


SEVENTEENTH GUAM LEGISLATURE  
1984 (SECOND) Regular Session

CERTIFICATION OF PASSAGE OF AN ACT TO THE GOVERNOR

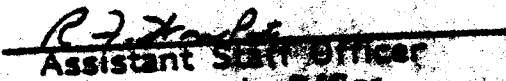
This is to certify that Substitute Bill No. 699, "AN ACT TO ADD A NEW CHAPTER VI TO TITLE XVII OF THE GOVERNMENT CODE, TO AMEND SECTION 278 AND ADD SECTION 300.1 TO THE CIVIL CODE, TO ADD A NEW 12 GCA CHAPTER 2A, AND TO ADD A NEW SECTION 19543.0020 AND A NEW SUBSECTION (g) TO SECTION 19605 OF THE GOVERNMENT CODE, RELATIVE TO PROVIDING INCENTIVES FOR FOREIGN CORPORATIONS, AND FOR OTHER PURPOSES," was on the 20th day of August 1984, duly and regularly passed.

  
CARL T. C. GUTIERREZ  
Speaker


Attested:

  
ELIZABETH P. ARRIOLA  
Senator and Legislative Secretary

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This Act was received by the Governor this 22<sup>nd</sup> day of August 1984, at 2:05 o'clock P.m.

  
Assistant Staff Officer  
Governor's Office

APPROVED:

  
RICARDO J. BORDALLO  
Governor of Guam

Date:

8/29/84

Public Law No. 17-63

3:17 pm

SEVENTEENTH GUAM LEGISLATURE  
1984 (SECOND) Regular Session

Bill No. 699  
Substitute by  
Committee on Ways and Means

Introduced by:

J. T. San Agustin  
F. R. Santos  
T. V. C. Tanaka

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J. F. Ada  
C. T. C. Gutierrez  
A. R. Unpingco  
M. D. A. Manibusan  
P. C. Lujan  
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E. R. Duenas  
F. J. Gutierrez  
M. K. Hartsock  
A. C. Lamorena III  
T. S. Nelson  
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J. F. Quan  
F. J. Quitugua  
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AN ACT TO ADD A NEW CHAPTER VI TO TITLE XVII  
OF THE GOVERNMENT CODE, TO AMEND SECTION 278  
AND ADD SECTION 300.1 TO THE CIVIL CODE, TO  
ADD A NEW 12 GCA CHAPTER 2A, AND TO ADD A  
NEW SECTION 19543.0020 AND A NEW SUBSECTION (g)  
TO SECTION 19605 OF THE GOVERNMENT CODE,  
RELATIVE TO PROVIDING INCENTIVES FOR FOREIGN  
SALES CORPORATIONS, AND FOR OTHER PURPOSES.

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

1 Section 1. Foreign Sales Corporation Export Incentive Act. The  
2 Legislature finds that the United States Congress has established, in Title  
3 VIII of the federal Deficit Reduction Act of 1984, various tax incentives to  
4 encourage foreign export trade by United States companies and has  
5 provided that special Foreign Sales Corporations may be established in  
6 possessions of the United States, including the territory of Guam and that  
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no tax shall be imposed by these possessions on foreign trade income derived before January 1, 1987. The Legislature further finds that it is in the best interests of the territory of Guam to support export activity by United States companies and to attract United States companies which are engaged in export trade to establish Foreign Sales Corporations in Guam, and that special tax incentives, in particular the continuation of Guam tax incentives on foreign trade income derived after January 1, 1987, are necessary for this purpose. This Act is based upon the foregoing findings and shall be known as the FSC Export Incentive Act.

Section 2. A new Chapter VI is added to Title XVII of the Government Code to read:

"CHAPTER VI  
FOREIGN SALES CORPORATIONS.

Section 16500. Foreign Sales Corporations. defined.

A 'Foreign Sales Corporation' or 'FSC' for the purposes of this Chapter is an entity incorporated in Guam which is a FSC as defined in Section 801(a) of the federal Deficit Reduction Act of 1984 as the same may be amended from time to time.

Section 16501. Same: License Requirements.

