.  
30 §2410. Conditions of benefits.  
31 §2411. Grounds for suspension, rescission  
32 or revocation.  
33 §2412. Hearing required.  
34 §2413. Retroactive suspension.  
35 §2414. License required.

|    |         |  |
|----|---------|--|
| 1  | §2415.  | Conflicts of interest.                       |
| 2  | §2416.  | Employment of United States citizens and     |
| 3  |         | permanent residents.                         |
| 4  | §2417.  | Same: work force.                            |
| 5  | §2418.  | Same: wages.                                 |
| 6  | §2419.  | Same: trainees.                              |
| 7  | §2420.  | Participation in training programs.          |
| 8  | §2421.  | Qualifying Certificate: non-transferable.    |
| 9  | §2422.  | Application for Qualifying Certificates.     |
| 10 | §2423.  | Monthly reports.                             |
| 11 | §2424.  | Publication of all applications for          |
| 12 |         | Qualifying Certificates.                     |
| 13 | §2425.  | Notice of hearing on applications.           |
| 14 | §2426.  | Recommendations.                             |
| 15 | §2427.  | Tax abatements.                              |
| 16 | 2427.1. | Property taxes.                              |
| 17 | 2427.2. | Rental of land, building or equipment.       |
| 18 | 2427.3. | Sale of alcoholic beverages.                 |
| 19 | 2427.4. | Sale of petroleum products.                  |
| 20 | 2427.5. | Insurance premiums.                          |
| 21 | §2428.  | Tax rebates.                                 |
| 22 | 2428.1. | Income tax rebate.                           |
| 23 | 2428.2. | Variable rates.                              |
| 24 | 2428.3. | Determination of income.                     |
| 25 | §2429.  | Taxability of abatements and rebates:        |
| 26 |         | Legislative intent.                          |
| 27 | §2430.  | Income tax rebate on dividends.              |
| 28 | §2431.  | Income tax rebates for the shareholders      |
| 29 |         | of a "Subchapter S" corporation.             |
| 30 | §2432.  | Modification of tax benefits.                |
| 31 | §2433.  | Extended term.                               |
| 32 | §2434.  | Acknowledgment of benefits by                |
| 33 |         | Tax Commissioner.                            |
| 34 | §2435.  | Procedure to claim abated and rebated taxes. |
| 35 | §2436.  | Abatement of taxes.                          |
| 36 | §2437.  | Rebate of tax.                               |
| 37 | §2438.  | Rebate fund.                                 |
| 38 | §2439.  | Tax redetermination.                         |
| 39 | §2440.  | Implementation by Tax Commissioner.          |
| 40 | §2441.  | Limited to government of Guam taxes.         |

- 1                    §2442.        Investment of abated or rebated tax in Guam.
- 2                    §2443.        Fees.
- 3                    §2444.        Extraordinary costs.
- 4                    §2445.        Periodic adjustment of fees.
- 5                    §2446.        Rule-making authority.

6            §2400. **Legislative findings and intent.** The Legislature recognizes  
7 that the Qualifying Certificate program of the Guam Economic  
8 Development Authority (the "Authority") was conceived as an economic  
9 incentive tool to entice investors into Guam. In use for over two decades,  
10 it has had substantial positive impact upon the economic development of  
11 the territory, mainly in the tourist industry.

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

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

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

8           **§2401. Qualifying Certificate defined.** A "Qualifying Certificate" is  
9 a contract valid for a given period of time, executed by the Governor upon  
10 recommendation of the Authority, between the government of Guam and  
11 the Beneficiary, which has qualified for certain tax rebates or tax  
12 abatements or for both in return for meeting certain employment,  
13 investment, and other requirements as described in this Article and in the  
14 Qualifying Certificate.

15           **§2402. Beneficiary defined.** The recipient of a Qualifying Certificate  
16 shall be known as a "Beneficiary".

17           **§2403. Benefits of a Qualifying Certificate.** A Qualifying Certificate  
18 shall entitle the Beneficiary to tax rebates or tax abatements or both in  
19 return for meeting the conditions and requirements prescribed by the  
20 Authority in this Article and in the Qualifying Certificate.

21           **§2404. Eligibility defined.** A Qualifying Certificate shall only be  
22 issued to the following entities:

23                   Any trust, partnership, sole proprietorship, corporation formed  
24                   under the laws of Guam, or "possessions" corporation as defined in  
25                   §2406 of this Article, engaged, or about to engage in any of the  
26                   following activities:

- 27                   1. Agriculture;

- 1                   2. Aquaculture;
- 2                   3. Mariculture;
- 3                   4. Manufacturing;
- 4                   5. Commercial fishing;
- 5                   6. Services;
- 6                   7. Tourism;
- 7                   8. Improvement of real property for purposes which are
- 8 specifically determined by the Authority to be beneficial,
- 9 desirable, and necessary for the economic development of
- 10 Guam;
- 11                   9. Captive insurance business as permitted by Chapter
- 12 VII, Title XXXIX, Government Code;
- 13                   10. "Export trading company" as defined in §19500.21,
- 14 Title XX, Government Code, if the main office of the export
- 15 trading company is established on Guam.

16           **§2405. Promotion of general economic improvement.** No

17 Qualifying Certificate shall be issued unless the Authority finds that the

18 proposed activities of the Beneficiary shall promote the general economic

19 development of the territory by:

- 20           **2405.1. Employment.** Creation of employment; plus
- 21           **2405.2. Replace imports.** Replacement of imports; or
- 22           **2405.3. Price reduction.** Reduction in consumer prices; or
- 23           **2405.4. Needed facilities.** Creation of vitally needed facilities; or
- 24           **2405.5. Economic activity.** Creation of economic activity of value to
- 25 the territory; or
- 26           **2405.6. Reinsurance.** Increasing the availability of insurance
- 27 including reinsurance.

1           **§2406. Qualifying Certificate: issuance of.** A Qualifying Certificate  
2 may be issued by the Governor of Guam upon the recommendation of the  
3 Authority to any applicant that proposes to engage in an eligible business,  
4 or to any applicant stockholder of such corporation holding a Qualifying  
5 Certificate, and said corporation may be either a Guam corporation or a  
6 duly organized "possessions corporation" limited to doing business in  
7 Guam, as such "possessions corporation" is defined under Federal income  
8 tax laws and regulations. Each Qualifying Certificate shall specifically  
9 identify on its face each activity of the Beneficiary which is entitled to the  
10 tax rebates or abatements set out in the Qualifying Certificate.

11           **§2407. Same: nature of; benefits.** A Qualifying Certificate, once  
12 issued, shall be a contract between the government of Guam and the  
13 Beneficiary, and the tax rebates or abatements or both set out in the  
14 Certificate may not be curtailed, limited or impaired without the consent  
15 of both parties by any subsequent act, **except** as provided herein. Once  
16 issued and **unless** suspended, rescinded or revoked, a Qualifying  
17 Certificate shall constitute conclusive evidence of entitlement to the tax  
18 rebates or abatements or both set out on its face.

19           **§2408. Same: regulations.** The Authority shall adopt regulations  
20 containing standards, criteria, and measures of investments for the  
21 Qualifying Certificate applicant and describing the benefits to be derived  
22 by the people of Guam in the issuance of Qualifying Certificates. Such  
23 regulations shall include preference to be extended to applicants which  
24 have a fifty-one percent (51%) or greater proportion of local ownership by  
25 **bona fide** Guam residents, U. S. citizens or permanent residents. The  
26 Authority shall recognize and take into consideration any and all  
27 provisions of law and regulations administered by other government

1 entities that have review or approval authority over the eligible activity.  
2 All of the regulations of the Authority shall be adopted in the manner  
3 prescribed by the Administrative Adjudication Law.

