

I MINA' BENTE NUEBI NA LIHESLATURAN GUÅHAN
2007 (FIRST) REGULAR SESSION

Bill No. 62(EC)

Introduced by:

v.c. pangelinan
J.P. Guthertz

AN ACT TO IMPOSE A TEMPORARY
MORATORIUM ON THE ISSUANCE OF NEW AND
EXTENSION OF EXPIRING QUALIFYING
CERTIFICATES; AND TO ADD A NEW §58148 TO
CHAPTER 58, DIVISION 2 OF TITLE 12, GUAM
CODE ANNOTATED, RELATIVE TO CREATING A
QUALIFYING CERTIFICATE ASSESSMENT
WORKGROUP.

1 BE IT ENACTED BY THE PEOPLE OF GUAM:

2 Section 1. Legislative Findings and Intent. *I Liheslaturan Guahan* finds
3 that the Qualifying Certificate program administered by the Guam Economic
4 Development and Commerce Authority is intended to attract new
5 investments and the incubation of new industries in Guam through the
6 granting of certain tax rebates and tax abatements. It is further intended to
7 create new economic development within the island and to expand and
8 diversify our economic base.

9 A Qualifying Certificate allows tax abatements for a period up to ten
10 (10) years applied to real property tax and an abatement of up to twenty years
11 (20) for gross receipts tax depending on the eligible business activity engaged
12 in as set forth in Chapter 58 of Title 12, Guam Code Annotated.

1 *I Liheslatura* also finds that it was never the original intention of the
2 program to re-issue Qualifying Certificates for existing, mature, and
3 established recipients, thereby allowing the Beneficiary to once again claim
4 exemption from having to pay certain taxes. It has become the rule rather than
5 the exception. Therefore, the process and criteria for the granting of
6 Qualifying Certificates must be re-evaluated to ensure that the initial intent of
7 bestowing economic incentives to investors in return for extending greater
8 opportunities for the community-at-large is not being corrupted.

9 It is therefore the intent of *I Liheslaturan Guahan* to impose a temporary
10 moratorium suspending the issuance of new Qualifying Certificates,
11 prohibiting the modification of existing Qualifying Certificates and granting
12 the extension of Qualifying Certificates.

13 It is further the intent of *I Liheslaturan Guahan* to create a Qualifying
14 Certificate Assessment Workgroup to evaluate the effectiveness of the
15 Qualifying Certificate Program and to submit recommendations.

16 **Section 2. Temporary Moratorium on Issuance of New and Extension**
17 **of Expiring Qualifying Certificates.** There shall hereby be a temporary
18 moratorium placed on the issuance of new, extension and renewal of expiring
19 Qualifying Certificates. The modification of all Qualifying Certificates is also
20 prohibited.

21 **Section 3.** A new Section 58148 is hereby added to Chapter 58, Division
22 2 of Title 12 Guam Code Annotated to read as follows:

23 **“§58148. (a) Establishment of the Qualifying Certificate Assessment**
24 **Workgroup.** There is hereby established a Qualifying Certificate Assessment

1 Workgroup which shall conduct a cost and benefits analysis on the
2 effectiveness of Qualifying Certificates issued in the Territory and to
3 formulate a permanent restructuring plan relative to the future of the
4 Qualifying Certificate program. The Workgroup shall issue, no later than six
5 (6) months from its initial meeting, a written report to the Speaker of *I*
6 *Liheslaturan Guahan* and *I Maga'lahen Guahan* which shall include, but not be
7 limited to:

- 8 (1) Analysis of the criteria used to grant qualifying certificate
9 and the effectiveness of the program as currently
10 administered by the Guam Economic Development and
11 Commerce Authority;
- 12 (2) Quantification of revenues from tax rebates and tax
13 abatements that are deferred by the government with the
14 granting of the abatements and rebates;
- 15 (3) Quantification of the economic benefits derived by the
16 granting of Qualifying Certificates by recipients;
- 17 (4) Historical analysis of extending expired Qualifying
18 Certificates;
- 19 (5) Breakdown on Beneficiaries engaged in different industry
20 activities availing themselves of Qualifying Certificates;
- 21 (6) Strategies to increase investor relations without relying
22 solely on the Qualifying Certificate program;
- 23 (7) Formulation of a plan to restructure the Qualifying
24 Certificate program that allows for investor opportunities,

1 but allows for greater benefits for our people and at the same
2 time takes into consideration the tax abatement and tax
3 rebate period;

4 (8) Effectiveness of the monitoring and compliance system
5 currently in place and recommendations for changes;

6 (9) Recommendations in draft bill form for consideration by the
7 Legislature to amend or repeal the existing statutes
8 governing the Qualifying Certificate Program.

9 The Workgroup may invite government, private sector,
10 community entities and individuals to submit reports, provide
11 testimony, data and other information that may assist the
12 Workgroup to comply with its duties and responsibilities. The
13 committee is authorized to create sub-committees as needed.

14 **(b) Composition of the Qualifying Certificate Assessment Workgroup.** The
15 Workgroup shall be composed of seven (7) members as follows:

16 (1) The Speaker of *I Liheslaturan Guahan* or his/her designee;

17 (2) The Administrator of the Guam Economic Development and
18 Commerce Authority;

19 (3) The Director of the Department of Revenue and Taxation or
20 his/her designee;

21 (4) The Director of the Department of Administration or his/her
22 designee;

23 (5) The Attorney General of Guam or his/her designee;

24 (6) A representative from the private business community who shall

1 possess a degree in economics, finance or business related field appointed by
2 the Governor; and

3 (7) A representative from the Guam Small Business Development
4 Center appointed by the Governor.

5 The Chairperson of the Workgroup shall be the Administrator of the
6 Guam Economic Development and Commerce Authority. The Vice
7 Chairperson shall be elected by the Workgroup at its first meeting. All
8 Workgroup meetings shall be open to the public as mandated by 5GCA,
9 Chapter 8, Section 8107. If the Governor fails to appoint members as
10 specified above within 30 days of enactment, the Speaker of *I Liheslatura* shall
11 make the appointment.

12 **(c) Term and Vacancy of Qualifying Certificate Assessment Workgroup.**
13 The Workgroup shall be formed and meet no later than forty-five (45) days
14 after the enactment of this Act. The members of the Workgroup shall serve
15 for the duration of its existence. Any vacancy shall be filled in the same
16 manner as the original appointment or selection, but only for the balance of
17 the term. The Workgroup members shall serve without compensation. The
18 Workgroup shall be terminated upon the acceptance of its report by the
19 Speaker of *I Liheslaturan Guahan* and *I Maga'lahaen Guahan* or 180 days after its
20 first meeting, if the first meeting is held within the 45 days after enactment of
21 this Act, otherwise the Workgroup shall terminate 250 days after enactment.

22 **(d) Support Services.** All government of Guam agencies and offices shall
23 assist the Workgroup in the performance of its duties and provide the
24 Workgroup with appropriate studies, data and other information as

1 requested.”

2 **Section 4. Effective Date.** Section 2 of this Act shall become effective
3 immediately after it has been signed into law. It shall remain in effect until
4 such time the Workgroup submits its request and recommendations to *I*
5 *Liheslatura* and *I Maga’Lahi* and is enacted into law. If no recommendations
6 are enacted by *I Liheslatura* and signed into law by *I Maga’Lahi*, the
7 moratorium shall be lifted on the granting of new Qualifying Certificates.

8 **Section 5. Severability.** If any of the provisions of this Act or the
9 application thereof to any person or circumstance is held invalid, such
10 invalidity shall not affect any other provision or application of this Act which
11 can be given effect without the invalid provision or application, and to this
12 end the provisions of this Act are severable.