Before any person or entity may operate a FSC in Guam, a written license issued by the Director of Revenue and Taxation shall be obtained. A Guam FSC license shall be issued provided the applicant meets the following requirements:

(1) It is duly incorporated under the laws of the Territory of Guam.

(2) It has filed with the Director of the Department of Revenue and Taxation a certified copy of its articles of incorporation and its bylaws and a copy of an application for a Guam FSC license in such form as the Director may specify.

(3) It has furnished to the Director such proof of its paid-in capital, capital stock ownership and management as the Director may reasonably require.

(4) It has filed with the Director a true copy of its most recent election, made under Section 801(a) of the federal Deficit Reduction

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Act of 1984 as the same may be amended from time to time, under Section 922(a)(2) of the Internal Revenue Code to be treated as a FSC and, if applicable, under Section 922(b)(1) of the Internal Revenue Code to be a small FSC; or if it has not yet made such election(s) it furnishes to the Director a true copy of such election(s) within ninety (90) days after the making of such election(s).

(5) It has complied with all applicable requirements of the Civil Code relating to domestic corporations, except matters otherwise specified for in Section 300.1 of the Civil Code.

(6) Its manager or agent residing in this Territory has taken an oath that such manager or agent will, as far as the duty devolves upon such manager or agent, diligently and honestly administer the affairs of the FSC and will not knowingly violate or willingly permit to be violated any of the provisions of law applicable to the FSC, and the oath, subscribed by the manager or agent taking it, has been transmitted to the Director and filed in the Director's office.

Section 16502. Same: License term. The Director shall issue a Guam FSC license to the applicant provided the applicant fulfills the requirements set forth in Section 16501 of this Chapter. The license issued shall be for a term of ten (10) years, subject to the condition that the licensee shall pay an annual license fee each year of One Thousand Dollars (\$1,000.00). The first annual license fee shall be payable at the time an application for license is filed with the Director. If the license is not issued, the One Thousand Dollar (\$1,000.00) fee shall be refunded to the applicant. The ten (10) year license provided for herein shall not be revoked or cancelled except for cause and in the manner provided in Chapter VI of Title XVII of the Government Code; provided any licensed FSC may elect at the end of any year during the term of its license not to pay the annual license fee and request, in writing, cancellation of its Guam FSC license, and in such event the Director shall cancel such license without penalty.

Section 16503. Same: exclusive license. So long as the business activities of the FSC are conducted solely for the purpose of earning foreign trade income as that term is defined in 12 GCA 52431(b), no

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business license other than the Guam FSC license shall be required. However to the extent a FSC conducts any business activities which are intended to produce or do produce any income other than foreign trade income, the FSC shall be required to obtain such business licenses and permits as are required of any other domestic corporation incorporated in Guam and transacting business in Guam. Foreign trade income of a FSC duly licensed hereunder shall qualify for the special tax incentives provided in 12 GCA §2432 and 12 GCA §2433. All income of a FSC other than foreign trade income shall be taxed in the same manner as income of any other domestic corporation incorporated in Guam.

Section 16504. Same: License Revocation or Cancellation. So long as a licensed FSC (i) pays its annual license fee and (ii) files with the Director within ninety (90) days after the date of making its election, a true copy of its federal election of status as FSC and small FSC under Sections 922(a)(2) and 922(b)(1) of the Internal Revenue Code, a Guam FSC shall be presumed to validly licensed. In the event the Director has any cause to believe any Guam FSC license was invalidly issued or that any Guam FSC license is subject to revocation or cancellation because the holder is not in compliance with applicable Guam law, then the Director shall provide written notice to the FSC, specifying the grounds for revocation or cancellation of the Guam FSC license. The FSC shall then have a period of ninety (90) days to correct any deficiencies and bring itself into compliance with applicable Guam law and cure any grounds for revocation or cancellation. In the event the Director, after such ninety (90) day period, believes the FSC is still not in compliance with applicable Guam law or otherwise has not cured the grounds for revocation or cancellation, the Director shall have the right upon not less than thirty (30) days' written notice to the FSC to conduct a hearing and thereafter, if cause be found, to revoke or cancel the Guam FSC license. Any cancellation or revocation order issued by the Director shall be subject to judicial review in the Superior Court of Guam."