4 **§2409. Authority's findings on applications.** In making its  
5 recommendation to the Governor the Authority shall consider and make  
6 specific findings on the following:

7 (a) The impact of the Beneficiary's proposed activities upon  
8 established businesses and markets in Guam;

9 (b) The financial risks facing the Beneficiary in undertaking the  
10 proposed activities;

11 (c) The location of the proposed activities;

12 (d) The importance of the proposed activities to the economy  
13 of Guam and to the official economic policies of the government of  
14 Guam, if any;

15 **§2410. Conditions of benefits.** In its recommendation of specific tax  
16 benefits, the Authority shall consider the following as possible terms and  
17 conditions to such benefits:

18 (a) **Percentage of investment.** Limiting the tax benefits to a  
19 percentage of the capital investment in Guam to be made by the  
20 Beneficiary;

21 (b) **Variable rate.** Varying the rate of tax benefits over the  
22 term of the Qualifying Certificate;

23 (c) **Limitation on amount.** Limiting the tax benefits to a fixed  
24 dollar amount;

25 (d) **Public investments.** Conditioning the tax benefits on the  
26 Beneficiary's investing in or creating public improvements separate  
27 from its proposed activities;

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

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

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

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

15          **§2411. Grounds for suspension, rescission or revocation.** A  
16 Qualifying Certificate may be suspended, rescinded or revoked by the  
17 Governor of Guam upon the recommendation of the Authority for the  
18 following reasons:

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

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

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

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

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

8           §2412. **Hearing required.** No recommendation for suspension,  
9 rescission or revocation of a Qualifying Certificate shall be made by the  
10 Authority except after a hearing thereon pursuant to the provisions of the  
11 Administrative Adjudication Law.

12           §2413. **Retroactive suspension.** The suspension, rescission or  
13 revocation of a Qualifying Certificate may be retroactive to the time of the  
14 act or omission giving use to the suspension, rescission or revocation or for  
15 any shorter period recommended by the Authority.

16           §2414. **License required.** A Qualifying Certificate shall not be issued  
17 to any applicant who has not first obtained a license to do business in  
18 Guam.

19           §2415. **Conflicts of interest.** No employee or board member of the  
20 Authority or their spouses and no corporation or any other legal entity in  
21 which any employee, board member or counsel of the Authority, or their  
22 spouses has any financial interest is eligible to apply for a Qualifying  
23 Certificate. Neither shall any of the following, during their term of office  
24 and for a period of one (1) year after their resignation, termination, or  
25 completion of their term of office, directly or indirectly, qualify for a  
26 Qualifying Certificate:

27           (a) Members of the Legislature and their spouses;

1 (b) Full-time employees of the executive branch of the  
2 government of Guam, and their spouses, from the level of first  
3 assistant to the agency director or chief executive and up;

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

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

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

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

10 **§2416. Employment of United States citizens and permanent**  
11 **residents.** Every Qualifying Certificate shall include a requirement that  
12 the Beneficiary shall submit a plan for a management training program for  
13 the approval of the Authority. The plan shall establish a management  
14 training program through which the Beneficiary shall have as managers  
15 and officers residents of Guam who are United States citizens or  
16 permanent residents of the United States.

17 **§2417. Same: work force. (a) Minimum size.** A Beneficiary shall at  
18 all times employ a total work force of not less than the minimum full-time  
19 equivalent number established by the Authority and as set out in the  
20 Qualifying Certificate. However, at all times, the work force of a  
21 Beneficiary shall meet the following minimum requirements:

22 (1) **Initial minimum requirement.** At least seventy-five  
23 (75%) of the Beneficiary's non-managerial employees shall be  
24 United States citizens or permanent residents of the United  
25 States; and

26 (2) **Subsequent minimum requirement.** After the  
27 expiration of three-fourths (3/4ths) of the period of the

1           Qualifying Certificate or ten (10) years, whichever is sooner,  
2           the Beneficiary shall satisfy the seventy-five (75%) employment  
3           requirement for both management and non-management  
4           employees.

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

20          **§2418. Same: wages.** No resident employee of a Beneficiary shall  
21          be paid at less than the prevailing wage rate nor shall such employee be  
22          laid off work nor have his or her workweek reduced to less than forty (40)  
23          hours in order to create employment for employees who are not United  
24          States citizens or permanent residents of the United States. For the  
25          purpose of this Section, "prevailing wage rate" shall mean such rate as is  
26          established from time to time by the Department of Labor. The  
27          Department of Labor is empowered to investigate any complaint filed

1 under this Section and to settle the same by issuance of an appropriate  
2 order after notice and hearing pursuant to the provisions of the  
3 Administrative Adjudication Law. Any willful violation of this Section, or  
4 of any order issued hereunder, may be cause for a Beneficiary of a  
5 Qualifying Certificate to forfeit the benefits thereof.

6       **§2419. Same: trainees.** For purposes of the employee percentages  
7 of §2417 of this Article, a Beneficiary may include among its employees  
8 "trainees" as that term is defined by the Authority's regulations. For good  
9 cause shown, the Authority may grant specific and limited exemptions to  
10 the percentage employment requirements of §2417 but only if a training  
11 program has been implemented by the Beneficiary as required by §2417.

12       **§2420. Participation in training programs.** Every Qualifying  
13 Certificate which covers the operation of a hotel or restaurant shall  
14 require its Beneficiary to participate in (i) the Hotel/Restaurant Industry  
15 Apprenticeship Training Program administered by the Guam Community  
16 College or other subsequent and similar programs approved by the  
17 Authority and (ii) the Management and Supervisory Training Program  
18 administered by the University of Guam's College of Business and Public  
19 Administration or other subsequent and similar programs approved by the  
20 Authority. Failure to actively participate in such training programs shall  
21 be grounds to revoke or suspend the Beneficiary's Qualifying Certificate.

22       **§2421. Qualifying Certificate: non-transferable.** A Qualifying  
23 Certificate or the benefits thereunder may not be transferred, assigned or  
24 conveyed to another person, firm, partnership, or corporation without the  
25 written permission of the Authority. For the purpose of this Section, a  
26 transfer of benefits shall have occurred at any time that there is a transfer  
27 of a majority of the voting stock of the Beneficiary resulting in a change in

1 the identify of the shareholders who control the Beneficiary. Similarly, a  
2 transfer of benefits shall occur whenever a Beneficiary shall lease, assign,  
3 or transfer a substantial part of its activities outside of the ordinary course  
4 of its business.

5 **§2422. Application for Qualifying Certificates.** Applications for  
6 Qualifying Certificates shall be filed on forms prescribed and furnished by  
7 the Authority and shall require such disclosures as the Authority shall deem  
8 appropriate.

9 **§2423. Monthly reports.** The Beneficiary of a Qualifying Certificate  
10 must furnish monthly written reports to the Authority beginning thirty (30)  
11 days after the date of the issuance of the Qualifying Certificate. Said  
12 reports must include, but are not limited to, financial, employment and  
13 payroll data. All such monthly reports shall be treated as confidential by  
14 the Authority.

15 **§2424. Publication of all applications for Qualifying**  
16 **Certificates.** The Authority shall cause to be published, at the applicant's  
17 expense, in a Guam newspaper of general circulation, a brief resumé of an  
18 application for a Qualifying Certificate, said publication to be made no  
19 later than seven (7) days following submission of an application. The  
20 resumé shall be in a form prescribed by the Authority, and it shall include  
21 the name and address of the applicant, a brief statement of the proposed  
22 investment, a brief summary of the tax rebates and abatements applied  
23 for, and the names and addresses of all the owners, partners, or  
24 shareholders of the Applicant. Following the filing of the application in  
25 due form, payment of the prescribed fees and publication of the resumé, a  
26 public hearing shall be held pursuant to the rule-making provisions of the  
27 Administrative Adjudication Law.

1           **§2425. Notice of hearing on applications.** A notice of the public  
2 hearing required by §2424 of this Article shall be published at the  
3 applicant's expense in a Guam newspaper of general circulation in a form  
4 prescribed by the Authority at least five (5) days but no more than ten (10)  
5 days before the scheduled public hearing date. The Authority shall take all  
6 reasonable precautions in connection with such public hearings to avoid  
7 disclosure of proprietary secrets of the applicant. The Authority may  
8 schedule additional public hearings as necessary. The Authority meeting  
9 for approval or disapproval of a Qualifying Certificate shall not be held on  
10 the same day as a public hearing on the same Qualifying Certificate  
11 application.

12           **§2426. Recommendations.** All recommendations of the Authority for  
13 issuance, modification, renovation and suspension of Qualifying Certificates  
14 shall be forwarded to the Governor of Guam, together with a memorandum  
15 of the Authority's findings in support of its recommendations. Any  
16 recommendation of the Authority not approved by the Governor within sixty  
17 (60) calendar days from his receipt thereof shall be deemed disapproved on  
18 the sixty-first (61st) day following such receipt.

19           **§2427. Tax abatements.** Subject to the provisions of this Article, the  
20 Governor is authorized to issue a Qualifying Certificate abating the  
21 following taxes on the following terms:

22           **2427.1. Property taxes.** All taxes now levied by virtue of Chapter 24,  
23 Title 11, Guam Code Annotated, known as the Real Property Tax Law, shall  
24 be abated for a period up to ten (10) years from the effective date of the  
25 Qualifying Certificate therefor, and as long as said Certificate is in force and  
26 effect; provided, that the real property on which the tax is assessed is only

1 utilized by the Beneficiary for activities identified in the Qualifying  
2 Certificate.

3       **2427.2. Rental of land, building or equipment.** All taxes now levied on  
4 income derived from the lease of land, buildings, machinery or equipment by  
5 virtue of Article 2, Chapter 26, Title 11, Guam Code Annotated, known as  
6 gross receipts taxes, shall be abated for a period up to ten (10) years, from the  
7 effective date of a Qualifying Certificate therefor, and as long as said  
8 Certificate is in force and effect; **provided**, that said income is derived from  
9 the lease of land, building, machinery or equipment to a Beneficiary of a  
10 Qualifying Certificate.

11       **2427.3. Sale of alcoholic beverages.** All taxes now levied by virtue of  
12 Article 2, Chapter 26, Title 11, Guam Code Annotated, known as gross  
13 receipts taxes, shall be abated for a period up to ten (10) years from the  
14 effective date of a Qualifying Certificate therefor, and as long as said  
15 Certificate is in force and effect; **provided**, that the gross receipts on which  
16 such tax shall be abated have been derived from the sale of alcoholic  
17 beverages manufactured in Guam by the manufacturer thereof and that such  
18 manufacturer is the Beneficiary of a Qualifying Certificate.

19       **2427.4. Sale of petroleum products.** All taxes levied or paid by virtue of  
20 Article 2, Chapter 26, Title 11, Guam Code Annotated, known as gross  
21 receipts taxes, shall be abated or rebated for a period up to ten (10) years from  
22 the effective date of the Qualifying Certificate therefor, for those gross  
23 receipts derived from the sale of petroleum products manufactured in Guam  
24 and sold to agencies or instrumentalities of the United States of America, or  
25 agencies or instrumentalities of the government of Guam, by the  
26 manufacturer thereof; **provided**, that a Qualifying Certificate for such a tax  
27 rebate or abatement is granted pursuant to the provisions of this subsection;

1 and provided, further, that at any such time that a manufacturer possessing  
2 such a Qualifying Certificate no longer continues to qualify for the  
3 Certificate, the taxes shall no longer be abated or rebated.

4       **2427.5. Insurance premiums.** All taxes now levied by virtue of §43714,  
5 Chapter VII, Title XXXIX, Government Code, shall be abated for a period of  
6 up to ten (10) years from the effective date of the Qualifying Certificate  
7 therefor and as long as said premiums are collected by a captive insurance  
8 company licensed under said Chapter VII that has qualified and continues to  
9 qualify for a Qualifying Certificate.

10       **§2428. Tax rebates.** Subject to the provisions of this Article, the  
11 Governor is authorized to issue a Qualifying Certificate which establishes the  
12 following tax rebate:

13       **2428.1. Income tax rebate.** A rebate of up to seventy-five percent (75%)  
14 of all income tax paid to the government of Guam by a Beneficiary on income  
15 received from those activities identified in the Qualifying Certificate may be  
16 issued for a period not to exceed twenty (20) consecutive years from the  
17 effective date of a Qualifying Certificate therefor.

18       **2428.2. Variable rates.** The percentage of rebate may be made variable  
19 by the Authority so as to permit higher or lower percentages in earlier or later  
20 years of the period. In determining the periods up to twenty (20) years and  
21 the percentages up to seventy-five (75%) the Authority shall take into  
22 consideration the financial risks involved in the undertaking as well as the  
23 impact on the socio-economic development of Guam by the proposed  
24 investment.

25       **2428.3. Determination of income.** For the purposes of this Section, the  
26 term "income tax paid" shall mean income taxes paid on income received on  
27 or after the effective date of the applicable Qualifying Certificate. The

1 Director of Revenue and Taxation of the government of Guam shall have  
2 authority to determine any prorations of rebates necessary because of taxable  
3 years occurring within the life of the applicable Qualifying Certificate which  
4 consist of less than a full twelve (12) months.

5 **§2429. Taxability of abatements and rebates: Legislative intent.** It is  
6 the intent of the Legislature that the abatement or rebate of taxes to  
7 Beneficiaries pursuant to §§2427, 2428, 2429, 2430 and 2431 of this Article shall  
8 be abatements or rebates on the taxes owed on the eligible activities identified  
9 in the Qualifying Certificates issued therefor and that no portion of such  
10 abatements or rebates shall be later subject to taxation as additional income  
11 to the Beneficiary.

12 **§2430. Income tax rebate on dividends.** A rebate of up to seventy-five  
13 percent (75%) of the income tax paid by the shareholders of a corporation on  
14 the dividends of that corporation may be granted for a period not to exceed  
15 five (5) consecutive years; provided, however, that the corporation paying the  
16 dividends is the Beneficiary of a Qualifying Certificate and that the dividends  
17 are being paid from the corporation's earnings on activities identified in the  
18 Qualifying Certificate which were received, on a cash basis, during the five  
19 (5) year period.

20 **§2431. Income tax rebates for the shareholders of a "Subchapter S"**  
21 **corporation.** A rebate of up to seventy-five percent (75%) of all income tax  
22 paid by the shareholders of a corporation which has elected to be taxed as a  
23 "Subchapter S" corporation, as defined at §1361, Title 26, United States Code,  
24 or any successor provision, on the income of the corporation which was  
25 received from those activities identified in the Qualifying Certificate, may be  
26 granted for a period not to exceed twenty (20) years following the effective  
27 date of the Qualifying Certificate therefor.

1           **§2432. Modification of tax benefits.** In the event that a Beneficiary  
2 proposes to substantially expand or add to its activities and desires to obtain  
3 a modification of its original Qualifying Certificate to include its proposed  
4 additional activities, then upon findings and recommendations of the  
5 Authority, the Governor may modify the original Qualifying Certificate,  
6 subject to the following conditions:

7           (a) **Findings.** The Authority specifically finds that the  
8 additional proposed activities of the Beneficiary satisfy the  
9 requirements of §§2403 and 2406 of this Article and that the Authority  
10 makes recommendations required by §2409 of this Article;

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

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

19           **§2433. Extended term.** In lieu of the percentage of tax abatements and  
20 rebates authorized in this Article, the Authority may recommend and the  
21 Governor may grant fifty percent (50%) of said abatements and rebates for a  
22 period of double the term authorized by this Article.

23           **§2434. Acknowledgment of benefits by Tax Commissioner.** When the  
24 Authority forwards its recommendations to the Governor on the issuance of a  
25 Qualifying Certificate, it shall transmit a copy of such recommendations to  
26 the Tax Commissioner of Guam for his information. The Tax Commissioner  
27 shall forthwith acknowledge in writing to the Governor and to the Authority

1 that the proposed tax benefits are understood and accepted by the  
2 Department of Revenue and Taxation.