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Section 3. Section 278 of the Civil Code is amended by adding a new paragraph at the end of that Section to read:

"FSC" refers to any domestic corporation which is also a FSC as defined in Section 801(a) of the federal Deficit Reduction Act of 1984 as the same may be amended from time to time."

Section 4. A new Section 300.1 is added to the Civil Code to read:

"§300.1. The following provisions of this Title shall not apply to any FSC:

- (1) Section 305, to the extent that directors need not be elected from among the holders of stock;
- (2) Section 306;
- (3) Section 308, to the extent that the president need not be a director.

In addition to the above exemptions, no officer of a FSC shall be required to own any shares of the capital stock of the Corporation of which he is an officer."

Section 5. A new Chapter 2A is added to 12 GCA to read:

"Chapter 2A

Foreign Sales Corporation Tax Incentives

Section 2430. Legislative Intent. The Legislature finds that it is in the best interest of the Territory of Guam to offer inducements to attract United States companies which are engaged in export trade to establish Foreign Sales Corporations in Guam and that special tax incentives are necessary for this purpose.

Section 2431. Definitions. For the purposes of this Chapter:

- (a) The term 'FSC' means a Guam domestic corporation which is:
  - (1) a FSC as defined in Section 801(a) of the federal Deficit Reduction Act of 1984 as the same may be amended from time to time, and
  - (2) the holder of a valid Guam FSC license duly issued pursuant to Chapter VI of Title XVII of the Government Code of Guam.
- (b) The term 'foreign trade income' means income which is;

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(1) foreign trade income as defined in Section 801(a) of the federal Deficit Reduction Act of 1984 as the same may be amended from time to time, and

(2) gross income of a FSC attributable to non-Guam trading gross receipts.

(c) The term 'non-Guam trading gross receipts' means the gross receipts of any FSC which are:

(1) from the sale, exchange, or other disposition of non-Guam property for direct use, consumption or disposition outside the Territory of Guam, or

(2) from the lease or rental of non-Guam property for use by the lessee outside the Territory of Guam, or

(3) for services which are related and subsidiary to

(i) any sale, exchange, or other disposition of non-Guam property by such corporation, or

(ii) any lease or rental of non-Guam property described in item (2) of this Subsection by such corporation,

(4) for engineering or architectural services for construction projects located (or proposed for location) outside the territory of Guam, or

(5) for the performance of managerial services for an unrelated FSC in furtherance of the production of non-Guam trading gross receipts described in items (1), (2), or (3) of this Subsection, provided that this item (5) shall not apply to a FSC for any taxable year unless at least fifty percent (50%) of its gross receipts for such taxable year are derived from activities described in items (1), (2), or (3) of this Subsection.

(d) The term 'non-Guam property' means property which is

(1) export property as defined in Section 801(a) of the federal Deficit Reduction Act of 1984 as the same may be amended from time to time, and

(2) held primarily for sale, lease, or rental, in the ordinary course of trade or business, by, or to, a FSC, for direct use, consumption, or disposition outside the territory of Guam.

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(e) The term 'Corporation' means the Guam Economic Development Authority.

Section 2432. For the purpose of the taxes imposed upon income pursuant to the Guam Territorial Income Tax (as established and defined in 48 U.S.C. §1424(i)), gross income of a FSC does not include any foreign trade income of such FSC.

Section 2433. (a) To the extent any foreign trade income should at anytime now or hereafter become includable within the gross income of a FSC for the purposes of the Guam Territorial Income Tax, the following rebate of corporate income tax payable to the Government of Guam in any single taxable year is hereby established and declared for FSCs. Upon application by a FSC after it has been issued a Guam FSC license pursuant to Chapter VI of Title XVII of the Government Code, a special Qualifying Certificate shall be issued for a period of ten (10) consecutive years for the rebate of all income taxes applicable to corporate earnings on foreign trade income as defined in this Chapter occurring on and subsequent to the date of the issuance of the special Qualifying Certificate and prior to the expiration of the Certificate.