3       **§2435. Procedure to claim abated and rebated taxes.** The Authority  
4 shall monitor the activities of the Beneficiary and its compliance with all of  
5 the terms and conditions of the Qualifying Certificate, this Article and the  
6 regulations of the Authority and it shall, if justified, issue annually its  
7 certificate of compliance by the Beneficiary. No rebate or abatement of any  
8 tax shall occur unless the Beneficiary shall have received a certificate of  
9 compliance for the applicable tax year.

10       **§2436. Abatement of tax.** When the return for the abated tax is  
11 accompanied by a corresponding certificate of compliance for the previous  
12 year or part thereof then the actual payment of the tax in question to the  
13 government of Guam shall not be required, and upon review of the tax  
14 return, the Tax Commissioner of Guam shall, within one hundred twenty  
15 (120) days from receipt of said tax return, furnish the taxpayer a certification  
16 confirming the nature and amount of the tax abated.

17       **§2437. Rebate of tax.** In the case of an income tax rebate, where the  
18 taxpayer's tax return is accompanied by a certificate of compliance, the  
19 amount of a tax due prior to rebate shall be deposited with the government of  
20 Guam at the time of filing the income tax return. The Tax Commissioner of  
21 Guam shall immediately thereafter cause the return to be reviewed and if the  
22 rebate is found in order shall cause the amount of the rebate to be withdrawn  
23 from the deposit and returned to the taxpayer within one hundred eighty  
24 (180) days from the date of the deposit, without interest. The balance of the  
25 deposit shall be credited against the taxpayer's income tax obligation to the  
26 government of Guam.

1           **§2438 Rebate fund.** Deposits for income tax made with the  
2 government of Guam pursuant to this Article shall be covered and deposited  
3 into a separate, special account in the Treasury of the territory of Guam, to be  
4 designated the "Income Tax Rebate Fund".

5           **§2439. Tax redeterminations.** In the case of any Beneficiary that, in  
6 accordance with the applicable laws of Guam, shall have applied for and  
7 been granted a redetermination of tax liability or taxes payable or in the case  
8 of a redetermination of tax liability made by the Department of Revenue and  
9 Taxation, the amount of abated or rebated taxes determined for such  
10 Beneficiary for the taxable years affected shall be accordingly adjusted by the  
11 Director of Revenue and Taxation and said Beneficiary shall be required to  
12 pay the balance due for said taxable years, if any, together with interest at the  
13 rate currently assessed by the government of Guam per annum from the date  
14 the Beneficiary realized the abatement or rebate benefit; **provided**, that said  
15 balance due may be offset or credited against any tax refund due to the  
16 Beneficiary.

17           **§2440. Implementation by Tax Commissioner.** The Tax Commissioner  
18 of Guam is hereby authorized to issue such rules and regulations as he may  
19 deem necessary to implement the procedures outlined in this Article.

20           **§2441. Limited to government of Guam taxes.** All abatements and  
21 rebates herein established and authorized shall apply only to the taxes due  
22 the government of Guam.

23           **§2442. Investment of abated or rebated tax in Guam.** Each Qualifying  
24 Certificate shall require a Beneficiary to invest within Guam no less than fifty  
25 percent (50%) of any taxes rebated or abated under §§2427 or 2428 of this  
26 Article for a period of five (5) years following the rebate or abatement. A  
27 Beneficiary shall report all such investments to the Authority.

1           **§2443. Fees.** On the effective date of this Article, and until modified  
 2 pursuant to §2445 of this Article, the following fees shall be assessed against  
 3 each applicant or Beneficiary of a Qualifying Certificate:

|                              | FILING FEES: | ANNUAL<br>SURVEILLANCE FEES:    |
|------------------------------|--------------|---------------------------------|
| 4 Agriculture, aquaculture,  |              |                                 |
| 5 and mariculture:           | \$150,       | \$500,                          |
| 6 Home manufacturing:        | \$100,       | \$100,                          |
| 7 Manufacturing:             | \$750,       | \$2,000,                        |
| 8 Commercial fishing:        | \$250,       | \$1,000                         |
| 9 Services:                  | \$750,       | \$2,000,                        |
| 10 Leasehold services:       | \$750,       | 0.75% of annual lease payments, |
| 11 Tourism                   | \$1,000,     | \$3,000,                        |
| 12 Captive insurance         |              |                                 |
| 13 companies:                | \$750,       | \$1,000,                        |
| 14 Export trading companies: | \$750,       | \$1,000                         |
| 15 Motels per motel:         |              |                                 |
| 16       Under construction: | \$750,       | \$2,000                         |
| 17       In operation:       | \$750,       | \$25 per room,                  |
| 18 Hotels per hotel:         |              |                                 |
| 19       Under construction: | \$1,500,     | \$3,000,                        |
| 20       In operation:       | \$1,500,     | \$45 per room.                  |

21           **§2444. Extraordinary costs.** In addition to the filing and surveillance  
 22 fee, the Authority may also assess against an applicant or Beneficiary any  
 23 extraordinary costs and expenses incurred to process the application or  
 24 monitor the Beneficiary's performance of the terms and conditions of the  
 25 Qualifying Certificate. Such cost and expenses shall not include the salaries  
 26  
 27

1 of any employees of the Authority but may include but are not limited to the  
2 services of outside consultants, or off-island trips necessitated by the  
3 application or the surveillance.

4       **§2445. Periodic adjustment of fees.** The Authority is authorized to  
5 adjust the fees listed in §2443 of this Article on an annual basis, at the  
6 beginning of each calendar year, upon demonstration to the Authority by the  
7 Administrator that the cost of performing the services covered by the fees is  
8 greater than the amount of the fees. Fee changes shall be made according to  
9 the provisions of the Administrative Adjudication Law.

10       **§2446. Rule-making authority.** In accordance with the Administrative  
11 Adjudication Law the Authority shall adopt rules and regulations consistent  
12 with this Article which provide for, but are not limited to the following:  
13 Eligibility, minimum investment levels for different industries, the  
14 applications process, the terms and conditions of the various Qualifying  
15 Certificates, the monitoring procedure, and the revocation of Qualifying  
16 Certificates."

17       **Section 2. Severability.** If any provision of this Act or the application  
18 thereof to any person or circumstances is held invalid, such invalidity shall  
19 not affect the other provisions or applications of the Act which can be given  
20 effect **without** the invalid provision or application, and to this end the  
21 provisions of the Act are declared to be severable.

MAR 09 '94

TWENTY-SECOND GUAM LEGISLATURE  
1993 (FIRST) Regular Session

Bill No. 920 (LS)

Introduced by:

Committee on Economic,  
Agricultural Development and  
Insurance

V. C. Pangelinan

T. C. Ada

M. D. A. Manibusan

A. C. Blaz

H. D. Dierking

J. T. San Agustin

P. C. Lujan

F. E. Santos

F. P. Camacho

T. V. C. Tanaka

T. S. Nelson

J. P. Aguon

E. P. Arriola

M. Z. Bordallo

C. T. C. Gutierrez

D. Parkinson

E. D. Reyes

D. L. G. Shimizu

AN ACT TO AMEND ARTICLE 4 OF CHAPTER 2, TITLE  
12, GUAM CODE ANNOTATED, TO REVISE THE TAX  
ABATEMENT AND REBATE PROGRAM OF THE  
GUAM ECONOMIC DEVELOPMENT AUTHORITY.

1 **BE IT ENACTED BY THE PEOPLE OF THE TERRITORY OF GUAM:**

2 **Section 1. Legislative findings.** The qualifying certificate program  
3 with its various abatement and rebates, as administered by the Guam  
4 Economic Development Authority (the "Program") has been revised a number

1 of times since it was first established under a statute subsequently approved  
2 by the United States Congress (See **Ramsey v. Chaco**, 549 F2d 1335). In order  
3 for Guam to continue to achieve economic growth and diversification, and to  
4 attract capital investments, financing institutions and programs, including  
5 the Program, must keep pace with changes in the marketplace, in the local  
6 labor supply, in employee training, and in investment practices.

7 It is the Legislature's intent to restructure the Program to provide  
8 flexibility sufficient to address such changes in Guam's market conditions in  
9 order to help stimulate the economy to achieve the island's socio-economic  
10 goals and objectives.

11 **Section 2.** Article 4, Chapter 2, Title 12, Guam Code Annotated, is  
12 amended to read as follows:

13 "Article 4. Qualifying Certificates  
14 §2400. Legislative findings and intent.  
15 §2401. Qualifying Certificate defined.  
16 §2402. Beneficiary defined.  
17 §2403. Benefits of a Qualifying Certificate.  
18 §2404. Eligibility defined.  
19 §2405. Promotion of general economic improvement.  
20 2405.1. Employment.  
21 2405.2. Replace imports.  
22 2405.3. Price reduction.  
23 2405.4. Needed facilities.  
24 2405.5. Economic activity.  
25 2405.6. Reinsurance.  
26 §2406. Qualifying Certificate: issuance of.  
27 §2407. Same: nature of; benefits.  
28 §2408. Same: regulations.  
29 §2409. Authority's findings on applications.  
30 §2410. Conditions of benefits.  
31 §2411. Grounds for suspension, rescission  
32 or revocation.  
33 §2412. Hearing required.  
34 §2413. Retroactive suspension.  
35 §2414. License required.

|    |         |  |
|----|---------|--|
| 1  | §2415.  | Conflicts of interest.                       |
| 2  | §2416.  | Employment of United States citizens and     |
| 3  |         | permanent residents.                         |
| 4  | §2417.  | Same: work force.                            |
| 5  | §2418.  | Same: wages.                                 |
| 6  | §2419.  | Same: trainees.                              |
| 7  | §2420.  | Participation in training programs.          |
| 8  | §2421.  | Qualifying Certificate: non-transferable.    |
| 9  | §2422.  | Application for Qualifying Certificates.     |
| 10 | §2423.  | Monthly reports.                             |
| 11 | §2424.  | Publication of all applications for          |
| 12 |         | Qualifying Certificates.                     |
| 13 | §2425.  | Notice of hearing on applications.           |
| 14 | §2426.  | Recommendations.                             |
| 15 | §2427.  | Tax abatements.                              |
| 16 | 2427.1. | Property taxes.                              |
| 17 | 2427.2. | Rental of land, building or equipment.       |
| 18 | 2427.3. | Sale of alcoholic beverages.                 |
| 19 | 2427.4. | Sale of petroleum products.                  |
| 20 | 2427.5. | Insurance premiums.                          |
| 21 | §2428.  | Tax rebates.                                 |
| 22 | 2428.1. | Income tax rebate.                           |
| 23 | 2428.2. | Variable rates.                              |
| 24 | 2428.3. | Determination of income.                     |
| 25 | §2429.  | Taxability of abatements and rebates:        |
| 26 |         | Legislative intent.                          |
| 27 | §2430.  | Income tax rebate on dividends.              |
| 28 | §2431.  | Income tax rebates for the shareholders      |
| 29 |         | of a "Subchapter S" corporation.             |
| 30 | §2432.  | Modification of tax benefits.                |
| 31 | §2433.  | Extended term.                               |
| 32 | §2434.  | Acknowledgment of benefits by                |
| 33 |         | Tax Commissioner.                            |
| 34 | §2435.  | Procedure to claim abated and rebated taxes. |
| 35 | §2436.  | Abatement of taxes.                          |
| 36 | §2437.  | Rebate of tax.                               |
| 37 | §2438.  | Rebate fund.                                 |
| 38 | §2439.  | Tax redetermination.                         |
| 39 | §2440.  | Implementation by Tax Commissioner.          |
| 40 | §2441.  | Limited to government of Guam taxes.         |

- 1                    §2442.        Investment of abated or rebated tax in Guam.
- 2                    §2443.        Fees.
- 3                    §2444.        Extraordinary costs.
- 4                    §2445.        Periodic adjustment of fees.
- 5                    §2446.        Rule-making authority.

6            **§2400. Legislative findings and intent.** The Legislature recognizes  
7 that the Qualifying Certificate program of the Guam Economic  
8 Development Authority (the "Authority") was conceived as an economic  
9 incentive tool to entice investors into Guam. In use for over two decades,  
10 it has had substantial positive impact upon the economic development of  
11 the territory, mainly in the tourist industry.

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

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

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

8 **§2401. Qualifying Certificate defined.** A "Qualifying Certificate" is  
9 a contract valid for a given period of time, executed by the Governor upon  
10 recommendation of the Authority, between the government of Guam and  
11 the Beneficiary, which has qualified for certain tax rebates or tax  
12 abatements or for both in return for meeting certain employment,  
13 investment, and other requirements as described in this Article and in the  
14 Qualifying Certificate.

15 **§2402. Beneficiary defined.** The recipient of a Qualifying Certificate  
16 shall be known as a "Beneficiary".

17 **§2403. Benefits of a Qualifying Certificate.** A Qualifying Certificate  
18 shall entitle the Beneficiary to tax rebates or tax abatements or both in  
19 return for meeting the conditions and requirements prescribed by the  
20 Authority in this Article and in the Qualifying Certificate.

21 **§2404. Eligibility defined.** A Qualifying Certificate shall only be  
22 issued to the following entities:

23 Any trust, partnership, sole proprietorship, corporation formed  
24 under the laws of Guam, or "possessions" corporation as defined in  
25 §2406 of this Article, engaged, or about to engage in any of the  
26 following activities:

- 27 1. Agriculture;

- 1                   2. Aquaculture;
- 2                   3. Mariculture;
- 3                   4. Manufacturing;
- 4                   5. Commercial fishing;
- 5                   6. Services;
- 6                   7. Tourism;
- 7                   8. Improvement of real property for purposes which are
- 8 specifically determined by the Authority to be beneficial,
- 9 desirable, and necessary for the economic development of
- 10 Guam;
- 11                  9. Captive insurance business as permitted by Chapter
- 12 VII, Title XXXIX, Government Code;
- 13                  10. "Export trading company" as defined in §19500.21,
- 14 Title XX, Government Code, if the main office of the export
- 15 trading company is established on Guam.

16           **§2405. Promotion of general economic improvement.** No

17 Qualifying Certificate shall be issued unless the Authority finds that the

18 proposed activities of the Beneficiary shall promote the general economic

19 development of the territory by:

20           **2405.1. Employment.** Creation of employment; plus

21           **2405.2. Replace imports.** Replacement of imports; or

22           **2405.3. Price reduction.** Reduction in consumer prices; or

23           **2405.4. Needed facilities.** Creation of vitally needed facilities; or

24           **2405.5. Economic activity.** Creation of economic activity of value to

25 the territory; or

26           **2405.6. Reinsurance.** Increasing the availability of insurance

27 including reinsurance.

1           **§2406. Qualifying Certificate: issuance of.** A Qualifying Certificate  
2 may be issued by the Governor of Guam upon the recommendation of the  
3 Authority to any applicant that proposes to engage in an eligible business,  
4 or to any applicant stockholder of such corporation holding a Qualifying  
5 Certificate, and said corporation may be either a Guam corporation or a  
6 duly organized "possessions corporation" limited to doing business in  
7 Guam, as such "possessions corporation" is defined under Federal income  
8 tax laws and regulations. Each Qualifying Certificate shall specifically  
9 identify on its face each activity of the Beneficiary which is entitled to the  
10 tax rebates or abatements set out in the Qualifying Certificate.