(b) A FSC desiring to apply for a special Qualifying Certificate shall make application by filing a certified copy of its Guam FSC license with the Corporation and furnishing the Corporation with copies of all documents which were required to be furnished to obtain the Guam FSC license pursuant to Chapter VI of Title XVII of the Government Code of Guam. The Corporation, upon ascertaining that the material furnished by the applicant is in proper order, shall thereupon promptly forward its recommendation for issuance of the special Qualifying Certificate to the Governor of Guam who shall approve the application.

(c) A true copy of the special Qualifying Certificate shall be attached to each corporate tax return of the FSC and the amount of tax due prior to rebate shall be deposited with the Government at the time of filing of each income tax return. Taxes deposited by a FSC shall not be placed in the General Fund or commingled with other

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funds, but shall be deposited by the Director of Revenue and Taxation in special purpose trust accounts in one or more FDIC insured banks with offices within the territory of Guam and shall be withdrawn from such accounts only for the purpose of (i) making rebates as provided herein or (ii) payment into the General Fund, after a final determination, including a judicial determination if requested by the FSC taxpayer, that taxes are validly due and payable and that the FSC is not entitled to any rebate. Upon filing by a FSC of a tax return, the Director of Revenue and Taxation shall immediately thereafter cause the return to be reviewed, and, if the rebate appears to be in order shall cause the amount of tax deposited by the FSC to be returned to the FSC within fifteen (15) days from the date of deposit. If for any reason the amount to be rebated is not returned to the FSC within fifteen (15) days from the date of deposit, the unreturned amount shall bear interest at the rate determined under Section 6611 of the Guam Territorial Income Tax law from the date of deposit until the date of return to the FSC of the money due to it. In the event of any failure to make the rebate provided for herein within thirty (30) days from the date of deposit by a FSC of the taxes due prior to rebate, the Government of Guam consents to suit and consents to a decree of specific performance being entered against it for payments found to be lawfully due. The fifteen day review by the Director of Revenue and Taxation of a tax return of a FSC shall not constitute an audit or final determination by the Director of taxes due, but the rebate provided for herein shall be made notwithstanding that an audit or final determination of taxes due has not been completed with the seven day period. Amounts rebated to a FSC as provided herein shall not constitute income to such FSC and shall not be included within the gross income of FSC for tax purposes.

(d) Any FSC holding a special Qualifying Certificate issued pursuant to this Chapter shall be entitled to all the rights of a beneficiary given under Chapter 1 of Title LIV of the Government Code of Guam (12 GCA Chapter 2, Article 4) and, except as otherwise specifically set forth in this Chapter, shall comply with all the

requirements of Chapter I of Title LIV (12 GCA Chapter 2, Article 4). It shall not be a condition of the special Qualifying Certificate that the FSC employ any minimum number of persons, but as to any persons who are employed with the territory of Guam, the provisions of Section 53571 of the Government Code (12 GCA §2408) shall be met. Any FSC holding a special Qualifying Certificate issued pursuant to this Chapter shall also be entitled to obtain an ordinary qualifying certificate issued pursuant to 12 GCA Chapter 2 from the Corporation as to any activities of the FSC which result or are intended to result in the earning by the FSC of any income other than foreign trade income; provided any FSC desiring a regular qualifying certificate shall meet such requirements as are required of any other applicant for a regular qualifying certificate.

Section 2434. It shall be a condition of the tax exemption provided for in Section 2432 of this Chapter and of the special Qualifying Certificate provided for in Section 2433 of this Chapter that a FSC shall at all times maintain a valid Guam FSC license in good standing pursuant to the provisions of Chapter VI of Title XVII of the Government Code of Guam."

Section 6. A new Section 19543.0020 is added to the Government Code to read:

"§19543.0020. All of the 'foreign trade income' of a FSC, as defined in 12 GCA §2431(b)."

Section 7. Subsection (g) is added to Section 19605 of the Government Code to read:

"(g) All property imported into Guam by a FSC which is 'non-Guam property' as defined in 12 GCA §2431(d)."