11           **§2407. Same: nature of; benefits.** A Qualifying Certificate, once  
12 issued, shall be a contract between the government of Guam and the  
13 Beneficiary, and the tax rebates or abatements or both set out in the  
14 Certificate may not be curtailed, limited or impaired without the consent  
15 of both parties by any subsequent act, **except** as provided herein. Once  
16 issued and **unless** suspended, rescinded or revoked, a Qualifying  
17 Certificate shall constitute conclusive evidence of entitlement to the tax  
18 rebates or abatements or both set out on its face.

19           **§2408. Same: regulations.** The Authority shall adopt regulations  
20 containing standards, criteria, and measures of investments for the  
21 Qualifying Certificate applicant and describing the benefits to be derived  
22 by the people of Guam in the issuance of Qualifying Certificates. Such  
23 regulations shall include preference to be extended to applicants which  
24 have a fifty-one percent (51%) or greater proportion of local ownership by  
25 **bona fide** Guam residents, U. S. citizens or permanent residents. The  
26 Authority shall recognize and take into consideration any and all  
27 provisions of law and regulations administered by other government

1 entities that have review or approval authority over the eligible activity.  
2 All of the regulations of the Authority shall be adopted in the manner  
3 prescribed by the Administrative Adjudication Law.

4 **§2409. Authority's findings on applications.** In making its  
5 recommendation to the Governor the Authority shall consider and make  
6 specific findings on the following:

7 (a) The impact of the Beneficiary's proposed activities upon  
8 established businesses and markets in Guam;

9 (b) The financial risks facing the Beneficiary in undertaking the  
10 proposed activities;

11 (c) The location of the proposed activities;

12 (d) The importance of the proposed activities to the economy  
13 of Guam and to the official economic policies of the government of  
14 Guam, if any;

15 **§2410. Conditions of benefits.** In its recommendation of specific tax  
16 benefits, the Authority shall consider the following as possible terms and  
17 conditions to such benefits:

18 (a) **Percentage of investment.** Limiting the tax benefits to a  
19 percentage of the capital investment in Guam to be made by the  
20 Beneficiary;

21 (b) **Variable rate.** Varying the rate of tax benefits over the  
22 term of the Qualifying Certificate;

23 (c) **Limitation on amount.** Limiting the tax benefits to a fixed  
24 dollar amount;

25 (d) **Public investments.** Conditioning the tax benefits on the  
26 Beneficiary's investing in or creating public improvements separate  
27 from its proposed activities;

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

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

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

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

15          **§2411. Grounds for suspension, rescission or revocation.** A  
16 Qualifying Certificate may be suspended, rescinded or revoked by the  
17 Governor of Guam upon the recommendation of the Authority for the  
18 following reasons:

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

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

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

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

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

8           **§2412. Hearing required.** No recommendation for suspension,  
9 rescission or revocation of a Qualifying Certificate shall be made by the  
10 Authority **except** after a hearing thereon pursuant to the provisions of the  
11 Administrative Adjudication Law.

12           **§2413. Retroactive suspension.** The suspension, rescission or  
13 revocation of a Qualifying Certificate may be retroactive to the time of the  
14 act or omission giving use to the suspension, rescission or revocation or for  
15 any shorter period recommended by the Authority.

16           **§2414. License required.** A Qualifying Certificate shall not be issued  
17 to any applicant who has not first obtained a license to do business in  
18 Guam.

19           **§2415. Conflicts of interest.** No employee or board member of the  
20 Authority or their spouses and no corporation or any other legal entity in  
21 which any employee, board member or counsel of the Authority, or their  
22 spouses has any financial interest is eligible to apply for a Qualifying  
23 Certificate. Neither shall any of the following, during their term of office  
24 and for a period of one (1) year after their resignation, termination, or  
25 completion of their term of office, directly or indirectly, qualify for a  
26 Qualifying Certificate:

27           (a) Members of the Legislature and their spouses;

1 (b) Full-time employees of the executive branch of the  
2 government of Guam, and their spouses, from the level of first  
3 assistant to the agency director or chief executive and up;

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

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

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

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

10 **§2416. Employment of United States citizens and permanent**  
11 **residents.** Every Qualifying Certificate shall include a requirement that  
12 the Beneficiary shall submit a plan for a management training program for  
13 the approval of the Authority. The plan shall establish a management  
14 training program through which the Beneficiary shall have as managers  
15 and officers residents of Guam who are United States citizens or  
16 permanent residents of the United States.

17 **§2417. Same: work force.** (a) **Minimum size.** A Beneficiary shall at  
18 all times employ a total work force of not less than the minimum full-time  
19 equivalent number established by the Authority and as set out in the  
20 Qualifying Certificate. However, at all times, the work force of a  
21 Beneficiary shall meet the following **minimum** requirements:

22 (1) **Initial minimum requirement.** At least seventy-five  
23 (75%) of the Beneficiary's non-managerial employees shall be  
24 United States citizens or permanent residents of the United  
25 States; and

26 (2) **Subsequent minimum requirement.** After the  
27 expiration of three-fourths (3/4ths) of the period of the

1           Qualifying Certificate or ten (10) years, whichever is sooner,  
2           the Beneficiary shall satisfy the seventy-five (75%) employment  
3           requirement for both management and non-management  
4           employees.

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

20          **§2418. Same: wages.** No resident employee of a Beneficiary shall  
21          be paid at less than the prevailing wage rate nor shall such employee be  
22          laid off work nor have his or her workweek reduced to less than forty (40)  
23          hours in order to create employment for employees who are not United  
24          States citizens or permanent residents of the United States. For the  
25          purpose of this Section, "prevailing wage rate" shall mean such rate as is  
26          established from time to time by the Department of Labor. The  
27          Department of Labor is empowered to investigate any complaint filed

1 under this Section and to settle the same by issuance of an appropriate  
2 order after notice and hearing pursuant to the provisions of the  
3 Administrative Adjudication Law. Any willful violation of this Section, or  
4 of any order issued hereunder, may be cause for a Beneficiary of a  
5 Qualifying Certificate to forfeit the benefits thereof.

6 **§2419. Same: trainees.** For purposes of the employee percentages  
7 of §2417 of this Article, a Beneficiary may include among its employees  
8 "trainees" as that term is defined by the Authority's regulations. For good  
9 cause shown, the Authority may grant specific and limited exemptions to  
10 the percentage employment requirements of §2417 but only if a training  
11 program has been implemented by the Beneficiary as required by §2417.

12 **§2420. Participation in training programs.** Every Qualifying  
13 Certificate which covers the operation of a hotel or restaurant shall  
14 require its Beneficiary to participate in (i) the Hotel/Restaurant Industry  
15 Apprenticeship Training Program administered by the Guam Community  
16 College or other subsequent and similar programs approved by the  
17 Authority and (ii) the Management and Supervisory Training Program  
18 administered by the University of Guam's College of Business and Public  
19 Administration or other subsequent and similar programs approved by the  
20 Authority. Failure to actively participate in such training programs shall  
21 be grounds to revoke or suspend the Beneficiary's Qualifying Certificate.

22 **§2421. Qualifying Certificate: non-transferable.** A Qualifying  
23 Certificate or the benefits thereunder may not be transferred, assigned or  
24 conveyed to another person, firm, partnership, or corporation **without** the  
25 written permission of the Authority. For the purpose of this Section, a  
26 transfer of benefits shall have occurred at any time that there is a transfer  
27 of a majority of the voting stock of the Beneficiary resulting in a change in

1 the identify of the shareholders who control the Beneficiary. Similarly, a  
2 transfer of benefits shall occur whenever a Beneficiary shall lease, assign,  
3 or transfer a substantial part of its activities outside of the ordinary course  
4 of its business.

5 **§2422. Application for Qualifying Certificates.** Applications for  
6 Qualifying Certificates shall be filed on forms prescribed and furnished by  
7 the Authority and shall require such disclosures as the Authority shall deem  
8 appropriate.

9 **§2423. Monthly reports.** The Beneficiary of a Qualifying Certificate  
10 must furnish monthly written reports to the Authority beginning thirty (30)  
11 days after the date of the issuance of the Qualifying Certificate. Said  
12 reports must include, but are not limited to, financial, employment and  
13 payroll data. All such monthly reports shall be treated as confidential by  
14 the Authority.

15 **§2424. Publication of all applications for Qualifying**  
16 **Certificates.** The Authority shall cause to be published, at the applicant's  
17 expense, in a Guam newspaper of general circulation, a brief resumé of an  
18 application for a Qualifying Certificate, said publication to be made no  
19 later than seven (7) days following submission of an application. The  
20 resumé shall be in a form prescribed by the Authority, and it shall include  
21 the name and address of the applicant, a brief statement of the proposed  
22 investment, a brief summary of the tax rebates and abatements applied  
23 for, and the names and addresses of all the owners, partners, or  
24 shareholders of the Applicant. Following the filing of the application in  
25 due form, payment of the prescribed fees and publication of the resumé, a  
26 public hearing shall be held pursuant to the rule-making provisions of the  
27 Administrative Adjudication Law.

1           **§2425. Notice of hearing on applications.** A notice of the public  
2 hearing required by §2424 of this Article shall be published at the  
3 applicant's expense in a Guam newspaper of general circulation in a form  
4 prescribed by the Authority at least five (5) days but no more than ten (10)  
5 days before the scheduled public hearing date. The Authority shall take all  
6 reasonable precautions in connection with such public hearings to avoid  
7 disclosure of proprietary secrets of the applicant. The Authority may  
8 schedule additional public hearings as necessary. The Authority meeting  
9 for approval or disapproval of a Qualifying Certificate shall **not** be held on  
10 the same day as a public hearing on the same Qualifying Certificate  
11 application.

12           **§2426. Recommendations.** All recommendations of the Authority for  
13 issuance, modification, renovation and suspension of Qualifying Certificates  
14 shall be forwarded to the Governor of Guam, together with a memorandum  
15 of the Authority's findings in support of its recommendations. Any  
16 recommendation of the Authority not approved by the Governor within sixty  
17 (60) calendar days from his receipt thereof shall be deemed disapproved on  
18 the sixty-first (61st) day following such receipt.

19           **§2427. Tax abatements.** Subject to the provisions of this Article, the  
20 Governor is authorized to issue a Qualifying Certificate abating the  
21 following taxes on the following terms:

22           **2427.1. Property taxes.** All taxes now levied by virtue of Chapter 24,  
23 Title 11, Guam Code Annotated, known as the Real Property Tax Law, shall  
24 be abated for a period up to ten (10) years from the effective date of the  
25 Qualifying Certificate therefor, and as long as said Certificate is in force and  
26 effect; **provided**, that the real property on which the tax is assessed is only

1 utilized by the Beneficiary for activities identified in the Qualifying  
2 Certificate.

3       **2427.2. Rental of land, building or equipment.** All taxes now levied on  
4 income derived from the lease of land, buildings, machinery or equipment by  
5 virtue of Article 2, Chapter 26, Title 11, Guam Code Annotated, known as  
6 gross receipts taxes, shall be abated for a period up to ten (10) years, from the  
7 effective date of a Qualifying Certificate therefor, and as long as said  
8 Certificate is in force and effect; **provided**, that said income is derived from  
9 the lease of land, building, machinery or equipment to a Beneficiary of a  
10 Qualifying Certificate.

11       **2427.3. Sale of alcoholic beverages.** All taxes now levied by virtue of  
12 Article 2, Chapter 26, Title 11, Guam Code Annotated, known as gross  
13 receipts taxes, shall be abated for a period up to ten (10) years from the  
14 effective date of a Qualifying Certificate therefor, and as long as said  
15 Certificate is in force and effect; **provided**, that the gross receipts on which  
16 such tax shall be abated have been derived from the sale of alcoholic  
17 beverages manufactured in Guam by the manufacturer thereof and that such  
18 manufacturer is the Beneficiary of a Qualifying Certificate.

19       **2427.4. Sale of petroleum products.** All taxes levied or paid by virtue of  
20 Article 2, Chapter 26, Title 11, Guam Code Annotated, known as gross  
21 receipts taxes, shall be abated or rebated for a period up to ten (10) years from  
22 the effective date of the Qualifying Certificate therefor, for those gross  
23 receipts derived from the sale of petroleum products manufactured in Guam  
24 and sold to agencies or instrumentalities of the United States of America, or  
25 agencies or instrumentalities of the government of Guam, by the  
26 manufacturer thereof; **provided**, that a Qualifying Certificate for such a tax  
27 rebate or abatement is granted pursuant to the provisions of this subsection;

1 and provided, further, that at any such time that a manufacturer possessing  
2 such a Qualifying Certificate no longer continues to qualify for the  
3 Certificate, the taxes shall no longer be abated or rebated.

4 **2427.5. Insurance premiums.** All taxes now levied by virtue of §43714,  
5 Chapter VII, Title XXXIX, Government Code, shall be abated for a period of  
6 up to ten (10) years from the effective date of the Qualifying Certificate  
7 therefor and as long as said premiums are collected by a captive insurance  
8 company licensed under said Chapter VII that has qualified and continues to  
9 qualify for a Qualifying Certificate.

10 **§2428. Tax rebates.** Subject to the provisions of this Article, the  
11 Governor is authorized to issue a Qualifying Certificate which establishes the  
12 following tax rebate:

13 **2428.1. Income tax rebate.** A rebate of up to seventy-five percent (75%)  
14 of all income tax paid to the government of Guam by a Beneficiary on income  
15 received from those activities identified in the Qualifying Certificate may be  
16 issued for a period not to exceed twenty (20) consecutive years from the  
17 effective date of a Qualifying Certificate therefor.

18 **2428.2. Variable rates.** The percentage of rebate may be made variable  
19 by the Authority so as to permit higher or lower percentages in earlier or later  
20 years of the period. In determining the periods up to twenty (20) years and  
21 the percentages up to seventy-five (75%) the Authority shall take into  
22 consideration the financial risks involved in the undertaking as well as the  
23 impact on the socio-economic development of Guam by the proposed  
24 investment.

25 **2428.3. Determination of income.** For the purposes of this Section, the  
26 term "income tax paid" shall mean income taxes paid on income received on  
27 or after the effective date of the applicable Qualifying Certificate. The

1 Director of Revenue and Taxation of the government of Guam shall have  
2 authority to determine any prorations of rebates necessary because of taxable  
3 years occurring within the life of the applicable Qualifying Certificate which  
4 consist of less than a full twelve (12) months.

5 **§2429. Taxability of abatements and rebates: Legislative intent.** It is  
6 the intent of the Legislature that the abatement or rebate of taxes to  
7 Beneficiaries pursuant to §§2427, 2428, 2429, 2430 and 2431 of this Article shall  
8 be abatements or rebates on the taxes owed on the eligible activities identified  
9 in the Qualifying Certificates issued therefor and that no portion of such  
10 abatements or rebates shall be later subject to taxation as additional income  
11 to the Beneficiary.

12 **§2430. Income tax rebate on dividends.** A rebate of up to seventy-five  
13 percent (75%) of the income tax paid by the shareholders of a corporation on  
14 the dividends of that corporation may be granted for a period not to exceed  
15 five (5) consecutive years; **provided**, however, that the corporation paying the  
16 dividends is the Beneficiary of a Qualifying Certificate and that the dividends  
17 are being paid from the corporation's earnings on activities identified in the  
18 Qualifying Certificate which were received, on a cash basis, during the five  
19 (5) year period.