Section 8. If any section or provision of the FSC Export Incentive Act of which 12 GCA Chapter 2A forms a part, including without limitation 12 GCA §2432 relating to exemption from tax, shall be found to be invalid by any court, it shall be conclusively presumed that this Act would have been passed by the Legislature without such invalid section or provision, and the Act as a whole shall not be declared invalid by reason of the fact

1 that one or more sections or provisions may be found to be invalid by any  
2 court.

3 Section 9. Section 59009(2) of the Government Code is amended to  
4 read:

5 "(2) The Commission on a pari-mutuel pool on every dog race  
6 which may be withheld by the licensee and the Territory for the total  
7 contributions made to such pari-mutuel pool shall in no event exceed  
8 thirty percent (30%) of the amounts contributed thereto, which said  
9 maximum commission shall include the one percent (1%) tax heretofore  
10 provided for by §59007, the Greyhound Owners Prize Pool established  
11 in §59001.1 and the additional tax provided thereafter by §59010. The  
12 one percent (1%) tax provided for by §59007, the six percent (6%)  
13 Greyhound Owners Prize Pool provided for by §59009.1 and the  
14 additional tax provided for by §59010 shall be deducted from the  
15 pari-mutuel pool before the licensee shall have the right to its  
16 commission and before the licensee shall receive any money or  
17 payments from the pari-mutuel pool."

18 Section 10. Section 59009.1 of the Government Code is amended to  
19 read:

20 "§59009.1. In addition to any other tax, there shall be deducted  
21 from the total daily pari-mutuel pool an amount equal to six percent  
22 (6%) of all money paid into the pari-mutuel pool to be deposited in the  
23 'Greyhound Owners Prize Fund.' The Fund shall be administered by  
24 the licensee under the supervision of the Guam Gaming Commission  
25 pursuant to rules and regulations promulgated by the Guam Gaming  
26 Commission. The Fund shall not be subject to any charge, deduction  
27 or other diminution of its value. Proceeds shall be distributed to the  
28 owners of greyhounds raced at the track from which the Fund is  
29 derived within thirty (30) days from the date on which deposits in the  
30 Fund are made pursuant to this statute."

31 Section 11. Subsection (1) of Section 59101 of the Government Code is  
32 amended to read:

1           "(1) In addition to any other tax, there shall be deducted from  
2 the total daily pari-mutuel pool and paid to the Government of Guam a  
3 daily operating tax of three percent (3%) of all money paid into the  
4 pari-mutuel pool."

5 Section 12. Section 19 of Public Law 17-53 is amended to read:

6           "Section 19. The sum of One Hundred Nine Thousand Six  
7 Hundred Seventy Dollars (\$109,670) is appropriated from the General  
8 Fund to the Guam Election Commission to purchase an AIS-315 Optical  
9 Scanner, tabulating device, for the upcoming elections and for the  
10 payment of costs involved in preparing and conducting an election for  
11 any initiative measure submitted and certified by the Election  
12 Commission."

13 Section 13. Section 2960.9 of the Government Code of Guam (Section  
14 17204, 3 GCA) is repealed and reenacted to read:

15           "§17204. An initiative must be approved by fifty percent (50%)  
16 plus one (1) of all voters who go to the polls to vote in the special or  
17 general election at which the initiative was placed on the ballot. Any  
18 initiative so approved by fifty percent (50%) plus one (1) of all voters  
19 who go to the polls to vote at said election shall take effect sixty (60)  
20 days after the date on which the Commission certifies that the  
21 initiative has been passed."

22 Section 14. 3 GCA Section 3105 is amended to read:

23           "Section 3105. Place of Registration. The registration of electors  
24 shall be in progress at the main office of the Commission during such  
25 hours as the office is open for business at all times prior to the  
26 closing of the registration rolls. The registration of electors may also  
27 be in progress in each precinct for fifteen (15) days, excluding  
28 Saturdays, Sundays and legal holidays, prior to the closing of the  
29 registration rolls. Electors may also be registered at such times and  
30 places within the Territory as the Commission shall deem advisable and  
31 convenient and may deputize volunteers for such purposes."