20 **§2431. Income tax rebates for the shareholders of a "Subchapter S"**  
21 **corporation.** A rebate of up to seventy-five percent (75%) of all income tax  
22 paid by the shareholders of a corporation which has elected to be taxed as a  
23 "Subchapter S" corporation, as defined at §1361, Title 26, United States Code,  
24 or any successor provision, on the income of the corporation which was  
25 received from those activities identified in the Qualifying Certificate, may be  
26 granted for a period not to exceed twenty (20) years following the effective  
27 date of the Qualifying Certificate therefor.

1           **§2432. Modification of tax benefits.** In the event that a Beneficiary  
2 proposes to substantially expand or add to its activities and desires to obtain  
3 a modification of its original Qualifying Certificate to include its proposed  
4 additional activities, then upon findings and recommendations of the  
5 Authority, the Governor may modify the original Qualifying Certificate,  
6 **subject to the following conditions:**

7           (a) **Findings.** The Authority specifically finds that the  
8 additional proposed activities of the Beneficiary satisfy the  
9 requirements of §§2403 and 2406 of this Article and that the Authority  
10 makes recommendations required by §2409 of this Article;

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

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

19           **§2433. Extended term.** In lieu of the percentage of tax abatements and  
20 rebates authorized in this Article, the Authority may recommend and the  
21 Governor may grant fifty percent (50%) of said abatements and rebates for a  
22 period of double the term authorized by this Article.

23           **§2434. Acknowledgment of benefits by Tax Commissioner.** When the  
24 Authority forwards its recommendations to the Governor on the issuance of a  
25 Qualifying Certificate, it shall transmit a copy of such recommendations to  
26 the Tax Commissioner of Guam for his information. The Tax Commissioner  
27 shall forthwith acknowledge in writing to the Governor and to the Authority

1 that the proposed tax benefits are understood and accepted by the  
2 Department of Revenue and Taxation.

3       **§2435. Procedure to claim abated and rebated taxes.** The Authority  
4 shall monitor the activities of the Beneficiary and its compliance with all of  
5 the terms and conditions of the Qualifying Certificate, this Article and the  
6 regulations of the Authority and it shall, if justified, issue annually its  
7 certificate of compliance by the Beneficiary. No rebate or abatement of any  
8 tax shall occur unless the Beneficiary shall have received a certificate of  
9 compliance for the applicable tax year.

10       **§2436. Abatement of tax.** When the return for the abated tax is  
11 accompanied by a corresponding certificate of compliance for the previous  
12 year or part thereof then the actual payment of the tax in question to the  
13 government of Guam shall not be required, and upon review of the tax  
14 return, the Tax Commissioner of Guam shall, within one hundred twenty  
15 (120) days from receipt of said tax return, furnish the taxpayer a certification  
16 confirming the nature and amount of the tax abated.

17       **§2437. Rebate of tax.** In the case of an income tax rebate, where the  
18 taxpayer's tax return is accompanied by a certificate of compliance, the  
19 amount of a tax due prior to rebate shall be deposited with the government of  
20 Guam at the time of filing the income tax return. The Tax Commissioner of  
21 Guam shall immediately thereafter cause the return to be reviewed and if the  
22 rebate is found in order shall cause the amount of the rebate to be withdrawn  
23 from the deposit and returned to the taxpayer within one hundred eighty  
24 (180) days from the date of the deposit, without interest. The balance of the  
25 deposit shall be credited against the taxpayer's income tax obligation to the  
26 government of Guam.

1           **§2438 Rebate fund.** Deposits for income tax made with the  
2 government of Guam pursuant to this Article shall be covered and deposited  
3 into a separate, special account in the Treasury of the territory of Guam, to be  
4 designated the "Income Tax Rebate Fund".

5           **§2439. Tax redeterminations.** In the case of any Beneficiary that, in  
6 accordance with the applicable laws of Guam, shall have applied for and  
7 been granted a redetermination of tax liability or taxes payable or in the case  
8 of a redetermination of tax liability made by the Department of Revenue and  
9 Taxation, the amount of abated or rebated taxes determined for such  
10 Beneficiary for the taxable years affected shall be accordingly adjusted by the  
11 Director of Revenue and Taxation and said Beneficiary shall be required to  
12 pay the balance due for said taxable years, if any, together with interest at the  
13 rate currently assessed by the government of Guam per annum from the date  
14 the Beneficiary realized the abatement or rebate benefit; **provided**, that said  
15 balance due may be offset or credited against any tax refund due to the  
16 Beneficiary.

17           **§2440. Implementation by Tax Commissioner.** The Tax Commissioner  
18 of Guam is hereby authorized to issue such rules and regulations as he may  
19 deem necessary to implement the procedures outlined in this Article.

20           **§2441. Limited to government of Guam taxes.** All abatements and  
21 rebates herein established and authorized shall apply only to the taxes due  
22 the government of Guam.

23           **§2442. Investment of abated or rebated tax in Guam.** Each Qualifying  
24 Certificate shall require a Beneficiary to invest within Guam no less than fifty  
25 percent (50%) of any taxes rebated or abated under §§2427 or 2428 of this  
26 Article for a period of five (5) years following the rebate or abatement. A  
27 Beneficiary shall report all such investments to the Authority.

1           **§2443. Fees.** On the effective date of this Article, and until modified  
 2 pursuant to §2445 of this Article, the following fees shall be assessed against  
 3 each applicant or Beneficiary of a Qualifying Certificate:

|    | <b>FILING FEES:</b>       | <b>ANNUAL<br/>SURVEILLANCE FEES:</b> |
|----|---------------------------|--------------------------------------|
| 4  |                           |                                      |
| 5  |                           |                                      |
| 6  | Agriculture, aquaculture, |                                      |
| 7  | and mariculture:          | \$150,                               |
| 8  | Home manufacturing:       | \$100,                               |
| 9  | Manufacturing:            | \$750,                               |
| 10 | Commercial fishing:       | \$250,                               |
| 11 | Services:                 | \$750,                               |
| 12 | Leasehold services:       | \$750,                               |
| 13 | Tourism                   | \$1,000,                             |
| 14 | Captive insurance         |                                      |
| 15 | companies:                | \$750,                               |
| 16 | Export trading companies: | \$750,                               |
| 17 | Motels per motel:         |                                      |
| 18 | Under construction:       | \$750,                               |
| 19 | In operation:             | \$750,                               |
| 20 | Hotels per hotel:         |                                      |
| 21 | Under construction:       | \$1,500,                             |
| 22 | In operation:             | \$1,500,                             |

23           **§2444. Extraordinary costs.** In addition to the filing and surveillance  
 24 fee, the Authority may also assess against an applicant or Beneficiary any  
 25 extraordinary costs and expenses incurred to process the application or  
 26 monitor the Beneficiary's performance of the terms and conditions of the  
 27 Qualifying Certificate. Such cost and expenses shall not include the salaries

1 of any employees of the Authority but may include but are not limited to the  
2 services of outside consultants, or off-island trips necessitated by the  
3 application or the surveillance.

4 **§2445. Periodic adjustment of fees.** The Authority is authorized to  
5 adjust the fees listed in §2443 of this Article on an annual basis, at the  
6 beginning of each calendar year, upon demonstration to the Authority by the  
7 Administrator that the cost of performing the services covered by the fees is  
8 greater than the amount of the fees. Fee changes shall be made according to  
9 the provisions of the Administrative Adjudication Law.

10 **§2446. Rule-making authority.** In accordance with the Administrative  
11 Adjudication Law the Authority shall adopt rules and regulations consistent  
12 with this Article which provide for, but are not limited to the following:  
13 Eligibility, minimum investment levels for different industries, the  
14 applications process, the terms and conditions of the various Qualifying  
15 Certificates, the monitoring procedure, and the revocation of Qualifying  
16 Certificates."

17 **Section 2. Severability.** If any provision of this Act or the application  
18 thereof to any person or circumstances is held invalid, such invalidity shall  
19 not affect the other provisions or applications of the Act which can be given  
20 effect **without** the invalid provision or application, and to this end the  
21 provisions of the Act are declared to be severable.